File No. 190605 Committee Item No. 3
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee **Date** June 17, 2019

Board of Supervisors Meeting **Date** _____

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☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
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OTHER **(Use back side if additional space is needed)**

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Completed by: Erica Major **Date** June 13, 2019
Completed by: Erica Major **Date** _____

[Master Lease of City Property - Yerba Buena Gardens Conservancy -Yerba Buena Gardens - $1.00 Annual Base Rent]

Resolution approving and authorizing the Director of Property to execute a master lease agreement between the City and County of San Francisco, as landlord, and the Yerba Buena Gardens Conservancy, a California nonprofit public benefit corporation, as tenant, for the lease of City-owned real property and improvements, collectively known as Yerba Buena Gardens at an annual base rent of $1.00 for a total term to commence upon approval from the Board of Supervisors and Mayor, through September 1, 2061; finding the proposed transaction is in conformance with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting California Environmental Quality Act findings.

WHEREAS, Over a forty-year period, the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "Former Agency" or "OCII"), developed and managed the three central blocks of the Yerba Buena Center Redevelopment Project Area ("Yerba Buena Gardens" or "YBG"); and

WHEREAS, The Former Agency developed and managed the properties located within YBG (the "YBG Properties") as a single, unified set of properties generating restricted revenue from associated leases and agreements ("Program Income"); and

WHEREAS, Program Income is governed by Community Development Block Grant ("CDBG") funding requirements, which contractually dedicates Program Income to be used for the operation, capital improvement, maintenance and programming of YBG; and

WHEREAS, State law dissolved the Former Agency on February 1, 2012, under California Health and Safety Code, Sections 34170 et seq. ("Redevelopment Dissolution

Law") and required that OCII dispose of the Former Agency's real property, including YBG; and

WHEREAS, The Board of Supervisors adopted, by Resolution File No. 180417 (May 22, 2018), authorizing the transfer of Yerba Buena Gardens and associated "Leases" and "Agreements" from OCII to City, with such transfers to City having occurred on June 27, 2018; and

WHEREAS, Since the acquisition, the City has directly managed YBG on an interim basis until such time as a long-term operator could be selected and a long-term master lease is negotiated; and

WHEREAS, That upon approval of any long-term management agreement or lease, the Director of Property shall retain the YBG Properties and all assets of YBG under the jurisdiction of the Real Estate Division (RED); and

WHEREAS, The Board of Supervisors adopted, by Resolution File No. 160756 (October 20, 2015), Establishment of Yerba Buena Gardens Conservancy (YBGC) created for the purpose of eventually managing YBG on behalf of the City and YBGC is currently overseen by an eleven-member "Interim Board"; and

WHEREAS, The City and YBGC have negotiated a master lease agreement dated June 14, 2019 (the "Lease"), commencing upon execution after approval by the Board of Supervisors and Mayor, expiring on September 1, 2061, a copy of the Lease is on file with the Clerk of the Board of Supervisors in File No. 190605; and

WHEREAS, Under the Lease, YBGC is obligated to manage and operate portions of YBG, including certain YBG Properties, certain leases and agreements within Central Block 1, Central Block 2, and Central Block 3 (collectively, the "YBGC Premises"); and

WHEREAS, City will continue to retain certain leases and responsibilities within YBG, but the Lease does not create any fiscal obligation upon City except those that are

reimbursable expenses from Program Income; and

WHEREAS, The Lease requires YBGC to use any Program Income, in accordance with CDBG requirements, to fulfil its obligations under the Lease; and

WHEREAS, The Lease obligates YBGC to perform certain responsibilities and YBGC will be assigned certain agreements within YBG, but not all (which unassigned agreements include the "Retained City Leases" and the "Retained Public Open Spaces", as defined in the Lease); and

WHEREAS, The Retained Lease Areas, as defined in the Lease, are not part of the Premises; however, revenue generated from the Retained Lease Areas, net of any expenses incurred by City, is dedicated to fund the operation, maintenance, security, and capital improvement of the Premises and YBGC shall have certain other rights with respect to the Retained Lease Areas as set forth in the Lease; and

WHEREAS, The Lease, at no cost to the City, fulfills the requirements of the Redevelopment Dissolution Law and requires Board of Supervisor approval under Chapter 23 of the San Francisco Administrative Code; and

WHEREAS, The Interim Board of the YBGC is expected to be replaced by a new Board of Directors in conjunction with the Lease taking effect; and

WHEREAS, The new Board of the YBGC will consist of 15 members as set forth in the YBGC Bylaws - eight of the Directors shall represent Yerba Buena neighborhood and community constituencies "(YBGC Representatives") and seven of the Directors shall be nominated by the City and County of San Francisco ("City Representatives"); and

WHEREAS, The YBGC Bylaws deem the City Representatives as agents of the City and County of San Francisco when serving as Directors and describes the City Representatives as follows: one Director representing the City Convention Facilities

Department, one Director representing the City Arts Commission, one Director representing the City Department of Real Estate, and four Directors nominated in the City's discretion; and

WHEREAS, The Planning Department, by letter dated April 30, 2018, found that the Lease agreement between YBGC and City is not considered a project under the California Environmental Quality Act ("CEQA", Public Resources Code, Section 21000 et seq.) pursuant to CEQA Guidelines, Section 15060(c)(2) and 15378, and is consistent with the General Plan, and the eight priority policies of Planning Code, Section 101.1, which letter is on file with the Clerk of the Board of Supervisors in File No. 190605, and incorporated herein by this reference; now, therefore, be it

RESOLVED, The Board of Supervisors affirms the Planning Department's determination under CEQA and finds that the proposed Lease between City and YBGC is consistent with the General Plan and with Planning Code Section 101.1 for the reasons set forth in the Director of Planning's letter; and, be it

FURTHER RESOLVED, That in accordance with the recommendations of the City's Director of Property, the Board of Supervisors approves and authorizes the Director of Property to (i) execute the Lease between the City and the YBGC (a California nonprofit public benefit corporation) for the lease of the City-owned real property and improvements collectively known as the Yerba Buena Gardens for the lease commencing upon execution after approval by the Board of Supervisors and Mayor, expiring on September 1, 2061, including any exhibits, such as assignment and assumption agreements of Leases or Agreements, causing YBGC to assume some of the Leases and Agreements, including most rights and obligations under those Leases and Agreements, subject to any restrictions or requirements imposed by the Lease; (ii) transfer Program Income, net of any expenses incurred by City associated with City's responsibilities at YBG, to YBGC so the Program Income may be used to fulfill YBGC's Lease obligations; (iii) maintain City's right to accept all

funds in the "Separate Account" (as described in the Lease), and for the Controller to maintain a separate account for use on the YBG Properties only as required by the Leases and Agreements; and be it

FURTHER RESOLVED, The City Administrator shall appoint the City Representatives to the YBGC Board based on identified skillsets helpful to the successful operation of the YBGC such as community development and public finance; and provided that one of the City Representative seats will be representative of the supervisorial district of YBG; and be it

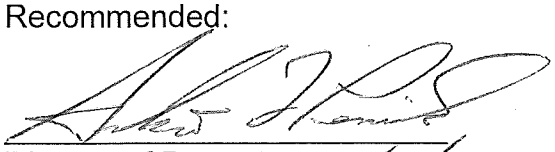
FURTHER RESOLVED, The Board of Supervisors approves and authorizes the Director of Property to execute any such other documents that are necessary or advisable to complete the transaction contemplated in the Lease, and to effectuate the purpose and intent of this Resolution; and, be it

FURTHER RESOLVED, That the Board authorizes the Director of Property, in consultation with the City Attorney, to enter into any additions, amendments or other modifications to Lease that the Director of Property determine are in the best interests of the City, and do not materially increase the obligations or liabilities of the City beyond those contemplated in this resolution, and are in compliance with all applicable laws, including the Redevelopment Dissolution Law and the City's Charter; and, be it

FURTHER RESOLVED, That all actions authorized and directed by this Resolution and previously taken are hereby ratified and approved by the Board of Supervisors; and, be it

FURTHER RESOLVED, That within thirty (30) days of the Proposed Lease being fully executed by all parties, RED shall provide a copy to the Clerk of the Board for inclusion into the official file.

Recommended:



Director of Property 5/30/19

File No. 190605

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

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: **Yerba Buena Gardens Conservancy**, a California non-profit public benefit corporation.	
(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 (1)Cathy Maupin; Sean Jeffries; Karen Carr; Deborah Cullinan; Ken Bukowski; Tom DeCaigny; John Elberling; Linda Lucero; Noushin Nofakhaml Andrico Penick. (2) CEO: Scott Rowitz; CFO: N/A; COO: N/A (3) N/A (4) N/A (5) N/A	
Contractor address: YBGC; 5 Third Street, Suite 914; San Francisco, CA 94103	
Date that contract was approved:	Amount of contract: **$0.00** (Note: expenses are paid from Program Income)
Describe the nature of the contract that was approved: non-profit lease of premises on to manage City-property located at Yerba Buena Gardens; expires in 2061.	
Comments: N/A	

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
as Landlord

and

YERBA BUENA GARDENS CONSERVANCY,
a California nonprofit public benefit corporation
as Tenant

for the lease of real property and improvements
collectively known as the Yerba Buena Gardens

in San Francisco, California

Dated as of June 14, 2019

LEASE

THIS LEASE (this "**Lease**"), dated for reference purposes as of June 14, 2019, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit corporation (the "**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted on Exhibit B-1 attached hereto (as further defined in Section 1.73 and Section 2.1 below, the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3," and includes the Yerba Buena Gardens.

B. The City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-2 attached hereto (the "**Retained Lease Areas**"). The Retained Lease Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The Retained Lease Areas are not part of the Premises; however, revenue generated from the Retained Lease Areas is dedicated to fund the operation, maintenance, security, and capital improvement of the Premises and Tenant shall have certain other rights with respect to the Retained Lease Areas as set forth in this Lease

C. The City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-3 attached hereto (the "**Retained Public Space Areas**"). The Retained Public Space Areas are not part of the Premises; however, Tenant shall have certain rights and obligations with respect to the Retained Public Space Areas as set forth in this Lease.

D. The City is also the owner in fee simple of other real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-4 attached hereto (the "**Retained Other Gardens Areas**), which as of the reference date of the Lease, are not incorporated into the Lease. Any Retained Other Gardens Areas are not part of the Premises as of the Effective Date; however, Tenant shall also have certain rights with respect to the Retained Other Gardens Areas as set forth in Section 2.6 of this Lease.

E. The Premises, the Retained Lease Areas, the Retained Public Space Areas, and any Retained Other Gardens Areas (collectively, the "**Yerba Buena Gardens Properties**") are located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 (the "**Project Area**") and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1 (the "**Redevelopment Plan**"), which was duly adopted by Ordinance No. 98-66 (April 29, 1966) in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011. The objectives of the

Redevelopment Plan included the development of destination cultural facilities, public open spaces, museums, hotels, and market-rate and affordable housing in the Project Area.

F. Pursuant to Section 3.3(b) and Section 27.3, the parties may agree or, pursuant to certain remedies under the terms of this Lease, to cause certain City property described, depicted or contemplated under this Lease to be considered as Retained Other Gardens Areas, Retained Public Space Areas or to be incorporated as part of the Premises, and the Lease shall be administratively amended to describe and depict such properties on the applicable exhibit(s) within this Lease.

G. From 1967 to 1983, the former Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**SFRA**") acquired the parcels of land that constitute the Yerba Buena Gardens Properties for the purpose of satisfying the objectives of the Redevelopment Plan. The improvements on the Yerba Buena Gardens Properties were constructed between 1993 and 2008 and represent a civic investment of approximately $175 million. The Yerba Buena Gardens Properties now consist of a collection of urban mixed-use spaces that include private uses (*i.e.,* commercial and retail properties) that are primarily located on the Retained Lease Areas and public uses (*i.e.,* cultural facilities, performance venues, recreational venues, and vast amounts of public open space that includes garden areas, plazas, children's play areas, artwork, a historic carousel, and fountains) that are primarily located on the Premises.

H. For almost 30 years, the SFRA developed, owned, and managed the Yerba Buena Gardens Properties as a self-financing portfolio of public assets, where revenue from the private uses (including lease payments, developer exactions, and fees) supported the maintenance of the public uses and the operation of the cultural facilities. Pursuant to certain enforceable obligations related to the Yerba Buena Gardens Properties, the SFRA was obligated to use this revenue to operate, maintain, and program the open space and cultural operations at the Premises. The enforceable obligations also required the SFRA to deposit certain revenues generated from the Yerba Buena Gardens Properties into a restricted, segregated account.

I. On February 1, 2012, the SFRA was dissolved pursuant to California Health and Safety Code Sections 34170 *et seq.* (the "**Redevelopment Dissolution Law**"). As a result of dissolution, all of the SFRA's non-housing assets, including the Premises, were transferred to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (the "**Successor Agency**" and commonly known as the Office of Community Investment and Infrastructure or "**OCII**"), and the Successor Agency assumed all of the authority, rights, powers, duties, and obligations of the SFRA that remained after its dissolution. (Cal. Health & Safety Code 34173 (a).)

J. As required by the Redevelopment Dissolution Law, the Successor Agency prepared a Long-Range Property Management Plan ("**PMP**"), which sets forth an inventory and disposition plan for all the property that the Successor Agency owns or leases, including the Premises. On November 25, 2013, by Resolution No. 12-2013, the Oversight Board to the Successor Agency approved the PMP, which was subsequently transmitted to the State Department of Finance ("**DOF**") for review and approval. In response to comments from DOF, the Successor Agency revised the PMP, and on November 23, 2015, by Resolution No. 14-2015,

the Oversight Board approved the revisions to the PMP requested by DOF. Pursuant to a letter dated December 7, 2015, DOF approved the revised PMP.

K. The PMP proposed that the Successor Agency would transfer the Yerba Buena Gardens Properties, related enforceable obligations, and associated operating and reserve accounts to the City, and that the City would manage the Yerba Buena Gardens Properties as a single, unified set of properties using the revenues currently generated from the Yerba Buena Gardens Properties. The PMP stated that the City and Yerba Buena Gardens community stakeholders were working together to determine the best management structure for the Yerba Buena Gardens Properties, and that the community had expressed a strong preference for a management model that involved a community-based, non-profit entity managing the Premises under a master lease agreement with the City.

L. The SFRA originally acquired the Yerba Buena Gardens Properties with urban renewal funds provided through a federal Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal (the "**HUD Contract**"). Under the HUD Contract, the SFRA was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949. Upon the demise of the federal urban renewal grant program, HUD required that the SFRA treat all future proceeds from the sale or lease of the Yerba Buena Gardens Properties as program income under the federal Community Development Block Grant ("**CDBG**") program ("**Program Income**"), as set forth in the Yerba Buena Center Redevelopment Project Closeout Agreement ("**YBC Closeout Agreement**"), executed in 1983 by the SFRA and the City with HUD concurrence, and attached hereto as Exhibit C.

M. In 1999, the SFRA established a capital reserve for the Yerba Buena Gardens Properties, including, but not limited to, the Premises and the Retained Other Gardens Areas to ensure that adequate funds would be available to replace, repair, and renovate the public facilities at Yerba Buena Gardens Properties over the coming decades. The Successor Agency has funded the capital reserve from excess operating revenue to the extent available.

N. On, or prior to the Effective Date, Successor Agency has: (i) conveyed fee title to the Yerba Buena Gardens Properties; (ii) assigned the enforceable obligations relating to the Yerba Buena Gardens Properties to City; (iii) transferred the associated operating and reserve accounts for the Premises to City.

O. The City and Tenant now desire to enter into this Lease upon the terms, conditions, and covenants set forth herein.

P. All initially capitalized terms used herein are defined in Article 1 below or have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in this Article. In the event of any conflict between a definition given in this Article and any more specific provision of this Lease, the more specific provision shall control.

1.1 "**Accounts**" has the meaning set forth in Section 7.3(b)i.

1.2 **"Acknowledged Non-Conforming Agreement"** has the meaning set forth in Section 6.3(i).

1.3 "**Additional Rent**" means any and all sums (other than the payment of Base Rent) that may become due or be payable by Tenant under this Lease as further defined in Section 10.5.

1.4 "**Agents**" means, when used with reference to either Party to this Lease or any other person or entity, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other person or entity, and their respective heirs, legal representatives, successors and assigns.

1.5 "**Agreement**" means any lease, sublease, license, operating agreement, management agreement, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Agreements.

1.6 **"Agreement Conditions"** has the meaning set forth in Section 6.3(c).

1.7 **"Assignment of Agreements"** means that certain Assignment and Assumption Agreement (Yerba Buena Gardens Leases and Contracts) assigning certain agreements, while reserving certain rights regarding payment of Gross Revenues, to the Tenant pursuant to the terms of this Lease and attached hereto as Exhibit D.

1.8 "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of the City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications, expenses, court costs and other costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law films with approximately the same number of attorneys as employed by the City Attorney's Office.

1.9 "**Award**" means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

1.10 "**Base Rent**" has the meaning set forth in Section 10.1.

1.11 "**Books and Records**" has the meaning set forth in Section 7.3(d).

1.12 "**Building Permit**" means a building or site permit issued by the City's Department of Building Inspection.

1.13 "**Capital Repairs and Replacements**" has the meaning set forth in Section 7.3(b)(v).

1.14 "**CB-1 REA**" means that certain Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens, dated as of March 31, 1998, and recorded in the Official Records on April 7, 1998 as Document Number 98-G331392-00, as amended by that certain First Amendment to Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated as of October 28, 1998, and recorded in the Official Records on October 28, 1998 as Document Number 98-G458534-00, as furtherer amended by that certain Second Amendment to Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated as of May 24, 2016, and recorded in the Official Records on May 24, 2016 as Document Number 2016-K250102.

1.15 "**CB-1 Retail Lease**" means that certain Central Block 1 Retail Lease dated as of March 31, 1998 and recorded in the Official Records on April 7, 1998, as Instrument No. 1998-G331396, as amended by that certain Amendment to Legal Description of Central Block 1 Retail Lease dated as of October 28, 1998, and recorded in the Official Records on October 28, 1998 as Instrument No. 1998-G458536, as amended by that certain Second Amendment to Central Block 1 Retail Lease dated as of October 22, 2002, and recorded in the Official Records on April 29, 2003, as Instrument No. 2003-H425860.

1.16 "**City Administrator**" means the City Administrator of the City and County of San Francisco or his or her designee, or successor that succeeds to the rights and obligations of the City Administrator under applicable Law.

1.17 "**City Costs**" has the meaning set forth in Section 10.9(a).

1.18 "**City Retained Areas**" means, collectively, the Retained Lease Areas, the Retained Public Space Areas, and the Retained Other Gardens Areas (if any) as depicted on Exhibit B-2, Exhibit B-3, and Exhibit B-4 hereto.

1.19 "**City Staff Costs**" means those City Costs incurred for City staff time in connection with fulfilling City's roles and responsibilities under this Lease, management of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not as regulator).

1.20 "**City Third Party Costs**" means those City Costs incurred that are not City Staff Costs, including City Costs incurred for consultants retained by City to perform internal tasks for the City in connection with fulfilling City's roles and responsibilities under this Lease, management

of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not in its regulatory capacity).

1.21 "**Commencement Date**" means the later of (i) the Effective Date, or (ii) the date that the deed transferring fee title to the Premises from OCII to the City is recorded in the official records of the City and County of San Francisco.

1.22 "**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the Law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any entity having the power of eminent domain (or to a designee of any such entity), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

1.23 "**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

1.24 "**Cultural Expenditures**" means the contributions of Program Income, subject to the priority of use requirements in Section 10.9(e) of this Lease, for third party costs, grants, and expenditures that Tenant incurs in connection with cultural programs and events at the Premises in accordance with the approved Annual Operating Budget, including without limitation, such expenditures made pursuant to applicable Operating Agreements and/or Subleases.

1.25 "**Default Rate**" means an annual interest rate equal to the lesser of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law.

1.26 "**Deferred City Staff Costs**" has the meaning set forth in Section 10.9(d).

1.27 "**Disabled Access Laws**" means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and disabled access Laws under the City's building code.

1.28 "**Effective Date**" means the later of (i) the date on which the Parties have executed and delivered this Lease or (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

1.29 "**Estimated City Costs**" has the meaning set forth in Section 10.9(b).

1.30 "**Event of Default**" has the meaning set forth in Section 26.1.

1.31 "**Existing Agreements**" means the Existing Operating Agreements and the Existing Subleases existing upon or within the Premises as of the Effective Date.

1.32 "**Existing Improvements**" means all Improvements existing upon or within the Premises as of the Effective Date.

1.33 "**Existing Operating Agreements**" means the Operating Agreements and Management Agreement listed on Attachment 2 to Exhibit D hereto.

1.34 **"Existing Operators"** means any person or entity with a right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises pursuant to an Existing Operating Agreement

1.35 "**Existing Subleases**" means the Subleases listed on Attachment 1 to Exhibit D hereto.

1.36 "**Existing Subtenants**" means any person or entity with a possessory interest in any portion of the Premises pursuant to an Existing Sublease.

1.37 "**Expiration Date**" means September 1, 2061.

1.38 "**Final Construction Documents**" means plans and specifications sufficient for the processing of an application for a Building Permit in accordance with applicable Laws.

1.39 "**Force Majeure**" means events or conditions which result in delays in a Party's performance (excluding a Party's performance of the payment of money required under the terms of this Lease) of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of the delayed Party, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, war, explosion, invasion, insurrection, rebellion, riots, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and inclement weather which is materially inconsistent with customary weather patterns. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, and to Restore if appropriate, and to complete performance of the hindered act.

1.40 "**Gross Revenues**" has the meaning set forth in Section 7.3(a)(2).

1.41 "**Handle**" when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge, or dispose of any Hazardous Material. (**"Handling"** has a correlative meaning.)

1.42 "**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under 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 any existing

Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

1.43 "**Hazardous Material Claims**" means any and all enforcement, investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City, or any of the other Indemnified Parties and any of their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

1.44 "**Hazardous Material Laws**" means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Material Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the Effective Date, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

1.45 "**Impositions**" has the meaning set forth in Section 11.1(b).

1.46 "**Improvements**" means all buildings, structures, fixtures, and other improvements erected, built, placed, installed, or constructed upon or within the Premises, including, but not limited to, the Existing Improvements.

1.47 "**Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City.

1.48 "**Indemnify**" means indemnify, defend, and hold harmless.

1.49 "**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

1.50 "**Initial Approved Annual Budget**" means the approved Annual Operating Budget and Annual Capital Budget for the period of July 1, 2019 through June 30, 2020 attached hereto as Exhibit E.

1.51 **"Invitees"** when used with respect to Tenant means the customers, patrons, invitees, guests, permittees, members, contractors, assignees, transferees, and Subtenants of Tenant and the customers, patrons, invitees, guests, permittees, members, contractors, licensees, concessionaires, assignees, transferees, and sub-tenants of such Subtenants.

1.52 **"Law"** or "**Laws**" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises, or any portion of any of them (including, without limitation, any subsurface area, the use thereof and of the Premises, or any portion thereof, and of the Improvements thereon), whether or not in the contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county, and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Premises, or any portion thereof. The term Law or Laws shall also include Tenant's compliance with General Order 143-B and 95 of the Public Utilities Commission of the State of California (notwithstanding the fact that such General Orders may not be directly applicable to Tenant).

1.53 **"Lease"** means this Lease, as it may be amended from time to time in accordance with its terms.

1.54 **"Lease Year"** means, for the Term of this Lease, any applicable twelve (12) month period beginning on the Commencement Date, or the applicable anniversary thereof and ending on the date immediately prior to the next succeeding anniversary of the Commencement Date.

1.55 **"Loss"** or **"Losses"** means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, (including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits, or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

1.56 **"Major Damage or Destruction"** means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed eighty percent (80%) of the hard costs to replace such Improvements on the Premises in their

entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

1.57 **"Management Agreement"** has the meaning set forth in Section 7.2(a).

1.58 **"Manager"** has the meaning set forth in Section 7.2(a).

1.59 **"Market Rent"** has the meaning set forth in Section 6.4(a).

1.60 **"Mortgage"** means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

1.61 **"Mortgagee"** means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is, being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

1.62 **"Net Awards and Payments"** has the meaning set forth in Section 19.4.

1.63 **"Net Effective Rental Rate"** means the rental rate, including periodic increases, minus the tenant improvement allowance (other than any tenant improvement allowance for "green building" components, equipment, or other features intended to assist a Subtenant in complying with applicable "green building" Laws) and the value of all leasing concessions amortized over the Sublease term, on a per square foot basis.

1.64 "**OCII**" has the meaning set forth in Recital F.

1.65 **"Official Records"** means, with respect to the recordation of any documents and instruments, the Official Records of the City and County of San Francisco.

1.66 **"Operating Account"** has the meaning set forth in Section 7.3(b)(iii).

1.67 **"Operating Agreement"** means any operating agreement, Management Agreement, or other agreement, other than a Sublease, by which Tenant grants to any person or entity in conformity with the provisions of this Lease, the right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Operating Agreements.

1.68 **"Operating Reserve Account"** has the meaning set forth in Section 7.3(b)(iv).

1.69 **"Operator"** means any person or entity with a right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises by virtue of an Operating Agreement.

1.70 **"Partial Condemnation"** has the meaning set forth in Section 19.3(b).

1.71 **"Party"** means City or Tenant, as a party to this Lease; **"Parties"** means both City and Tenant, as Parties to this Lease.

1.72 **"Permitted Uses"** has the meaning set forth in Section 4.1.

1.73 **"Personal Property"** means all trade fixtures, furniture, furnishings, equipment, machinery, supplies, software, and other tangible personal property that is incident to the ownership, development, or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, and whether owned by Tenant, leased to Tenant pursuant to the terms of this Lease, and/or in which Tenant has or may hereafter acquire an ownership or leasehold interest, together with all present and future attachments, accessions, replacements, substitutions, and additions thereto or therefor.

1.74 **"Premises"** shall mean the real property and all Improvements affixed thereto from time to time leased to Tenant pursuant to the terms of this Lease. The "Premises" shall mean the real property and property rights described on Exhibit A attached hereto and depicted on Exhibit B-1 attached hereto (and further defined in Section 2.1 below). The Premises leased hereunder may be modified in accordance with the terms of this Lease, or by boundary adjustments or other modifications as may otherwise be agreed to by the Parties from time to time in one or more written Lease amendments to this Lease. The Premises shall include the Existing Improvements, together with any additions, modifications, or other Subsequent Improvements thereto permitted hereunder.

1.75 "**Prime Rate**" means the rate of interest designated as the "prime rate" in The Wall Street Journal, or, if such publication ceases to exist, in a business publication of similar substance and reputation thereto.

1.76 "**Program Income**" has the meaning set forth in Recital I.

1.77 "**Property Related Insurance**" means the insurance set forth in items (i), (ii), and (iii) of Section 22.1(b).

1.78 "**Regulatory Approval**" means any authorization, approval, or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Art Commission, and the City's Department of Building Inspection.

1.79 "**Release**" when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any Existing Improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

1.80 "**Retained Leases**" means those certain leases to which City is a party described on Exhibit F attached hereto.

1.81 "**Retained Lease Areas**" means that certain real property leased by the City to third parties pursuant to the Retained Leases as depicted on Exhibit B-2 attached hereto.

1.82 "**Retained Other Gardens Areas**" means that certain real property, if any, retained by the City as depicted on Exhibit B-4 attached hereto.

1.83 "**Retained Public Space Areas**" means that certain real property retained by the City as depicted on Exhibit B-3 attached hereto. (The Retained Public Space Areas are the portions of "Central Block 1" that are owned by the City and that are not Retained Lease Areas which are comprised entirely of (i) Jessie Square Plaza and; and (ii) the City Property connecting Jessie Square Plaza to Yerba Buena Lane (Yerba Buena Lane is a portion of the CB-1 Retail Lease Premises). The two areas within the Retained Public Space Areas plus Yerba Buena Lane are referred to as "Common Areas" under the CB-1 REA and have specific restrictions, rights and obligations assigned to the parties under the CB-1 REA.

1.84 "**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

1.85 "**Rent**" means Base Rent and Additional Rent.

1.86 "**Rent Roll**" has the meaning set forth in Section 6.3(l).

1.87 "**Replacement Reserve Account**" has the meaning set forth in Section 7.3(b)(v).

1.88 "**Reserve Account**" has the meaning set forth in Section 7.3(b)(vi).

1.89 "**Restoration**" means the repair, restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable to substantially the same condition they were in immediately before an event of damage or destruction or, in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. All Restoration shall be conducted in accordance with the provisions of Article 16. ("**Restore**" and "**Restored**" have correlative meanings.) Notwithstanding the foregoing, in the event of a Major Damage or Destruction occurring at any time during the Term, Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements as Restored, constitute a first class civic and cultural destination. In connection with any such Restoration after an event of Major Damage or Destruction, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that Improvements so redesigned is a first class project affording similar public benefits as the original Existing Improvements.

1.90 "**Significant Change**" means any dissolution, merger, consolidation, or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in a Subtenant, directly or indirectly, in one or more transactions, by operation of law or otherwise, that results in any of the following: (1) a change in the identity of persons or entities controlling a Subtenant, provided that a Significant Change will not include the Transfer of beneficial interests in any entity as a result of the trading of shares on the open-market where such

entity is a publicly-traded company, (2) the admission of any equity investor that has the right to exercise day-to-day management or day-to-day control over the business of a Subtenant, (3) the dissolution of a Subtenant, (4) the sale of fifty percent (50%) or more of a Subtenant's assets, capital or profits, or the assets, capital or profit of any person or entity controlling the Subtenant, except for sales of publicly traded stock.

1.91 "**Sublease**" means any lease, sublease, license, concession, or other agreement by which Tenant leases, subleases, demises, licenses, or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Subleases.

1.92 "**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration, or modification of any Improvements, or any construction of additional Improvements after the Effective Date.

1.93 "**Substantial Condemnation**" has the meaning set forth in Section 19.3(a).

1.94 "**Subtenant**" means any person or entity leasing, occupying, or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

1.95 "**Supplemental Capital**" has the meaning set forth in Section 7.3.

1.96 "**Sufficient Restoration Funds**" has the meaning set forth in Section 18.3.

1.97 "**Tenant**" has the meaning set forth in the introductory paragraph of this Lease and includes Tenant's permitted successors and assigns.

1.98 "**Tenant's Restoration Funds**" has the meaning set forth in Section 18.3.

1.99 "**Term**" has the meaning set forth in Section 3.1.

1.100 "**Total Condemnation**" has the meaning set forth in Section 19.2.

1.101 "**Transfer**" means to sell, convey, assign, transfer, encumber, alienate, or otherwise dispose (directly or indirectly, by one or more transactions, and by operation of law or otherwise) of all or any interest or rights in the Premises, the Improvements, and/or this Lease, including but not limited to any right or obligation to develop or operate the Premises (other than pursuant to a Sublease made in the ordinary course), or otherwise do any of the above or make any contract of agreement to do any of the same, or permit a Significant Change to occur.

1.102 "**Uninsured Casualty**" has the meaning set forth in Section 18.4(a).

1.103 **"Unmatured Event of Default"** means any event, action, or inaction that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

1.104 "**Yerba Buena Gardens Properties**" means collectively the Premises and the City Retained Areas, as depicted on Exhibit B-1, Exhibit B-2, Exhibit B-3, and Exhibit B-4 attached hereto.

2. PREMISES; CONDITION OF PREMISES

2.1 **Premises**. For the Rent and subject to the terms and conditions of this Lease, City hereby leases to Tenant, and Tenant hereby leases from City, (a) the Premises, including, without limitation, the Existing Improvements, together with all rights, privileges, and licenses appurtenant to the Premises, and owned by City, and (b) the Personal Property used in the operation of the Premises and included in the Bill of Sale from OCII to City, as described in Exhibit G attached hereto. The Premises is depicted on Exhibit B-1 attached hereto. Portions of the Premises are presently occupied by the Existing Subtenants and Existing Operators pursuant to those Existing Agreements listed on Attachment 1 and Attachment 2 to the Assignment of Agreements attached hereto as Exhibit D and incorporated herein by reference, which Assignment of Agreements provides for the assignment from City, and the assignment and assumption by Tenant, of the Existing Operating Agreements and Existing Subleases as provided therein, and which Assignment of Agreements will be entered into by City and Tenant and effective concurrent with the Effective Date of this Lease. City shall have no obligation to deliver the Premises to Tenant free of occupancy by any of the Existing Subtenants or Existing Operators.

2.2 Correction of Premises Description.

The Parties reserve the right, upon mutual agreement of the City's Director of Property and Tenant, to enter into one or more memoranda setting forth the legal description of the Premises or technical corrections to reflect any non-material changes in the legal description and square footages of the Premises discovered after the Commencement Date, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

2.3 Condition of Premises.

(a) Condition of the Premises. Tenant represents and warrants that Tenant has had the opportunity to conduct inspections and investigations, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for the Permitted Use.

(b) Acceptance of Premises. Tenant acknowledges and agrees that the Premises, and each increment thereof, are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation, and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting the Premises or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological, or environmental condition of the Premises, including, without limitation, any water lines, sewer lines, or Existing Improvements, other facilities, structures, equipment and Personal

Property, or fixtures located on or under the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's intended uses, (v) the feasibility, cost, or legality of constructing any Improvements on the Premises, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Waiver and Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits, and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical, or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises (including, but not limited to, soils and groundwater conditions), (ii) any Laws applicable thereto, including without limitation, Hazardous Material Laws; provided that the foregoing waiver and release shall not be applicable in the event of the intentional concealment of a material fact or matter with respect to the Premises that was actually known by the City Administrator, the Director of Property, or any Indemnified Party at or before the Commencement Date and not disclosed to Tenant in writing.

In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Tenant's Initials: _____

Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(d) Assignment of Warranties. The City hereby assigns to Tenant for the Term of the Lease the City's interest in all warranties and guaranties relating to the Premises and the Existing Improvements that OCII provided to City or assigned to City, including pursuant to that certain Assignment and Assumption of Leases, Assignment and Assumption of Contracts, and Quitclaim of Improvements (Yerba Buena Gardens) dated June 27, 2018. City retains its warranties and guaranties relating to the City Retained Areas.

(e) Title Matters. Without limiting the foregoing provisions of this Section 2.2, City shall cooperate in good faith with Tenant's attempts to resolve title matters which adversely affect the Premises, Tenant, or any Subtenant (including, to the extent necessary, making claims

under the owner's policy of title insurance that City purchased in connection with the transfer of the Premises from the Successor Agency to the City).

(f) Work In Progress Improvements. With respect to any and all Improvements that have been or are being constructed as of the Effective Date and are related to the Moscone Expansion work in progress and are located within the area shown as the Premises on attached as Exhibit B-1 (the "**Work In Progress Improvements**") (which Work in Progress Improvements will not be included in the Premises until such time that a Notice of Final Completion related to such improvements is recorded, at which time such Work In Progress Improvements will automatically become part of the Premises), the City will retain the right and obligation, at the City's cost (and not as part of the City Costs that are reimbursed to City), to cause all such Work In Progress Improvements to be completed, even after the Effective Date, and the City will remain responsible for enforcing its rights with respect to any contractor warranties and guaranties under the existing agreements (the "**Existing Moscone Agreements**") related to such Work In Progress Improvements and the correction of any defects related to the Work In Progress Improvements (the "**Contract Work**"). Notwithstanding the foregoing, any work within the Premises that City and Tenant agree is required to be done by the City or is otherwise required to be done by City under the Lease beyond the Contract Work shall be covered as City Costs under the terms of this Lease. Tenant will be responsible for ordinary maintenance of the Work In Progress Improvements after recordation of the Notice of Final Completion related thereto, subject to City's enforcement of contractor warranties and guaranties and correction of any defects related to the Work In Progress Improvements as described in this Section 2.3(f).

2.4 Reserved Rights.

(a) Reserved Rights. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(i) Any and all water and water rights, including, but not limited to any and all surface water and surface water rights, riparian rights and appropriative water rights to surface streams and the underflow of streams;

(ii) Any and all minerals and mineral rights of every kind and character, now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and conducted in such manner as not to damage the surface of the Premises or any Improvements constructed thereon or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(iii) The right, subject to Tenant's prior written approval not to be unreasonably withheld, to grant future rights and easements over, across, under, in and upon the Premises. No such future rights or easements shall unreasonably interfere with Tenant's or any Subtenant's use of the Premises.

2.5 Retained Leases; Retained Lease Areas; Retained Public Space Areas; CB-1 REA.

(a) The Premises does not include the Retained Lease Areas, and City has not assigned the Retained Leases to Tenant. Notwithstanding the foregoing, pursuant to Section 7.3 below, City is dedicating the Gross Revenues and GMOS Payments payable by the tenants under the Retained Leases to fund the operation, maintenance, security, and capital improvement of the Premises and the Retained Other Gardens Areas and the performance of Tenant's obligations under this Lease. Because the Retained Leases provide a critical source of dedicated funding for the Premises and the performance of Tenant's obligations under this Lease, and because the Retained Lease Areas and the Premises are in proximity to each other and, together with the Retained Public Space Areas and the Retained Other Gardens Areas, form a unified set of properties that constitute the Yerba Buena Gardens Properties, Tenant shall have certain consultation and approval rights over the Retained Leases and Retained Lease Areas and Retained Public Space Areas, as set forth in this Section 2.5, to the extent of City's consultation and approval rights under the Retained Leases and Agreements.

(b) City shall consult with Tenant regarding, and Tenant shall have the right to approve or disapprove, which approval or disapproval shall not be unreasonably withheld, delayed, or conditioned, any of the following:

(i) any proposed amendment, modification, or extension of any Retained Lease (a "**Retained Lease Amendment**") that would (I) adversely affect the Gross Revenues and/or GMOS Payments that are payable by a tenant under the Retained Lease or the CB-1 Retail Lease or any other Sublease or Operating Agreement, or (II) materially affect the use, operation, and programing of, or visually impact the City Retained Areas;

(ii) any new lease, sublease, license, concession or other agreement by which City leases, subleases, demises, licenses, or otherwise grants to any person or entity the right to occupy or use any portion of the Retained Lease Areas or Retained Public Space Areas (whether in common with or to the exclusion of other persons or entities) (a "**New Retained Lease**"), and any amendment, modification, or extension of any New Retained Lease ("**New Retained Lease Amendment**"), that would (I) adversely affect the Gross Revenues and/or GMOS Payments that are payable by a tenant under the New Retained Lease or New Retained Lease Amendment, or (II) materially affect the use, operation, or programing of the Retained Lease Area subject to the New Retained Lease or New Retained Lease Amendment; and

(iii) decisions and approvals related to the exterior architectural design, alteration of any Improvements, or any other visual impacts within the Retained Lease Areas and Retained Public Space Areas, or any exterior signage in the Retained Lease Areas or Retained Public Space Areas, to the extent City has such approval rights.

(c) All Gross Revenue, GMOS Payments, and any other form of rent or revenue payable under any Retained Lease Amendment or New Retained Lease shall be transferred into the Accounts in accordance with Section 7.3 below.

(d) To the extent City has such rights, this Lease grants to Tenant for the benefit of Tenant, Tenant's Invitees, Subtenants, and the public in general, a right of ingress, egress, and access over the Retained Lease Areas and Retained Public Space Areas, subject to the rights of tenants under the Retained Leases (and any amendments thereto or replacements thereof) and the rights of any other parties under documents affecting the Retained Lease Areas and Retained Public Space Areas (for example, under any recorded documents). Tenant shall have no obligations or liabilities with respect to the Retained Lease Areas and Retained Public Space Areas except to the extent Tenant's liability is caused by Tenant's negligence or misconduct. Tenant shall have the right to request from City a license to use the Retained Public Space Areas, subject to compliance with all Laws, requirements of then-existing contracts affecting such Retained Public Space Areas, and recorded documents.

(e) To the extent of the City's rights as a "Party" under the CB-1 REA, City authorizes Tenant to operate as its agent during the Term of this Lease in exercising City's rights on behalf of the City under the CB-1 REA, including the City's authority to manage the programming of the outdoor City Retained Areas on "Central Block 1", specifically, the Retained Public Space Areas.

2.6 Retained Other Gardens Areas. The Premises does not include the Retained Other Gardens Areas, but because the Retained Other Gardens Areas along with the Premises, the Retained Lease Areas, and the Retained Public Space Areas form a unified set of properties that constitute the Yerba Buena Gardens Properties, Tenant shall have certain rights over the Retained Other Gardens Areas, as set forth in this Section 2.6.

(a) City shall consult with Tenant regarding the use, operation, and programing of the Retained Other Gardens Areas to ensure reasonable conformity with Tenant's programming of the Premises prior to the commencement of any new or changed use, operations, or programming of the Retained Other Gardens Areas.

(b) City agrees that the following uses of the Retained Other Gardens Areas are prohibited:

(i) Automobile sale, rental, repair or maintenance facility;

(ii) Adult bookstore, adult theater or encounter studio, all as defined in the Police Code of the City and County of San Francisco;

(iii) Hospital, medical center, medical clinic or laboratory with regular visiting patients;

(iv) Public health clinic, provided that a first class, private medical office shall be permitted;

(v) Hotel, whether tourist or residential;

(vi) Manufacturing or industrial uses;

(vii) Massage parlor, except that a day spa providing first class services such as facials, hair styling, manicures, pedicures, and professional massage therapy, shall be permitted;

(viii) Mortuary, crematorium or funereal services;

(ix) Recycling center or collection facility unless collection bins are required by law, and then only to the extent required by law;

(x) Dry cleaners with on-site cleaning of clothing involving any use of cleaning chemicals; provided that a drop-off and pick up service shall be permitted;

(xi) Smoke shop;

(xii) Drug or substance abuse treatment or rehabilitation center, clinic or facility;

(xiii) Needle exchange services; or

(xiv) Tattoo parlor.

To the extent there is any dispute over the definition of the uses described above, the definitions found in the Planning Code of the City and County of San Francisco shall apply.

(c) To the extent City has such rights, the City grants to Tenant for the benefit of Tenant, Tenant's Invitees, Subtenants, and the public in general, a right of ingress, egress, and access over the Retained Other Gardens Areas, but nothing in this Lease will preclude City from entering into any lease, license, concession, or other agreement for the exclusive occupancy of any portion of the Retained Other Gardens Areas (provided the lease, license, concession, or other agreement for exclusive occupancy does materially impair access to the Premises) and the rights granted to Tenant, Tenant's Invitees, and Subtenants will be subordinate and subject to that lease, license, concession, or other agreement Tenant shall have no obligations or liabilities with respect to the Retained Other Gardens Areas except to the extent Tenant's liability is caused by Tenant's negligence or misconduct. Notwithstanding the foregoing, the parties recognize that as of the execution of this Lease no Retained Other Gardens Areas have been identified; however, the parties may mutually agree to administratively amend this Lease, at any point during the term to reclassify certain real property within Yerba Buena Garden Properties as Retained Other Gardens Areas and to update Exhibit B-4 accordingly.

3. TERM

3.1 Term.

The term of this Lease shall expire with respect to the entire Premises on September 1, 2061 (the "**Expiration Date**"), unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until the Expiration Date is referred to as the "**Term**." Any expiration or termination of this Lease shall result in the termination of the Assignment of Agreements.

3.2 Access and Entry by Tenant Prior to Commencement Date.

In the event that the Commencement Date occurs after the Effective Date, Tenant shall have the right of access to and entry upon and around the Premises prior to the Commencement Date for the purposes of performing inspections, studies and tests necessary to carry out the obligations under this Lease, provided Tenant shall first obtain a written agreement from the OCII, or the City, as applicable, on terms reasonably satisfactory to OCII, or the City, as applicable, allowing such access, which agreement shall include, among other things, indemnification and insurance requirements (a "**Permit to Enter**"). In making any entry upon the Premises authorized in accordance with this Section, Tenant shall not materially interfere with or obstruct the permitted, lawful use of the Premises by the OCII or the City, as applicable, the Existing Subtenants, Existing Operators, or their invitees.

3.3 Discussions Regarding Possible Future Use of the Premises.

(a) In order to allow Tenant and Subtenants and Operators to plan for the orderly continuation, transition, or termination, as applicable, of business under this Lease and the Agreements approximately five (5) years before the Expiration Date, provided that this Lease has not been earlier terminated, City's Director of Property, or his or her designee, and Tenant shall meet to discuss whether the Parties are interested in extending the Term of this Lease or entering into a new lease for the Premises or some portion thereof. Tenant acknowledges that any future agreement to extend the Term of the Lease or to enter into a new lease would be subject to the prior approval of the then-Board of Supervisors, in its sole and absolute discretion.

(b) Notwithstanding any other provisions of this Lease, including Section 27.3, both parties may mutually agree to administratively amend this Lease at any point during the Term to reclassify certain real property within Yerba Buena Gardens Properties. For example, if real property within Yerba Buena Gardens Properties is agreed by both City and Tenant to be more appropriately classified as Retained Other Gardens Areas, as referenced in section 2.6(c) above, the parties would update Exhibit B-4 and/or any other applicable exhibits to reflect any addition or reclassification.

4. USES

4.1 Permitted Use.

Tenant shall use the Premises for civic, cultural, museum, gardens/open space, entertainment, and recreational uses, with ancillary/supporting uses such as food establishments, cafes, retail, gift shops, and event space, and including, without limitation, all uses permitted under the Existing Subleases and Existing Operating Agreements (collectively, the "**Permitted Use**" or "**Permitted Uses**"), consistent with existing zoning (or as amended in the future). Tenant shall have the right to use the Premises or portions thereof, including the public plazas and gardens, for temporary uses as set forth in Section 6.7 below. Tenant shall also have the right to install art works throughout the Premises subject to compliance with any applicable City Laws regarding the installation of public art. Any exceptions to the Permitted Uses set forth herein shall require prior written approval of City, which may be withheld or granted in City's reasonable discretion.

4.2 Ongoing Operations.

Tenant shall operate and manage the Premises in a first class condition. Tenant acknowledges that a material consideration for this Lease is Tenant's agreement to maintain and operate the Premises in the manner described in this Article 4 and Article 7 below.

4.3 Cultural Enrichment and Community Involvement.

Tenant shall use good faith efforts to support programs and events that highlight San Francisco's rich cultural diversity and history, including, as appropriate, exploration of ways to cultivate stronger connections with adjacent neighborhoods and cultural venues, as well to the wider San Francisco community.

4.4 Financial Sustainability.

If Sublease and Retained Lease revenues and the other sources of dedicated funding for the operation, maintenance, security, and capital improvement of the Premises as set forth in Section 7.3(a) below are insufficient to fund the performance of one or more of Tenant's obligations under this Lease, Tenant shall have the right to seek, obtain, and use other sources of revenue and funding for the operation, maintenance, security, and capital improvement of the Premises. Tenant shall also have the right, but not the obligation, to seek and obtain financing and enter indebtedness (which indebtedness may be secured by the dedicated funding sources outlined above), and City will cooperate with Tenant as necessary to facilitate and close such financing and indebtedness. If the foregoing revenue and funding sources are insufficient to fully fund the operation, maintenance, security, and long-term capital funding of the Premises, then Tenant and City shall cooperatively use diligent, good faith efforts to identify and obtain other funding sources or, identify opportunities to reduce expenses, for operating and capital costs within the Premises. If such efforts do not result in sufficient funding of the operation, maintenance, security, and long-term capital funding of the Premises, then the provisions of Section 24.2 below shall apply.

4.5 Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(a) any activity that creates a public or private nuisance;

(b) any activity that is not a Permitted Use;

(c) any activity that will cause damage to the Premises or the Improvements;

(d) any activity that is reasonably determined by City to constitute waste, disfigurement, or damage to the Premises;

(e) any activity that is reasonably determined by City to constitute a material nuisance to owners or occupants of adjacent properties. Such activities include, without limitation, the preparation, manufacture, or mixing of anything that emits any materially objectionable or unlawful odors, noises or lights onto adjacent properties, or the unreasonable or unlawful use of loudspeakers or sound apparatus that can be heard outside the Premises or the unlawful or unreasonable use of any light apparatus that can be seen outside of the Premises (taking into

account the Permitted Uses and the hours of operation of the businesses in the Premises and Public or Private Events), subject to any right given Tenant to alter, modify, repair, maintain, restore or construct Improvements; provided, however, that such activities are performed in accordance with all Laws and all terms and conditions of this Lease as applicable;

(f) any activity that will materially injure, obstruct or interfere with the rights of Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress, to their properties (taking into account the Permitted Uses hereunder), except to the extent necessary on a temporary basis to alter, modify, repair, maintain, restore or construct Improvements and conducted within the Permitted Uses hereunder in accordance with all Laws and Regulatory Approvals;

(g) any activity that attracts members of the general public to the Premises in a manner that materially obstructs, conflicts with, or interferes with the activities of Subtenants or Operators (taking into account the Permitted Uses hereunder); and,

(h) any auction, distress, fire, bankruptcy, or going out of business sale on the Premises without the prior written consent of City.

4.6 Continuous Use

Tenant shall use good faith efforts to ensure that the Premises are used continuously during the Term in accordance with the Permitted Uses and shall not allow the Premises to remain unoccupied or unused without the prior written consent of City, which City may withhold in its sole discretion, subject to Article 18 [Damage or Destruction], Article 19 [Condemnation] and Force Majeure, and further subject to customary vacancies of space that may arise from time to time in connection with retenanting.

4.7 Public Use and Access

During the Term, the Premises shall remain open for public use and public access, excluding such support facilities within the Premises that house mechanical equipment; engineering, property management, custodial, or security support staff or other resources; or serve as back of the house or pre-function areas in support of public presentation spaces. Notwithstanding the foregoing, the public's right to use and access the Premises pursuant to this Section 4.7 shall be subject to (a) the rights of Subtenants under Subleases and Operators under Operating Agreements, (b) the provisions of Section 6.7 [Public or Private Events], Article 14 [Repair and Maintenance], Article 16 [Subsequent Construction], Article 18 [Damage or Destruction], and Article 19 [Condemnation], and (c) the right of Tenant to impose reasonable restrictions on public use of and public access to the Premises so long as such closure does not violate any Laws.

5. INTENTIONALLY DELETED

6. ASSIGNMENT, SUBLETTING, AND CONTRACTING

6.1 Assignment of Lease.

(a) Consent of City. Except as otherwise expressly permitted in Sections 6.1(b) and (c), Tenant, its successors and permitted assigns shall not Transfer any interest in this Lease, without the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned by City. Notwithstanding anything to the contrary set forth in this Lease, the Premises shall remain subject to this Lease regardless of any Transfer made at any time or from time to time, whether or not City approved such Transfer.

(b) Mortgaging of Leasehold. As further provided in Section 42 [Mortgages] hereof, at any time during the Term of this Lease, Tenant shall have the right, without City's consent, to Transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage.

(c) Conditions. Any Transfer described in Section 6.1(a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof (the "**Transfer Conditions**"):

(i) Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant under this Lease (including, without limitation, the provisions of Section 7 hereof), and any other agreements or documents entered into by and between City and Tenant relating to the Premises.

(ii) The Transfer is made for a legitimate business purpose and not to deprive City of the benefits of this Lease. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however effected or occurring, and whether voluntary or involuntary, by operation of law or otherwise, foreseen or unforeseen, shall operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that City would have had, had there been no such Transfer.

(iii) All instruments and other legal documents effecting the Transfer shall have been submitted to City for review, including the agreement of sale, transfer, or equivalent, and City shall have approved such documents which approval shall not be unreasonably withheld, delayed, or conditioned.

(iv) Tenant shall have complied with the provisions of Section 6.1(d) below.

(v) There shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee, or if not cured, Tenant or the proposed transferee have made provisions

to cure the Event of Default, which provisions are satisfactory to City in its sole and absolute discretion.

(vi) The proposed transferee (A) has demonstrated to City's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable Law from transacting business or entering into contracts with City; (C) is subject to the jurisdiction of the courts of the State of California; and (D) is not in default with respect to any obligations that it has to City.

(vii) The proposed Transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond, or certificates of participation financing as determined by City in its sole discretion.

(viii) Tenant deposits with City sufficient funds, in City's reasonable opinion, to reimburse City for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. Subject to Section 42 [Mortgages], no Transfer of any interest in this Lease made with City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to City, within thirty (30) days after Tenant entered into such Transfer, an executed counterpart of the agreement affecting the Transfer containing an agreement, a memorandum of which shall be in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on Tenant's part to be performed under this Lease, and the other assigned documents (if any) to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit City's rights or remedies under this Lease or under applicable Law). The form of such instrument of Transfer shall be subject to City's approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of a Transfer of Tenant's entire interest in this Lease, approved by City under Sections 6.1(a), (c), and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by City to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of City to any further Transfer.

(f) Reports to City. At such time or times as City may reasonably request, Tenant must furnish City with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant, if any, and the extent of their respective holdings, if any, and in the event any other persons or entities have a beneficial interest in Tenant, their names and the extent of such interest. Tenant's furnishing of such information, however, will not relieve Tenant from liability for its failure to comply with the provisions of this Lease.

(g) Request for Proposed Transfer. At any time Tenant may submit a request to City for the approval of the terms of a Transfer of this Lease (all of the foregoing being collectively referred to herein as a "**Proposed Transfer**") or for a decision by City as to whether

in its opinion a Proposed Transfer requires City consent under the provisions of this Section 6.1. Within thirty (30) days of the making of such a request and the furnishing by Tenant to City of all documents and instruments with respect thereto as shall be reasonably requested by City, City shall notify Tenant in writing of City's approval or disapproval of the Proposed Transfer or of City's determination that the Proposed Transfer does not require City's consent. If City disapproves the Proposed Transfer, or determines that it requires the consent of City, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 6.1 will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 6.3, or (ii) the granting of any security interest expressly permitted by this Lease, subject to compliance with Article 42 [Mortgages] and other applicable terms of this Lease.

(i) Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other Transfer of Tenant's interest in this Lease, occurring at any time and from time to time during the Term, Tenant shall pay to City as Additional Rent hereunder, all sums paid or payable to Tenant by the transferee after subtracting expenses for verifiable, reasonable and customary brokerage commissions and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer.

6.2 Assignment of Rents.

Tenant hereby assigns to City all rents and other payments of any kind, due or to become due from any present or future Subtenant or Operator; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Article 42 of which City has been made aware in writing until such time as City has terminated this Lease, at which time the rights of City in all rents and other payments assigned pursuant to this Section 6.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing assignment, Tenant shall have the right to collect, use for any purpose (subject to the terms of this Lease) and retain the balance thereof, of all such assigned rents and other payments of any kind, due or to become due from any present or future Subtenant, at all times prior to the commencement of legal proceedings to terminate this Lease due to an Event of Default. Following the commencement of any such legal proceedings, City shall apply any net amount collected by it from such Subtenants and Operators (after the payment of Operating Expenses required for the on-going operation of the Premises) to the payment of Rent due under this Lease or for the payment of any other amounts under this Lease owed to City by Tenant.

6.3 Subleases and Operating Agreements.

(a) Existing Agreements. The Existing Agreements are hereby approved and consented to by City. No further approval or consent of City shall be required with respect to the Existing Agreement, unless an Existing Agreement is amended, and then only to the extent that the City's consent to such amendment is otherwise required by the terms of this Section 6.3.

City and Tenant acknowledge that because the Existing Agreements were entered into prior to this Lease, the rights and obligations of the Existing Subtenants and Existing Operators under the Existing Agreements may potentially conflict with the City's rights and Tenant's obligations under this Lease. In the event of a conflict between an Existing Subtenant's or Existing Operator's rights under an Existing Agreement and the City's rights under this Lease, where the exercise of the City's rights would cause Tenant to breach its obligations as party under the Existing Agreement, City shall exercise its rights under this Lease in a manner that will avoid conflicting with the Existing Subtenant's or Existing Operator's exercise of its rights under the Existing Agreement. Furthermore, to the extent that this Lease imposes greater or more restrictive obligations on Tenant with respect to a particular subject matter than an Existing Agreement imposes on an Existing Subtenant or Existing Operator, the Existing Subtenant or Existing Operator shall only be required to comply with its obligations under the Existing Agreement, and not the greater or more restrictive obligations of Tenant under this Lease. The City's obligations and the Existing Subtenants' and Existing Operators' rights under this Section 6.3 shall only apply to the Existing Agreements and shall not apply to Agreements that Tenant enters into after the Effective Date (which must be consistent with the terms and conditions of this Lease and other Laws pursuant to Section 45.1).

(b) Future Agreements and Amendments to Existing Agreements. Subject to this Section 6.3, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to enter into or amend Agreements from time to time that, by their terms, are subject to and in compliance with the provisions of this Lease without the necessity of obtaining the consent of City, to such persons or entities and upon such terms and conditions which are consistent with the provisions of this Lease. Except as specifically provided in this Section 6.3, Tenant shall not enter into a new Agreement or an amendment to an Existing Agreement that is inconsistent with the requirements set forth in this Section 6.3, including, without limitation, Section 6.3(c).

(c) Requirements for Conforming Agreements and Amendments Not Requiring Consent. In addition to any other requirement set forth in this Section 6.3, the following conditions must be satisfied with respect to any new Agreement or amendment to an Existing Agreement in order that City's consent shall not be required: (A) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses, (B) the Subtenant and the Sublease or the Operator and Operating Agreement, as applicable, are expressly subject to all the terms and provisions of this Lease related to Subtenant's or Operator's use of the subleased premises, (C) the term of the Agreement, including any extension options, shall not exceed thirty (30) years and does not extend beyond the term of this Lease, (D) there exists no Event of Default or Unmatured Event of Default under the Lease, (E) with respect to new Agreements only, the Subtenant or Operator Indemnifies the City for any loss or damage arising in connection with the Agreement in form required under Exhibit H, (F) Tenant remains liable under this Lease, (G) with respect to new Agreements only, the Subtenant or Operator provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City, (H) if a Sublease, the rent to be charged under the Sublease conforms with the Minimum Rent Requirements set forth in Section 6.3(e) below, and (I) with respect to new Agreements and amendments to Existing Agreements to extend the term, the Agreement shall include the provisions set forth in Exhibit I. The foregoing conditions are sometimes referred to as the "**Agreement Conditions**."

(d) Requirements Regarding Rent in Subleases. Tenant shall use good faith efforts to achieve Market Rent in Subleases whenever possible and to enter into Subleases with terms that are reasonable in light of the market conditions existing at the time of such Sublease. Notwithstanding the above, all Subleases shall have a Net Effective Rental Rate that is not less than ninety percent (90%) of the Market Rent for the type of space/improvement to be subleased in light of and restricted to the Intended Use of such space/improvement (the "**Minimum Rent Requirement**"), unless Tenant expressly proposes, and City approves, an Acknowledged Non-Conforming Sublease, as set forth in Section 6.3(i) below. For the purposes of determining Market Rent, the "**Intended Use**" of a space/improvement to be subleased shall be the intended use of such space/improvement as determined by Tenant, which "Intended Use" shall be either a Permitted Use or another use approved by City as an Acknowledged Non-Conforming Sublease under Section 6.3(i) below. For example, in determining the Market Rent of the ice skating facility, the Intended Use of the ice skating facility as a community-serving ice rink shall be considered as opposed to other, potentially more economically beneficial, uses of the facility.

(e) Requirements for Payments under Operating Agreements. Tenant shall use good faith efforts to pay not more than the reasonable market rate for services, works, maintenance, operations, and improvements in light of the market conditions existing at the time of such Operating Agreement.

(f) Pre-Execution Deliveries to City. Prior to executing a new Agreement or amendment to an Existing Agreement, Tenant shall submit to City (i) a summary of the key terms of the proposed Agreement (including location, proposed use, square footage of the space/improvement, length of term, rental rate (for Subleases and Sublease amendments only), tenant improvement allowances and leasing concessions (if any, for Subleases and Sublease amendments only), for Operating Agreements: payment obligations of Tenant, and work to be performed, and schedule for completion, if applicable), (ii) a calculation of the Net Effective Rental Rate for such proposed Sublease, which may include, if Tenant elects to obtain an appraisal of the Market Rent of the space/improvement to be subleased, a copy of such appraisal and (iii) evidence as reasonably required by the City that payments to be made under any Operating Agreement are reasonable in light of the current market and comply with all Laws (collectively, the "**Pre-Execution Submittal Package**"). The City shall reasonably review the Pre-Execution Submittal Package for conformance with the Agreement Conditions, including the Permitted Uses and the Minimum Rent Requirement, if applicable. If the Net Effective Rental Rate for the proposed Sublease is less than Market Rent for space/improvement to be subleased in light of its Intended Use (as set forth in the appraisal submitted by Tenant), then the summary shall contain an appendix that describes why Tenant determined that the proposed Net Effective Rental Rate is appropriate for such space/improvement. If the Net Effective Rental Rate is less than ninety percent (90%) of the Market Rent for such space/improvement, then such proposed Sublease shall be subject to the provisions of Section 6.3(i) below. If payments to be made under an Operating Agreement are above the then current market rate, then then the summary shall contain an appendix that describes why Tenant determined that the proposed payments are appropriate for such services, works, maintenance, operations, or improvements. If the payments under an Operating Agreement are in excess of then current market rate, in City's reasonable determination, then the proposed Operating Agreement shall be subject to the provisions of Section 6.3(i) below.

(g) Nonconformance with Permitted Uses or Other Agreement Conditions. If City reasonably determines that a proposed Agreement (other than an Acknowledged Non-Conforming Agreement, as described in Section 6(h) below) is inconsistent with the Permitted Uses or any other Agreement Conditions, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package:

(i) disapprove such Sublease, in its reasonable discretion, by providing written notice to Tenant describing the claimed inconsistencies; or

(ii) request additional information from Tenant regarding the reason(s) why the proposed Agreement should be approved despite such inconsistency(ies).

(h) Nonconformance with Minimum Rent Requirement or Market Rate Requirement.

(i) This subparagraph applies to Subleases. If the Pre-Execution Submittal Package that Tenant submits does not include an appraisal of the Market Rent from an Approved Appraiser, and if City reasonably determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease) has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the space/improvement to be subleased, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package, notify Tenant that Tenant must either resubmit such proposed Sublease as an Acknowledged Non-Conforming Sublease in accordance with the provisions of Section 6.3(i) below or submit an appraisal of the Market Rent of the space/improvement to be subleased from an Approved Appraiser pursuant to Section 6.4(b) below. Notwithstanding the foregoing, City shall have no right to object to or disapprove any determination of Market Rent set forth in an appraisal prepared by an Approved Appraiser in accordance with Section 6.4(b) below, and City's rights pursuant to this Section 6.3(h) are limited to City's reasonable review of the calculation of the Net Effective Rental Rate.

(ii) This subparagraph applies to Operating Agreements. If the City reasonably determines that a proposed Operating Agreement (other than an Acknowledged Non-Conforming Agreement) that Tenant submits in a Pre-Execution Submittal Package obligates Tenant to pay more than 10% more than the then current market rate for such services, works, maintenance, operations, or improvements under the Operating Agreement, in City's reasonable determination, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package, may notify Tenant that Tenant must either resubmit such proposed Operating Agreement as an Acknowledged Non-Conforming Agreement in accordance with the provisions of Section 6.3(i) below or submit the required contract documentation required under Section 6.3(f) above.

(i) Acknowledged Non-Conforming Agreements. In order to meet certain goals of this Lease, including the operation and maintenance of the Premises with a diverse and healthy mix of civic and cultural uses and Subtenants and Operators, it may be necessary or desirable, from time to time, for Tenant to enter into particular Agreements that are not consistent with the Permitted Uses or have a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable space/improvement to be subleased or require payments of more

than one hundred ten percent (110%) of the market rate for services, works, maintenance, operations, or improvements (each, an "**Acknowledged Non-Conforming Agreement**"). If Tenant proposes to enter into an Acknowledged Non-Conforming Agreement, then Tenant shall submit, in addition to the summary of key terms required under Section 6.3(f) above, a written explanation of the reason(s) why the proposed Acknowledged Non-Conforming Sublease should be approved despite such inconsistency(ies).

(i) City may, in its sole discretion, disapprove any proposed Acknowledged Non-Conforming Agreement that proposes a use other than a Permitted Use by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Agreement, then City shall provide a written explanation of the reason(s) therefor.

(ii) City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a Net Effective Rental Rate that is less than ninety percent (90%) of the Market Rent for space/improvement to be subleased for the Intended Use of such space/improvement by written notice to Tenant given no later than ten (10) business days after receipt of the Pre-Execution Submittal Package. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

(iii) City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Agreement that proposes a payments by Tenant that are more than one hundred ten percent (110%) of the market rate for the services, works, maintenance, operations, or improvements to be contracted for, as reasonably determined by City, by written notice to Tenant given no later than ten (10) business days after receipt of the Pre-Execution Submittal Package. If City elects to disapprove the proposed Agreement, then City shall provide a written explanation of the reason(s) therefor.

(iv) City may, in its reasonable discretion, request additional information from Tenant regarding the reason(s) why the Acknowledged Non-Conforming Agreement should be approved.

(j) Cooperation. Tenant and City shall use good faith efforts to promptly resolve any dispute about whether an Agreement is inconsistent with the Permitted Uses or other Agreement Conditions or has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space or payments by Tenant that are more than one hundred ten percent (110%) of the market rate for the services, work, or improvement to be contracted for.

(k) No Execution of Agreements Disapproved or Subject to Information Requests. Tenant shall not enter into any proposed Agreement for which Tenant has timely received a disapproval notice or a request for additional information unless City subsequently approves such proposed Agreement in writing.

(l) Deemed Approval. If City fails or declines to respond to Tenant within the applicable ten (10) business day period described above following submission of a Pre-Execution Submittal Package, then Tenant may at Tenant's election provide written notice to City that no

notice of objection, disapproval, or request for additional information was received from the City, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "AGREEMENT REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Agreement shall be deemed approved if City does not disapprove the Agreement in accordance with the terms of this Section 6.3 within ten (10) days of such notice. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws (e.g., San Francisco Administrative Code Chapter 23).

(m) Post-Execution Deliveries to City; Rent Rolls. Tenant shall provide City with a copy of each Agreement (and each assignment of Agreement and sub- Agreement) within ten (10) business days after execution, amendment, or extension thereof. Within ten (10) business days after receipt of a written request from the City, Tenant shall provide City with a current rent roll for all Agreement and include such other matters as reasonably required by City (a "**Rent Roll**").

6.4 Determination of Market Rent for Subleases.

(a) Market Rent. For purposes of this Lease, the term "**Market Rent**" shall mean the Net Effective Rental Rate that would be payable in an arm's length negotiation for a space/improvement of comparable size, age, condition and functionality, suitable for and limited to the Intended Use, and situated either in the Premises or other similar, reputable, established neighborhoods or districts in the San Francisco Bay Area sub-markets, taking into account typical concessions. Market Rent shall include the periodic rental increases, if any, that would be applicable to the portion of the Premises subject to a Sublease. As set forth in Section 6.3(d) above, in determining Market Rent, the "Intended Use" of a space/improvement to be subleased shall be the intended use of such space/improvement as determined by Tenant.

(b) Determination of Market Rent by Approved Appraisers. Tenant shall have the right, but not the obligation, to obtain, a Tenant's cost, an appraisal of the Market Rent of a space/improvement to be subleased from one of the City's pre-approved real estate appraisers or such other pre-approved real estate appraisers as Tenant and the City's Director of Real Estate may agree upon in writing from time to time (collectively, the "**Approved Appraisers**") it being understood that at all times during the Term there shall be no fewer than three Approved Appraisers, and in such event the determination of Market Rent set forth in an appraisal prepared by an Approved Appraiser and submitted to the City pursuant to Section 6.3(e) above shall be, in the absence of material error or misrepresentation, presumed to be a valid determination of the Market Rent of such space/improvement at the time of appraisal, subject to the confirmation of the City's Director of Property, if and as required by Law. All such appraisals shall take into consideration the Intended Use and shall otherwise be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics, and the Standards of Professional Appraisal Practice of the MAI.

6.5 Reasonable Grounds for Withholding Consent.

Where a Transfer or an Agreement requires City's reasonable consent, it shall be reasonable (1) for City to withhold its consent if Tenant has not supplied sufficient information (including supplemental materials reasonably requested by City) to enable City to make a reasonable determination whether any applicable Transfer Condition or Agreement Condition has been satisfied, and (2) if Tenant is then in default of any of its obligations under this Lease, for City to condition its consent on the cure of such defaults as City may specify in its notice conditionally approving such Transfer or Agreement.

6.6 Non-Disturbance of Subtenants, Attornment, Relevant Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). All Non-Disturbance Agreements shall comply with the provisions of this Section 6.6(a) and of Section 6.6(b). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the Term of this Lease; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 45.2 [Non-Discrimination] and Section 45.5 [Tobacco Product Advertising Prohibition] (or, if the Sublease does not contain such provisions, then Subtenants agrees to comply with such provisions pursuant to the Non-Disturbance Agreement or other written agreement with City or Tenant); (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement); and (v) with respect to requests for Non-Disturbance Agreement after the Tenant and Subtenant have entered into a Sublease only, then Subtenant shall have delivered to City an executed estoppel certificate certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, and (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in such certificate. In addition, with respect to Subleases having an initial term of more than ten (10) years, City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is entered into; provided, however, that City acknowledges and agrees that the rental terms of Subleases that propose a Net Effective Rental Rate of at least ninety percent (90%) of Market Rent at the time of execution of the Sublease, with an adjustment of rent at or before the end of the initial ten (10) years to at least ninety (90%) of then-Market Rent, shall be deemed reasonable and acceptable for purposes of City's review under this Section 6.6(a). City shall in no event be required to enter into a Non-

Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Nothing in this Section 6.6 shall preclude City in its sole and absolute discretion from granting non-disturbance to other Subtenants. Notwithstanding any provision to the contrary in this Section 6.6 or in this Lease, upon request, City shall provide Non-Disturbance Agreements for any Existing Subtenant (including for Subtenants with Existing Subleases that extend beyond the scheduled expiration of the Term).

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that in the event this Lease expires, terminates or is canceled during the term of the Sublease, (i) City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease, (ii) Subtenant agrees to attorn to City, and (iii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City; provided, however, that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid, shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

6.7 Temporary Rentals for Public or Private Events. Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to grant permits and licenses for the temporary use of portions of the Premises without City's consent for Public or Private Events pursuant to this Section 6.7; provided, however, that Tenant shall coordinate with the Manager (as defined in Section 7.2) regarding any actions contemplated within this Section in accordance with any applicable Management Agreement (as defined in Section 7.2), and further provided that such right shall subject to applicable Laws delegating authority related to the implementation of relevant provisions of the City's Park Code and any rules implemented or developed by the City thereunder for the operation and maintenance of the Premises. Notwithstanding the foregoing, the City and Tenant recognize that Tenant (to the extent acting as manager of the Premises), and any third-party entity may be acting as the Manager pursuant to the terms of this Agreement, will be subject to all applicable terms in this Agreement, including, but not limited to, this Section 6.7 and Section 7.2. The term "**Public or Private Events**" means (i) concerts and musical performances, (ii) theater performances, (iii) dance performances, (iv) public ceremonies, (iv) exhibitions of art, crafts and merchandise for sale, (v) trade shows and fairs, (vi) private and corporate events, (vii) film shoots, and (viii) any similar events, performances, ceremonies, shows and exhibitions that are consistent with the Permitted Uses. Tenant shall require as a condition of issuance of a permit or license for any Public or Private Event that (i) such event be conducted in compliance with all applicable Laws, including, without limitation, obtaining any Regulatory Approvals from any governmental entity which may be necessary, (ii) the sponsor/organizer of the event provide reasonably adequate commercial general liability insurance naming the City as an additional insured, (iii) the sponsor/organizer be solely responsible for all costs of such event, including clean-up costs, and the costs of any damage to or destruction of the Premises, and (iv) that during the event, public access will be maintained through the areas of the Premises that are usually open to the public, but only to the extent reasonably feasible in light of the nature of the

Public or Private Event (it being understood that Public or Private Events will at times, as determined by Tenant, result in the temporary closure of portions of the Premises that are usually open to the public, such as the gardens and cultural facilities located therein). All rents and fees that Tenant receives from Public or Private Events shall be deemed to be Gross Revenues hereunder, shall be deposited in the Accounts, and dedicated for and used for the management, operation, security, and capital improvement of the Premises and Retained Other Gardens Areas consistent with the allowable uses of Program Income. City and Tenant may, but shall not be obligated to, enter into a separate agreement that more fully sets forth rules and procedures for use of the Premises for Public or Private Events.

6.8 Naming Rights Agreements.

Tenant may enter into agreements with third parties for naming rights to real property within the Premises ("Naming Rights Agreements") subject to the terms of any applicable Subleases or Operating Agreements and subject to the City's approval, in its sole and absolute discretion. All proceeds from such Naming Rights Agreements shall be dedicated for the operation, maintenance, security, and capital improvement of Yerba Buena Gardens Properties and be consistent with the allowable uses of Program Income.

7. OPERATIONS AND MANAGEMENT

7.1 Operating Standards.

Tenant shall manage and operate, or cause the Manager (defined below) to manage and operate, the Premises in accordance with all Laws and in a commercially reasonably manner consistent with the practices of other prudently, well-managed civic and cultural places of assembly in the San Francisco Bay Area or other similar spaces in the United States of a like age and quality. In connection with managing and operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants and Operators, to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards, including, but not limited to, (a) routine and extraordinary repair and maintenance of the Improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and grounds keeping, (e) security services, (f) marketing the Premises, selection of Subtenants and Operators and negotiation of Agreements, (g) enforcement of reasonable rules and regulations for the conduct of Subtenants and Operators and others present on the Premises, (h) collection of rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants and Operators with the terms, covenants and conditions of their Agreements (i) placement of insurance and payment of premiums and securing certificates of insurance from Subtenants and Operators and persons working on the Premises, and (j) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

7.2 Management.

(a) Manager; Management Agreement. Tenant, at its election, shall either manage and operate the Premises itself or shall engage one or more third-party entities to manage and operate the Premises (or any portion thereof that Tenant has elected not to manage itself); and

provided that at all times during the term of this Lease the entire Premises (or any portion thereof) shall be under the management of Tenant or one or more third-party entities. Any contract for the operation or management or leasing of the Premises entered into by Tenant (a "**Management Agreement**") shall provide that such Management Agreement may be terminated by Tenant without penalty. Tenant shall manage the Premises, whether directly or indirectly, in a commercially reasonable manner consistent with comparable cultural and civic places of assembly within the United States and consistent with (a) best practices of facility management as defined by the International Facility Management Association (IFMA), and (b) best practices of transaction management as defined by Building Owners and Managers Association (BOMA). The managing employee or agent (the "**Manager**" or "**Managers**") must have a demonstrated ability to manage facilities of comparable size and quality to the Premises. No act or omission of the Manager pursuant to the Management Agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease. If City determines in its reasonable judgment that the Premises is not being operated, managed, or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management, or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the Premises. If requested by Tenant, in Tenant's sole discretion, City agrees to serve as the Manager for such portion of the Premises as may be determined by Tenant, subject to Tenant and City entering into a mutually acceptable Management Agreement with respect thereto.

(b) Preparation and Submittal of Reports and Annual Operating Budget and Capital Budget. Tenant shall prepare or cause to be prepared and submitted to City all budgets, including the annual operating budget ("**Annual Operating Budget**") and the annual capital budget ("**Annual Capital Budget**"), financial reports, inspection reports, and other materials required by this Lease, including, without limitation, the Inspection Report described in Section 14.1(b) below, together with quarterly reports of claims filed against Tenant, 30/60/90 day delinquency reports of Subtenants, and copies of default notices from Tenant to Subtenants. Tenant shall submit the Annual Operating Budget and the Annual Capital Budget for the next fiscal year to the City by no later than the end of each calendar year during the Term and the City shall reasonably approve the Annual Operating Budget and the Annual Capital Budget no later than ninety (90) days after receipt of the Annual Operating Budget and Annual Capital Budget. If the City has any questions or comments regarding the Annual Operating Budget and Annual Capital Budget, then City shall promptly notify Tenant, and City and Tenant shall diligently, reasonably, and in good faith work together to resolve and/or address the questions or comments so that the City can reasonably approve the Annual Operating Budget and Annual Capital Budget within the ninety (90) day period.

7.3 Financial Operations and Reporting

(a) Dedicated Funding. In order to fund the operation, maintenance, security, and capital improvement of the Premises and the performance of Tenant's obligations under this Lease, the Existing Account Funds (as defined in Section 7.3(a)(i) below), Gross Revenues (as defined in Section 7.3(a)(ii) below), GMOS Payments (as defined in Section 7.3(a)(iii) below), and Developer Exactions (as defined in Section 7.3(a)(iv) below) shall be dedicated for Tenant's use in accordance with the terms of this Lease, which terms include City's right to payment of the

City Costs subject to Section 10.9 below and the right of Tenant to use the dedicated funding to pay for Tenant's operating and administrative costs. Additionally, Tenant's use and expenditure of Gross Revenues must be in accordance with (x) the requirements for priority of use as contained in the Metreon Lease, the CB-1 Retail Lease, and the CB-1 REA, which requirements are excerpted from each document and set forth in Exhibit J attached to this Lease, and (y) the requirements for priority of use set forth in Section 10.9(e). City acknowledges that the foregoing dedicated funding sources currently support the operation, maintenance, security, and capital improvement of the Premises (including the programming of Yerba Buena Gardens parks, public amenities, and cultural facilities), and City agrees that these funding sources shall continue to be fully dedicated for those purposes during the Term of this Lease. Furthermore, to the extent applicable to the Premises, all Supplemental Capital Funds (as defined in Section 7.3(a)(vi) below) shall also be dedicated during the Term of this Lease for capital repairs and capital improvements to the Premises and Retained Other Gardens Areas. For the purposes of any transfers of funds from City to Tenant contemplated in this Section 7.3 and elsewhere in this Lease, City shall make reasonable efforts to identify the sources of the funds being transferred, and proposed uses of the any funds being withheld as part of a net transfer made in accordance with the terms and conditions of this Lease. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be unreasonably withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(i) Existing Account Funds. On or as soon as practical after the Commencement Date, City shall transfer into the Accounts (as defined below), all of the capital accounts, operating accounts, and reserves that City maintains for the operation, maintenance, security, and capital improvement of the Premises (the "**Existing Account Funds**"). The Existing Account Funds for operations of the Premises as of the Commencement Date as well as reserves for future operating expenses, building repair and renovation needs, and long-range capital improvements are included in the Initial Approved Annual Budget. The Existing Account Funds shall be dedicated for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with any applicable Program Income requirements. To the best of City's knowledge, the Existing Account Funds are free and clear of any liens or other encumbrances.

(ii) Gross Revenue. During the Term of this Lease, all Gross Revenue shall be dedicated for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with the allowable uses of Program Income. As used in this Lease, "**Gross Revenue**" means (A) all payments, revenues, income, rental receipts, common area maintenance (CAM) fees, gate receipts, parking charges, proceeds and amounts of any kind whatsoever, including all base rent, minimum rent, and percentage rent/participation rent payable under and actually received (1) by Tenant, including those received on behalf of City, pursuant to the terms of the Agreements, and those then transferred to City pursuant to the terms and conditions of this Lease, and (2) by City pursuant to the terms of the Retained Leases, and (B) all rent and fees and any other amounts payable and actually received by Tenant for Public or Private Events pursuant to Section 6.7. Tenant shall cause all Gross Revenue

under the Subleases to timely be paid to City or deposited into an account designated by City. Along with City's receipt of any Gross Revenue from the Subleases, the City shall timely collect all Gross Revenue payable under the Retained Leases and deposit such Gross Revenue into the Accounts within thirty (30) days of receipt of the Gross Revenue by City, with each deposit identifying the source of such funds at the time of deposit (and proposed uses of the any funds being withheld as part of a net transfer made in accordance with the terms and conditions of this Lease), provided that City may reserve therefrom the City Costs in accordance with and subject to Section 10.9. If City elects not to or fails to properly identify the sources of funding, Tenant may request more detail of a specific transfer pursuant to Section 10.3. The Gross Revenue under the Existing Agreements and Retained Leases is included in the Initial Approved Annual Budget.

(iii) GMOS Payments. During the Term of the Lease, all Yerba Buena Gardens maintenance, operations, and security ("**GMOS**") payments required under the agreements listed on Exhibit K and any other existing or future agreements for which GMOS payments are required (the "**GMOS Payment Agreements**") to fund the annual maintenance, operations, and security costs of Yerba Buena Gardens, shall be deposited into the Accounts and dedicated for the operation, maintenance, and security of the Premises and Retained Other Gardens Areas in accordance with the terms of the GMOS Payment Agreements. The current available total GMOS amount is included in the Initial Approved Annual Budget. City shall be responsible for the enforcement and timely collection of GMOS Payments payable under any GMOS Payment Agreement that is not a Sublease or Operating Agreement, and City shall deposit such GMOS Payments into the Accounts within thirty (30) days of receipt of the GMOS Payments by City. Tenant shall be responsible for the enforcement and collection of GMOS Payments under any GMOS Payment Agreement that is a Sublease or Operating Agreement and Tenant, on behalf of City, shall deposit such GMOS Payments into an account designated by City and City shall deposit such GMOS Payments into the Accounts within thirty (30) days of receipt of the GMOS payments by City.

(iv) Developer Exactions. During the Term of the Lease, all exactions imposed pursuant to agreements listed on Exhibit L and any other existing or future agreements for which exactions are imposed to support the operation, maintenance, security, and capital improvement of the Premises (the "**Developer Exactions**") will be deposited in the Accounts and dedicated for the operation, maintenance, and security of the Premises and Retained Other Gardens Areas in accordance with the terms of such agreements. City shall be responsible for the enforcement and timely collection of Developer Exactions, and City shall deposit the Developer Exactions into the Accounts within thirty (30) days of receipt of the Developer Exactions by City.

(v) Additional Long Range Capital Funding. City, in its proprietary capacity as Landlord, shall support Tenant's efforts to seek additional long-range capital funding for the Premises and Retained Other Gardens Areas, which shall include, at a minimum, the following (collectively, the "**Supplemental Capital Funds**"):

(1) City, in its proprietary capacity as Landlord, shall support Tenant in its efforts to designate the Yerba Buena Gardens Properties as a project eligible to be funded by the Community Facilities Funding District that is planned for the City's pending Central SoMa Plan.

(2) City, in its proprietary capacity as Landlord, shall support Tenant in its efforts to establish a Public Financing Authority and an Enhanced Infrastructure Financing District ("**EIFD**") pursuant to Sections 53398.50–53398.88 of the California Government Code to fund capital repair and improvement of the Premises and Retained Other Gardens Areas. While the final boundaries of the EIFD would be established as part of the process of preparing an Infrastructure Financing Plan ("**IFP**"), City and Tenant envision that the boundaries of the EIFD should be the same as the about-to-be-updated Yerba Buena Community Benefit District boundaries and would include the Premises.

(3) If the EIFD is not created or if it is necessary to supplement revenues from the EIFD, City, in its proprietary capacity as Landlord, shall support Tenant's efforts to pursue other sources of revenues and funds to satisfy the long range-range capital funding of the Premises and Retained Other Gardens Areas, including developer exactions, property transfer payments, Community Facility Districts, Lighting and Landscaping Districts, and future revenue sources created through local, state, and federal legislation.

(vi) Crescent Pool Settlement Proceeds. If City has received or receives in the future any settlement proceeds (either directly or through an assignment from OCII) in connection with the damage to the crescent pool located in the Premises (the "**Crescent Pool Settlement Proceeds**"), City shall deposit all Crescent Pool Settlement Proceeds into the Accounts, and Crescent Pool Settlement Proceeds shall be dedicated and used for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with the allowable uses of Program Income.

(b) Establishment and Maintenance of Operating and Reserve Accounts.

(i) Generally. Tenant shall establish (with the dedicated sources of funding listed in Section 7.3(a) above as such dedicated sources shall be deposited by the City and Tenant) and maintain the bank accounts required to fulfill its obligations under this Section 7.3(b) (collectively, the "**Accounts**") with one or more depository institutions reasonably acceptable to City and approved by City in writing. The following depository institutions shall be deemed approved hereunder: (i) any institution approved by the Controller for deposit by City of City funds, (ii) any institution in which Tenant's deposits will be afforded full FDIC deposit insurance coverage for entire balance in the accounts held in such institution, and (iii) First Republic Bank. Other depository institutions and investment strategies proposed by Tenant for the Accounts shall be subject to the prior written approval of the City, which approval will not be unreasonably withheld, delayed, or conditioned. Tenant shall respect any limit on the size of the funds held in any account(s) as shall be established from time to time by the Controller for City funds with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Any interest accruing on the funds in any Account shall be added to such Account. The dedicated funding set forth in Section 7.3(a) above and any other sources of funding that Tenant or City obtain for the operation, maintenance, security, and capital improvement of the Premises shall not be commingled with other funds. The Tenant shall cause each person who has authority to withdraw or transfer funds from any Account to be bonded or otherwise insured.

(ii) Intentionally Deleted.

(iii) Operating Account. City and Tenant, as applicable, shall deposit all Gross Revenues, GMOS Payments, and Developer Exactions promptly after receipt into a segregated depository account (the "**Operating Account**") established exclusively for the maintenance, operation, and security of the Premises and Retained Other Gardens Areas; provided, that Tenant shall transfer portions of such funds deposited in the Operating Account to the Reserve Accounts (or deposit such funds directly into the Reserve Accounts) as provided herein. City and Tenant agree and acknowledge that pursuant to the YBC Closeout Agreement attached hereto as Exhibit C, all Gross Revenues shall be segregated in a separate Account to be used only for eligible Program Income uses.

(iv) Operating Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Operating Reserve Account**") in an amount as set forth in Section 10.9 and in any event reasonably adequate to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums, or other expenses which are payable other than monthly, abnormally high vacancies, and other expenses that vary seasonally (collectively, "**Operating Expense Fluctuations**"). The funds in the Operating Reserve Account shall be used only for Operating Expense Fluctuations, and Tenant shall not be used for any other purpose unless Tenant obtains the prior written consent of City, which shall not be unreasonably withheld, conditioned, or delayed.

(v) Replacement Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Replacement Reserve Account**") in an amount as set forth in Section 10.9 and in any event reasonably adequate for the payment of all reasonably anticipated capital repairs and improvements which are reasonably required to preserve, repair, or replace capital improvements, fixtures, or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the Improvements on the Premises ("**Capital Repairs and Replacements**"). The funds in the Replacement Reserve Account shall be used only for Capital Repairs and Replacements, and Tenant shall not use the funds for any other purpose unless Tenant obtains the prior written consent of City, which shall not be unreasonably withheld, conditioned, or delayed. Tenant shall not enter into any agreement to address Capital Repairs and Replacements in an amount in excess of the Replacement Reserve Account balance without the prior written consent of the City.

(vi) Other Reserve Accounts. In addition to the Operating Reserve Account and the Replacement Reserve Account, Tenant may establish such other reserve accounts, as such other reserve accounts are included in the priority of use requirements in Section 10.9(e) below, as shall be advisable for the prudent operation of the Premises and Retained Other Gardens Areas in Tenant's good faith judgment. The Operating Reserve Account, the Replacement Reserve Account, and any other reserve account established in connection with the operation of the Premises is sometimes referred to herein as a "**Reserve Account**" or collectively as the "**Reserve Accounts**."

(vii) Purpose of Reserve Accounts: Funding Levels and Limits. Tenant shall fund each Reserve Account in accordance with Section 10.9 below and in any event in an amount reasonably adequate to pay for all reasonably anticipated costs to be paid from such account, consistent with the practices of other prudently, well-managed civic and cultural places

of assembly in the San Francisco Bay Area or other similar spaces in the United States of a like age and quality, from the dedicated sources of funding set forth in Section 7.3(a) above. City's Controller may review the adequacy of deposits to the Reserve Accounts periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in any Reserve Account is insufficient, or unnecessarily conservative, to fund the cost of the likely expenditures which will be required to be made from such account, City may require an increase in the amount of monthly deposits into such Reserve Account (subject to the rights of Mortgagees) upon thirty (30) days prior written notice to Tenant, and Tenant shall thereupon make such adjustments. City's Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly deposits into such Reserve Accounts.

(c) Contract Standards; Contracts with Related Parties. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Premises, Tenant shall attempt to secure the best price reasonably obtainable. Tenant shall not enter into any agreement or arrangement for the furnishing to Tenant of goods or services with any person or entity related to or affiliated with Tenant, Manager or any Subtenant, unless such agreement or arrangement has been approved in advance by the City Administrator or Director of Property in writing after full disclosure of such relationship, which approval shall not be unreasonably withheld if Tenant demonstrates that the sums payable under the proposed contracts do not exceed the amounts normally payable for similar goods and services under similar circumstances and that the agreement is otherwise consistent with an arms-length transaction.

(d) Books and Records. Tenant shall keep accurate Books and Records in accordance with the standards of financial accounting of the Governmental Accounting Standards Board for at least four (4) years, or such longer time as may be required under applicable Law, after the creation of such Books and Records. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain its Books and Records as to separately account for expenses incurred and revenues generated. If Tenant operates all or any portion of the Premises through a third-party Manager, Tenant shall cause such third-party Manager to adhere to the foregoing requirements regarding books, records, and accounting principles. Tenant shall maintain complete and accurate accounting records of all construction costs associated with the Improvements for a period of no less than four (4) years after, the date of the issuance of the last certificate of completion for any work on the Improvements. Promptly (but in no event exceeding thirty (30) days) following a written request from City, Tenant shall make requested Books and Records (or copies thereof) available for inspection and audit by City during customary business hours at a location within the City reasonably satisfactory to City; provided, that City may not request more than one inspection and audit per Lease Year so long as there is not an Event of Default at any time during the Term. Tenant shall cooperate with City during the course of any audit.

(e) Reports. Tenant shall deliver to City annually a statement from the depository institutions in which the Accounts are held, showing the then current balance in such Accounts and any activity on such Accounts which occurred during the immediately prior Lease Year. In the event that Tenant has withdrawn funds from any Reserve Account within the

immediately prior Lease Year, Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City.

(f) Inspection and Audit. City shall have the right to inspect Tenant's Books and Records during normal business hours upon reasonable prior written notice to Tenant, and City shall have audit rights as described in Section 10.2.

(g) Security Interest. Tenant hereby grants to City a lien and security interest in the Accounts to secure the performance by Tenant of all of Tenant's obligations under this Lease. Tenant shall execute, deliver, file, and refile, and consents to City filing and refiling, at Tenant's expense, any instruments, financing statements, continuation statements, or security agreements that City may require from time to time to confirm the lien granted herein. Tenant hereby warrants and represents that the Accounts shall be free and clear of all other liens and encumbrances except only liens granted to a Mortgagee as permitted under Article 42. Tenant shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien granted hereby if requested by City, including, without limitation, a security agreement and a depository account control agreement. Subject to the rights of a Mortgagee of which City has been made aware in writing, upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City shall have the immediate right of possession of the funds in the Accounts. City hereby subordinates its interest in the Accounts to the interests of a Mortgagee of which City has been made aware in writing, which subordination is self-operative. The requirements set forth in this Section are the minimum requirements imposed on Tenant in connection with the Accounts and City acknowledges that a Mortgagee may impose the same or further requirements with respect thereto, and that sums deposited with or at the direction of a Mortgagee for the purposes for which a Reserve Account has been established shall be deemed deposited in such Reserve Account to avoid Tenant being required to maintain duplicative reserves.

(h) Joint Control Agreement. At any time upon the recommendation of the City Controller, and following a determination by the City that Tenant's management of the Accounts (as defined in Section 7.3(b)(i)) is materially affecting (with adverse consequences) the use, operation, and programing of the Premises, City may require, by sixty (60) days advance written notice to Tenant, that Tenant cause the depositary bank, in which one or more Accounts are held, to enter into a "joint control agreement," on commercially reasonable terms and conditions, in which such depositary bank agrees that it will require the consent of City as related to certain activities in connection with one or more of the Accounts listed in Section 7.3(b).

(i) Transfer of Accounts at Lease Expiration or Termination. Upon the expiration or earlier termination of this Lease all funds in the Accounts shall be transferred to City or City's designee, subject to payment of all of Tenant's reasonable expenses incurred in performing its obligations under this Lease through the date of expiration or earlier termination of this Lease.

8. SURRENDER AND TRANSFER BY OCII

City and Tenant anticipate that by separate agreement, OCII will agree to the following upon transfer of OCII's interest in the Premises to City: (i) cooperate in good faith with City and Tenant to surrender possession of the Premises and facilitate Tenant's possession and commencement of operations under this Lease, (ii) transfer all of the Existing Account Funds to Tenant or to City, for transfer to Tenant, as the parties may agree, (iii) transfer all of its other personal and intangible property to Tenant, including but not limited to all equipment, supplies, files, books, and records, and assign (to the extent assignable) all maintenance, janitorial, security, and other services contracts that Tenant agrees to assume, and (iv) cooperate with Tenant to recover possession from Subtenants of the Premises who have not entered into Subleases (if required) on or before the Commencement Date hereof. If OCII reasonably incurs any additional expenses in connection with the existing ownership interest or in connection with OCII obligations under any such agreement following the transfer by OCII of all of its accounts and reserves, Tenant shall reimburse OCII for such reasonable expenses from the Existing Account Funds in accordance with the allowable uses of such funds.

9. INTENTIONALLY DELETED.

10. RENT AND ACCOUNTING

10.1 Base Rent.

Commencing on the Commencement Date and thereafter on every anniversary of the Commencement Date during the Term, Tenant shall pay annual Base Rent to City in the amount of One Dollar ($1.00) per year.

10.2 Accounting by Tenant. Upon request by the City, or if Tenant reasonably believes that that Gross Revenues collected or Operating Expenses incurred for the prior month will cause the approved Annual Operating Budget to be exceeded, Tenant shall deliver to City a statement certified as correct by Tenant and otherwise in form satisfactory to City, showing the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds that Tenant collected (or received from City) during the last preceding calendar month and an itemization of Operating Expenses for that calendar month (a "**Tenant Monthly Statement**"). In addition to this ongoing, as-needed reporting requirement, on or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City a statement (the "**Tenant Annual Statement**"), certified as correct by Tenant, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Tenant Annual Statement shall set forth financial statements in accordance with Governmental Accounting Standards Board ("**GASB**") standards which will include a balance sheet, statement of activities, or income statement, statement of cash flows, and include applicable footnotes and disclosures for the Lease Year just concluded. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be

unreasonably withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(a) Definitions. The following terms shall be defined as set forth below.

(i) "**Operating Expenses**" means expenses, fees and costs of any kind or nature whatsoever, incurred in connection with the operation, management, ownership, insurance, maintenance or repair of the Premises and Retained Other Gardens Areas paid for by Tenant with no reimbursement from any subtenant, licensee, other occupant of the Premises or from grantors, donors or any other entity or person. Operating Expenses shall include, without limitation (A) the cost of utilities (including any deposit); (B) the cost of security services; (C) the cost of janitorial services; (D) to the extent not paid out of retenanting reserves, the cost of marketing the Premises (including advertising, reletting, lease inducements, broker commissions and fees, lease buyouts, rent subsidies, moving expenses, tenant improvements, LEED or similar "green building" consultants engaged by Tenant to assist Subtenants and Operators in connection with tenant improvements, fees and other costs incurred in connection with any application, registration or certification of Subtenants' Sublease premises or the premises subject to an Operator's Operating Agreement with any green building rating organization (e.g., USGBC) and hazardous materials remediation or restoration, if applicable; (E) to the extent not paid out of insurance reserves, insurance premiums for all insurance policies carried by Tenant on the Premises or in connection with the use or occupancy thereof; (F) wages, salaries, payroll taxes and other labor costs and employee benefits; (G) management fees and common area maintenance (CAM) expenses; (H) accounting, consulting, and legal expenses; (I) Tenant's overhead and reimbursement of City Costs up to the greater of (1) the City Third Party Costs that City incurs during a fiscal year, or (2) the Estimated City Costs for that fiscal year; (J) deposits into the Operating Reserve Account, Replacement Reserve Account, and any other Reserve Account (subject to Section 10.9 below), reasonable retenanting reserves, and reasonable reserves for insurance premiums and property taxes; (K) required permits, certificates, and licenses; (L) to the extent not paid out of property tax reserves, any and all taxes, impositions and/or assessments levied against or charged to the Premises or Tenant's interest therein pursuant to this Lease or any covenants, conditions and restrictions, easements, or access and maintenance agreements now or hereafter of record; (M) refunds owed to Subtenants for excess repayment of operating expenses or common area maintenance (CAM) charges; and (N) Tenant's Organizational Expenses. The computation of Operating Expenses shall be made in accordance with GAAP. Such expenses shall be reasonable and no higher than market rates, and all dealings with affiliates, board members and employees of Tenant shall be disclosed to the City in the Tenant Annual Statement.

(ii) "**Tenant's Organizational Expenses**" means the reasonable costs of operating the entity which is Tenant under this Lease. Tenant shall operate the entity in a manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient, cost effective and consistent with Tenant's mission, corporate purposes, applicable Laws, and this Lease, at all times avoiding lavish, extravagant, or excessive expenditures.

(b) Audit of Tenant Accounting. Tenant agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make its Books and Records available to City, or to any City auditor, or to any auditor or representative

designated by City ("**City Representative**"), for the purpose of examining such Books and Records to determine the accuracy of Tenant's reporting of Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds and Operating Expenses pursuant to the terms of this Lease and for Tenant's compliance with the requirements of Section 7.3. Tenant shall cooperate with City Representative during the course of any audit. Such Books and Records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City Representative for the purpose of auditing or re-auditing these accounts. If an audit is made within such four-year period and City claims that errors or omissions have occurred, the Books and Records shall be retained and made available until those matters are resolved. If Tenant operates all or any part of the Premises through a third-party Manager, Tenant shall require each such third-party Manager to provide City with the foregoing audit right with respect to their respective Books and Records.

10.3 Accounting by City. Upon request by the Tenant, or if it appears that Gross Revenues collected or City Costs incurred for the prior month will cause the approved Annual Operating Budget to be exceeded, City shall deliver to Tenant a statement certified as correct by an officer of City and otherwise in form satisfactory to Tenant, showing the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds that City collected during the last preceding calendar month and itemized City Costs for that calendar month (a "**City Monthly Statement**"). In addition to this ongoing, as-needed reporting requirement, on or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, City shall deliver to Tenant a statement (the "**City Annual Statement**"), certified as correct by City, certified or audited by an independent certified public accountant, or otherwise in form satisfactory to Tenant. The City Annual Statement shall set forth financial statements in accordance with GASB standards regarding the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds as well as the City Costs, for the Lease Year just concluded. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be unreasonably withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(a) Audit of City Accounting. City agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make records applicable to this Lease available to Tenant, or to Tenant's auditor, or to any auditor or representative designated by Tenant (collectively, "**Tenant Representative**"), for the purpose of examining such City's records to determine the accuracy of City's reporting of Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds as well as the City Costs. City shall cooperate with Tenant Representative during the course of any audit. City will keep such records for four (4) years and maintain and/or make them available in San Francisco to Tenant Representative for the purpose of auditing or re-auditing these accounts. If an audit is made within

such four-year period and Tenant claims that errors or omissions have occurred, the City will maintain its records and make them available until those matters are resolved.

(b) Security Interest. City hereby grants to Tenant a lien and security interest in any separate account into which City deposits the Retained Lease revenues prior to transfer to the Tenant (such separate account, the "**Retained Lease Account**") to secure the performance by City of its obligations under this Lease. City shall execute, deliver, file, and refile, and consents to Tenant filing or refiling, at City's expense, any instruments, financing statements, continuation statements, or other security agreements that Tenant may require from time to time to confirm the lien granted herein. City hereby warrants and represents that the Retained Lease Account shall be free and clear of all other liens and encumbrances. City shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien granted hereby if requested by Tenant, including, without limitation, a security agreement and a depository account control agreement. Upon the occurrence of an event of default by City, City shall have the immediate right of possession of the funds in the Retained Lease Account.

10.4 CBDG Audits. City and Tenant shall cooperate to comply with annual CBDG audit requirements, including audits specifically pertaining to one party. Tenant shall pay for the cost of the CBDG audits not otherwise paid by City as City Costs.

10.5 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements, and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, including, subject to the terms and conditions of Section 10.9 below, any City Costs for which City has not previously reimbursed itself from Gross Revenues collected by City, shall be deemed Additional Rent. City shall have the same rights, powers, and remedies, whether provided by Law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent.

10.6 Payment of Rent. Tenant shall pay Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) days following the giving by City of such demand, notice, invoice, or the like to Tenant specifying that such sum is presently due and payable.

10.7 No Abatement or Setoff.

Except as otherwise set forth in this Lease, Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim.

10.8 Dedicated Funding. City acknowledges that Tenant is non-profit public benefit corporation that is incorporated for the primary purpose of performing the long term operation and management of the Premises and that as of the Effective Date, Tenant has no sources of revenue or

funding and relies upon the dedicated sources of funding set forth in Section 7.3(a) hereto. Accordingly, City and Tenant agree that all Rent and any other payments that Tenant is obligated or becomes obligated to make to City or third parties pursuant to the terms of this Lease shall be paid from one or more of the dedicated sources of funding set forth in Section 7.3(a) as well as any additional funding actually received by Tenant, such as Supplemental Capital Funds, subject to and consistent with the terms and conditions of any such additional funding. Notwithstanding the foregoing, but subject to Section 24.2 below, the parties recognize that there are certain obligations under the Lease that must be met and City and Tenant recognize a mutual affirmative obligation to identify and apply for additional funding, from non-City sources, to meet such obligations.

10.9 City Costs Reimbursement; Reserves Funding.

(a) City Costs. Subject to the terms and conditions of this Section 10.9, City shall have the right to reimbursement of the actual, out-of-pocket costs incurred by City during the Term in connection with fulfilling its roles and responsibilities under this Lease, management of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not as regulator), as determined on a time and materials basis (the "**City Costs**"). Subject to the terms and conditions of this Section 10.9, City shall reimburse itself for City Costs from the Gross Revenues that City collects under the Retained Leases and shall deposit the remaining Gross Revenues collected by City in the Accounts in accordance with this Lease.

(b) Estimated City Costs. As part of the annual budgeting process, City shall prepare and provide to Tenant for its review and approval a reasonable estimate of the total annual City Costs that the City anticipates incurring during the upcoming fiscal year, including estimates of the anticipated City Third Party Costs and anticipated City Staff Costs. Such estimated City Costs that are approved by Tenant and included within the following year's approved Annual Operating Budget are referred to herein as the "**Estimated City Costs**." In the event that the City and Tenant cannot agree on the Estimated City Costs for an upcoming fiscal year, then the amount of the Estimated City Costs for such year shall be set at five percent (5%) of the average actual City Costs over the previous three (3) fiscal years (but exclusive of any extraordinary costs during such period); except that (i) for fiscal year 2018/2019, the Estimated City Costs shall be in the amount shown on the Initial Approved Annual Budget, (b) for fiscal year 2019/2020, the Estimated City Costs shall be the average of the final actual fiscal year 2018/2019 City Costs and an amount equal to 105% of the fiscal year 2018/2019 Estimated City Costs, and (c) for fiscal year 2019/2020, the Estimated City Costs shall be the average of the final actual fiscal year 2018/2019 City Costs, the final actual fiscal year 2019/2020 City Costs and an amount equal to 105% of the fiscal year 2019/2020 Estimated City Costs. City may elect to reserve the full amount of Estimated City Costs within a City account upon commencement of any applicable fiscal year; provided that any amounts so reserved in excess of final actual City Costs during such fiscal year shall be available for distribution at the end of the fiscal year or shall be credited toward the following fiscal year's reservation for Estimated City Costs.

(c) Reserve Funding. To ensure adequate operating and capital reserves, upon the transfer of the Existing Accounts to Tenant, (i) Tenant shall fund the Operating Reserve Account with the amount shown on the Initial Approved Annual Budget, and (ii) Tenant shall fund the Replacement Reserve Account with the amount shown on the Initial Approved Annual Budget.

Thereafter, Tenant shall have the right but not the obligation to increase the amount of funds in the Operating Reserve Account and the Replacement Reserve Account, with the goal of annually restoring funds in the Operating Reserve Account to an amount equal to fifteen percent (15%) of the projected annual Operating Budget (the "**Operating Reserve Budget Target Amount**") and the goal of annually restoring funds in the Replacement Reserve Account to an amount equal to twenty-five percent (25%) of the average upcoming three fiscal years of projected capital budgets (the "**Replacement Reserve Budget Target Amount**"), subject to the terms and conditions of this Section 10.9. The funding for the Operating Reserve Account and the Replacement Reserve Account shall be an item in each Annual Operating Budget and Annual Capital Budget.

(d) Reimbursement Procedures. During each fiscal year during the Term, City shall have the right to be reimbursed for City Costs up to the greater of (i) the City Third Party Costs that City incurs during the fiscal year, or (ii) the Estimated City Costs for the fiscal year. Any City Costs that exceed the greater of (i) the City Third Party Costs that City incurs during the fiscal year, or (ii) the Estimated City Costs for the fiscal year shall be "**Deferred City Staff Costs**" and shall be reimbursed to City as set forth in this Section 10.9(d).

(i) City Third Party Costs. City Third Party Costs shall be reimbursed to City as incurred by the City during the fiscal year.

(ii) Deferred City Staff Costs.

(1) City shall have no right to reimbursement for the Deferred City Staff Costs until such time as (A) the Operating Reserve Account has been funded to an amount equal to the Operating Reserve Budget Target Amount, and (ii) the Replacement Reserve Account has been funded to an amount equal to the Replacement Reserve Budget Target Amount. Subject to the priority of use provisions of Section 10.9(e) below, if these conditions are met, then City may be reimbursed for the Deferred City Staff Costs provided that such reimbursement would not cause funds in the Operating Reserve Account to drop below the Operating Reserve Budget Target Amount and funds in the Replacement Reserve Account to drop below the Replacement Reserve Budget Target Amount.

(2) Deferred City Staff Costs shall always be paid in arrears (upon conclusion of the annual audit) in order to allow sufficient time to determine the amount of funds in the Operating Reserve Account and the Replacement Reserve Account.

(e) Priority of Use. In addition to the priority of use requirements as contained in the Metreon Lease, the CB-1 Retail Lease, and the CB-1 REA, which requirements are excerpted from each document and set forth in Exhibit J attached to this Lease, Tenant's use and expenditure of Gross Revenues must be in accordance with the following priority of use requirements: (i) payment of Operating Expenses (including Tenant's overhead and reimbursement of City Costs up to the greater of (A) the City Third Party Costs that City incurs during the fiscal year, or (B) the Estimated City Costs for the fiscal year), (ii) funding of the Operating Reserve Account to an amount equal to the Operating Reserve Budget Target Amount, (iii) funding of the Replacement Reserve Account to an amount equal to the Replacement Reserve Budget Target Amount, (iv) reimbursement of Deferred City Staff Costs that are at least three (3) years outstanding, (v) payment of Capital Repairs and Replacements, (vi) payment of Cultural Expenditures that are not

separately paid as Operating Expenses, (vii) reimbursement of Deferred City Staff Costs that are less than three (3) years outstanding, and (viii) funding of the Operating Reserve Account and the Replacement Reserve Account in amounts that exceed the Operating Reserve Budget Target Amount and the Replacement Reserve Budget Target Amount or any other reserve account, as established consistent with Section 7.3 (b)(vi) of this Lease, and as determined by Tenant in its reasonable discretion.

(f) Cooperation. In the event that the actual City Costs exceed the Estimated City Costs or, if at any time City reasonably anticipates that the actual City Costs may end up exceeding the Estimated City Costs, as might be the case if City incurs extraordinary City Third Party Costs that were not anticipated by City and Tenant, City and Tenant shall meet and confer in good faith to determine how to address the City Costs in excess of the Estimated City Costs in a manner that allows Tenant to remain solvent and to continue to operate and maintain the Premises in accordance with this Lease.

(g) City Cost Reporting. If City elects to reimburse itself for City Costs for any expense not previously estimated as a part of Estimated City Costs, then within with thirty (30) days after each reimbursement, City shall provide Tenant with a notice stating that City has elected to reimburse itself for the City Costs along with an invoice documenting and itemizing such costs. The City Monthly Statement for the calendar month in which City reimbursed itself directly for the City Costs shall show that City was reimbursed for such costs, and that Tenant has no obligation to pay such costs as Additional Rent. Tenant shall have the right to dispute any portion of the invoice and to audit the City's books and records in accordance with Section 10.3(a) above. If Tenant in good faith disputes any portion of an invoice, then within sixty (60) calendar days after receipt of the invoice Tenant shall provide written notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to resolve the dispute as soon as practicable.

11. TAXES AND ASSESSMENTS

11.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. To the extent required by Law, Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property located on the Premises or Tenant's leasehold estate to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 11.1(c)). Subject to the provisions of Section 12 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest, or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability, or amount of any such taxes in accordance with Section 12.

(i) Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease and/or the Agreements may create a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory

interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor (but excluding any such taxes separately assessed, levied, or imposed on any Sublease). Tenant further acknowledges that any Agreement or assignment permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may be reasonably requested by City to enable City to comply with such requirements.

(b) Other Impositions. Without limiting the provisions of Section 11.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 11.1(c)), which may be assessed, levied, confirmed, or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant or Operator whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or Operator or any other person or entity may have acquired pursuant to this Lease. Subject to the provisions of Section 12, Tenant shall pay or cause to be paid all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest, or cost as may be assessed for nonpayment or delinquent payment of any Imposition, except to the extent such fine, penalty, interest, or cost relates to nonpayment or delinquency of taxes separately assessed, levied, or imposed on any Subtenant or Operator. "**Impositions**" means all taxes, assessments, liens, levies, charges, or expenses of every description, levied, assessed, confirmed, or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees, and other charges whether general or special, ordinary, or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation all community benefits district assessments imposed on the Premises. Notwithstanding the foregoing provisions to the contrary, Tenant shall not be responsible for paying any transfer taxes resulting from the City's lease of the Premises to Tenant or any business or gross rental taxes assessed to the City.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City

copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

11.2 City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 12, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, City, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, City shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which City intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify City that it is contesting such Imposition pursuant to Section 12, then City may thereafter pay such Imposition, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within ten (10) business days following demand.

12. CONTESTS

12.1 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity, or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or any Operator, or other person or entity to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to City. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability, or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties, or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in any instance where City's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body, or administrative agency conducting such proceedings. If City is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Premises, City, at the request of Tenant and at no cost to City, with counsel selected and engaged by Tenant, subject to City's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. City, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings

be brought by or in the name of City or any owner of the Premises. Except as provided in the preceding sentence, City shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 21, Tenant shall Indemnify City for any such fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, which City may be legally obligated to pay.

12.2 City's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, City may but in no event shall be obligated to contest the validity, applicability, or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require City to pay any Imposition as long as it contests the validity, applicability, or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. City shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. If City undertakes any such contest, and any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, City shall be responsible for complying with such condition as a condition to its right to contest. City shall be responsible for the payment of any interest, penalties, or other charges which may accrue as a result of any contest, and City shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Premises may be subjected to such lien or claim. City shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body, or administrative agency conducting such proceedings. If Tenant is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of City and at no cost to Tenant, with counsel selected and engaged by City, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

13. COMPLIANCE WITH LAWS

13.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to City, (i) with all applicable Laws (including Regulatory Approvals to the extent required or applicable), and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Section 22 of this Lease. The foregoing sentence shall not be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 4.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses (if, and to the extent, not already

obtained), including but not limited to, Building Permits, nor do such uses limit City's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to City, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Section 13.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 13.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Article 18 or 19, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, except to the extent provided in Article 18 or 19, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

(c) Proof of Compliance. Tenant shall promptly upon request provide City with evidence of its compliance with any of the obligations required under this Section.

13.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises and not in its regulatory capacity. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations, or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where City will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires City's approval under Article 16, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of City, which approval will not be unreasonably withheld, conditioned, or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with City in Tenant's efforts to obtain such Regulatory Approval, and City shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that City shall

have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than City, if City is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of City whether on or off the Premises, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. No such approval by City shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, where required City shall join in its proprietary capacity as landlord, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that City shall have no obligation to join in any such application or execute the permit if City does not approve the conditions imposed by any regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of City (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties, or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and City shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 21, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

14. REPAIR AND MAINTENANCE

14.1 Tenant's Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to City (except as set forth in Section 14.2 [Substructure] below), the Premises in condition and repair as is appropriate for a first class civic and cultural place of assembly in the San Francisco Bay Area and in compliance with all applicable Laws and the requirements of this Lease, subject to the approved Annual Operating Budget and Annual Capital Budget, the 5-Year Work Plan, and Section 24.2 below.

(b) Inspection Reports. Not less frequently than once every five (5) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises in good order and repair and to keep the Improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify Capital Repairs and Replacements as well as routine maintenance and repairs and establish a budget and schedule for the performance of such work. Tenant, in consultation with City, shall develop a budget and financing plan for the Replacements and other repair work identified in the Inspection Report and a schedule for the commencement and completion of such work (the "**5-Year Work Plan**"), which shall be subject to City's reasonable approval. Following the City's approval of the 5-Year Work Plan, Tenant shall commence and complete the work identified in the 5-Year Work Plan in accordance with the 5-Year Work Plan and this Lease. A

new 5-Year Work Plan shall be prepared and approved in connection with each Inspection Report during the Term. If at any time City reasonably determines that repairs, improvements, or replacements which are not detailed on the Inspection Report are advisable to keep the Premises in good order and repair or to prevent deterioration ("**Additional Replacements**"), City may send Tenant written notice of the need for such Additional Replacements.

(c) Maintenance and Repair. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Replacements and Additional Replacements (except as otherwise provided in Article 18 or Article 19) in a timely manner and in compliance with all Laws and this Lease. Tenant shall make such repairs with materials, apparatus, and facilities at least equal in quality, design standards, public safety, and durability to the materials, apparatus, and facilities repaired, replaced, or maintained. Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

(d) No Obligation of City. Except as set forth in Section 14.2 [Substructure] below, as between City and Tenant, Tenant shall be solely responsible for the condition, repair, and maintenance of the Premises, including any and all Improvements, from and after the Commencement Date. Except as set forth in Section 14.2 [Substructure] below, City shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941, and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(e) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than City) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Material Laws), asserting that the Premises or any portion thereof is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 22, asserting that the requirements of such insurance policy or policies are not being met.

14.2 City's Obligation to Maintain and Repair the Substructure.

(a) City's Duty to Maintain and Repair. City and Tenant agree that the substructure supporting the Premises (the "**Substructure**") is not part of the Premises. City shall be responsible, at its sole cost and expense, for Substructure maintenance, operations, repairs, replacements, and capital improvements; provided, however, to the extent Tenant damages the Substructure, then Tenant shall be responsible for the cost of repairing or replacing the damaged portions of the Substructure. City shall secure sufficient funding to perform the work required by this Section 14.2 and to maintain the Substructure in a first class condition over the term of the Lease.

(b) Substructure Inspection Reports. Not less frequently than once every five (5) years, City and Tenant shall conduct an inspection and physical needs assessment for the Substructure to identify replacements, and repairs required to maintain the Substructure in good order and repair and to keep the Substructure from deteriorating, and shall cause to be prepared a written report (the "**Substructure Inspection Report**") detailing the results of such inspection and assessment. The Substructure Inspection Report shall identify capital repairs and improvements which are reasonably required to preserve, repair, or replace capital improvements, fixtures or equipment located on or used in connection with the Substructure ("**Substructure Replacements**") as well as routine maintenance and repairs and establish a budget and schedule for the performance of such work. City, in consultation with Tenant, shall develop a budget and financing plan for the Substructure Replacements and other repair work identified in the Substructure Inspection Report and a schedule for the commencement and completion of such work (the "**5-Year Substructure Work Plan**"), which shall be subject to Tenant's reasonable approval. Following Tenant's approval of the 5-Year Substructure Work Plan, City shall commence and complete the work identified in the 5-Year Substructure Work Plan in accordance with the 5-Year Substructure Work Plan and this Lease. A new 5-Year Substructure Work Plan shall be prepared and approved in connection with each Substructure Inspection Report during the Term. If at any time Tenant reasonably determines that repairs, improvements, or replacements which are not detailed on the Substructure Inspection Report are advisable to keep the Substructure in good order and repair or to prevent deterioration ("**Additional Substructure Replacements**"), Tenant may send City written notice of the need for such Additional Substructure Replacements.

(c) Maintenance and Repair. City shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Substructure Replacements and Additional Substructure Replacements in a timely manner and in compliance with all Laws and this Lease. City shall make such repairs and replacements with materials, apparatus, and facilities at least equal in quality, design standards, public safety, and durability to the materials, apparatus, and facilities repaired, replaced, or maintained.

(d) Notice. City shall take all necessary and reasonable measures to ensure that all Substructure operations and work will not unreasonably impact Tenant's, Managers', or any Subtenant's or Operator's ability to use the Premises. Prior to performing any work on the Substructure, City shall provide prior written notice to Tenant and coordinate and consult with Tenant to minimize any potential impacts on Tenant, Managers, Subtenants, Operators, and the operation of the Premises, as set forth in Section 41.1 below.

15. PERSONAL PROPERTY

Trade fixtures and other personal property of Subtenants and Operators and will remain the property of such Subtenants and Operators according to the terms of their Agreements. Tenant shall have the right during the Term of this Lease, to remove trade fixtures and other Personal Property from the Premises in the ordinary course of business; provided that Tenant replaces the Personal Property with equal or better Personal Property and if the removal of Personal Property causes material damage to the Premises or Retained Other Gardens Areas, Tenant shall promptly cause the repair of such damage, at no cost to City, from the Accounts.

16. SUBSEQUENT CONSTRUCTION

16.1 City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Article 16, provided that Tenant shall not do any of the following, without City's prior written approval (which approval may be withheld by City in its reasonable discretion):

(i) Construct additional buildings or other additional structures (other than to replace or Restore those previously existing, the approval and construction of which shall be governed by a separate instrument entered into with City) or take any action that will materially affect the structural integrity of the Improvements; or

(ii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law) or take any action that materially affects or requires any work to the Substructure or any property or improvements not located on the Premises; or

(iii) Materially alter the Premises in a manner which would adversely affect the Gross Revenues generated.

(iv) Contract work that shall cause the approved Annual Capital Budget to be exceeded.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires City's approval under Section 16.1(a) above, Tenant shall notify City of such planned Subsequent Construction. City shall have the right to reasonably object to any such Subsequent Construction, to the extent that such Subsequent Construction requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Subsequent Construction within the thirty (30) day period described above, then Tenant may submit a second written notice to City that such objection was not received within the period provided by this Section 16.1(b) and requesting City's response within five (5) business days after Tenant's second notice. If the City fails to object to such planned Subsequent Construction within such five (5) business day period, then Tenant shall proceed with compliance with the procedures for approval and performance of the Subsequent Construction as set forth below.

(c) Permits. Tenant acknowledges that the provisions of this Section are subject to all applicable provisions of this Lease, including, but not limited to, Sections 13.1(a) and 16.7. In particular, Tenant acknowledges that City's approval of Subsequent Construction (or the fact that Tenant is not required to obtain City's approval) is approval in City's proprietary capacity as landlord and does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from City in its regulatory capacity.

16.2 Minor Alterations.

Unless otherwise required under Section 16.1(a), City's approval, in its proprietary capacity as landlord, shall not be required for (a) the installation, repair, or replacement of furnishings, fixtures, or equipment which do not materially affect the structural integrity of the Improvements, (b) the installation, repair, or replacement of landscaping and hardscaping, (c) repainting of the Premises and similar maintenance and upkeep, and (d) any other Subsequent Construction that does not require permits or approvals from the Planning Commission or Planning Department, the Zoning Administrator, the Department of Building Inspection or the Board of Supervisors) (collectively, "**Minor Alterations**").

16.3 Tenant Improvements.

Except as otherwise specifically provided hereunder, including under Section 16.1 of this Lease, City's approval hereunder, acting in its proprietary capacity as Landlord, shall not be required for the installation of tenant improvements and finishes to prepare any portion of the Premises or Improvements for occupancy or use by Subtenants or Operators, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a Building Permit from City, acting in its regulatory capacity.

16.4 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review, and Approval of Construction Documents. With regard to any Subsequent Construction that requires City's approval under this Article 16, Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed schematic drawings, and following City's approval of such schematic drawings, Final Construction Documents that are consistent with the approved schematic drawings (collectively, schematic drawings and Final Construction Documents are referred to as "**Construction Documents**"). City may waive the submittal requirement of schematic drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall reasonably approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If City notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 16.5, City shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection, and City shall reasonably approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If City fails to approve, conditionally approve, or disapprove the Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 16.4, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved by City, provided

(i) that Tenant first submits a second written notice to City stating that such approval or disapproval was not received within the period provided by this Section 16.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second written notice and further stating that Tenant intends to deem said Construction Documents so approved if City fails to respond within such ten (10) day period, (ii) that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED, and (iii) that the original request met the requirements of this Section. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of the Construction Documents, City and Tenant shall hold regular progress meetings to coordinate the preparation, review, and approval of the Construction Documents. City and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to City can receive prompt and speedy consideration.

16.5 Resubmittal of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's reasonable written objections. Tenant shall resubmit such revised portions to City, in its proprietary capacity as Landlord, as soon as possible after receipt of the notice of disapproval. City shall reasonably approve or disapprove such revised portions in the same manner as provided in Section 16.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to City. If Tenant desires to make any substantial change in the Final Construction Documents after City has approved them or was deemed to have approved them, then Tenant shall submit the proposed change to City for its reasonable approval. City shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to City. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period. If City fails to approve or disapprove the proposed change to the Final Construction Documents within such fifteen (15)-day period, the proposed change shall be deemed approved by City, provided (i) that Tenant first submits a second written notice to City stating that such approval or disapproval was not received within the period provided by this Section 16.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second written notice and further stating that Tenant intends to deem said Construction Documents so approved if City fails to respond within such ten (10) day period, (ii) that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED, and (iii) that the original request met the requirements of this Section. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

16.6 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to City written progress reports when and as reasonably requested by City.

16.7 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City:

(i) City shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which City has an approval right under Section 16.1, if any); and

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Article 13;

(iii) If Tenant in good faith estimates that total construction costs of the Subsequent Construction will exceed One Million Dollars ($1,000,000), Tenant shall have submitted to City a statement, reasonably satisfactory to City, describing the sources of funding that Tenant will use to pay such costs as and when due; provided, however, that the threshold amount set forth in this Section 16.7(iii) shall be increased annually by the same percentage as the increase, if any, in the Index, which is published most immediately preceding the most recent anniversary of the Commencement Date over the Index in effect on the Commencement Date.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently, and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption, or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant shall use commercially reasonable efforts to control dust, noise, and other effects of such work using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, Tenant shall, to the extent reasonably necessary to minimize the risk of hazardous construction conditions, erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed.

(c) Costs of Construction. City shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants and Operators and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. The City and its Agents shall conduct their activities in such a way as to

minimize interference with operations of Tenant and its Subtenants and Operators to the extent reasonably practicable. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Subject to applicable Laws, Tenant agrees that any person performing labor in connection with Subsequent Construction (other than tenant improvement work or other work performed by Existing Subtenants under Existing Subleases or Existing Operators under Existing Operating Agreements that may not require compliance) shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, or cause to be included, 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 general prevailing rate of wages for the labor so performed and shall use reasonable and diligent efforts to enforce such contract provisions. Tenant further agrees that highest prevailing wage shall be determined in accordance with the applicable provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22 of the San Francisco Administrative Code that relate to payment of prevailing wages. At City's written request, Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements (other than tenant improvements performed by Subtenants) to document compliance with this Section 16.7(e).

16.8 Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

16.9 As-Built Plans and Specifications.

With respect to any Subsequent Construction for a single project costing One Hundred Thousand and No/100 Dollars ($100,000.00) as Indexed, or more, for which City's approval was required under Article 16, Tenant shall furnish to City one set of as-built plans and specifications with respect to such Subsequent Construction (reproducible transparencies and CAD files) within one hundred twenty (120) days following completion, unless City notifies Tenant in writing that as-built plans and specifications are not required for such Subsequent Construction. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

17. UTILITY SERVICES

City, in its proprietary capacity as fee owner of the real property comprising the Premises and landlord under this Lease, shall be responsible for maintenance and repairs and pay all charges incurred for installation, maintenance, and replacement of all utilities beyond those utilities serving specific building footprints within the Premises, so long as said maintenance, installation, and repair items are consistent with utility related expenses that OCII incurred for such items as of the Effective Date. Tenant, Managers and its Subtenants and Operators shall be responsible for contracting with, and obtaining, all other necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put. Tenant and its Subtenants and Operators will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees, and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations, and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

18. DAMAGE OR DESTRUCTION

18.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage or Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes of this Section 18, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction to all or a portion of the Premises or of the Improvements thereon or any part thereof, (i) that would materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) the repair of which would exceed twenty-five percent (25%) of the funds in the Replacement Reserve Account, or (iii) the repair of which would exceed the amount of any deductible for the applicable insurance policy maintained by Tenant (or maintained by a Subtenant under a Sublease or an Operator under an Operating Agreement with respect to the portion of the Improvements so damaged or destroyed), Tenant shall promptly, but not more than thirty (30) days after the occurrence of any such damage or destruction, give written notice thereof

to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

18.2 Intentionally Omitted.

18.3 Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 18.4, and such casualty arises from a risk required to be covered by insurance described in this Lease, then, provided that the funds in the Replacement Reserve Account immediately prior to the event of damage or destruction ("**Replacement Reserve Account Funds**"), together with the Property Related Insurance proceeds and the applicable deductible(s) payable in connection with such Property Related Insurance (Tenant shall apply funds from all Reserve Accounts to the extent necessary to pay such deductible(s)) (collectively, "**Tenant's Restoration Funds**") are sufficient for such purpose, as mutually determined by Tenant and City ("**Sufficient Restoration Funds**"), then subject to Section 18.4, Tenant shall, within a reasonable period of time, including such time as may be necessary or desirable for Tenant to obtain all Regulatory Approvals, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades). All Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 16 relating to Subsequent Construction and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

18.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs, or if a change in Laws has occurred which prohibits the Premises from being rebuilt for the Permitted Uses, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (i) electing to commence and complete Restoration of the Improvements substantially to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Laws (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 18.4(b)) as to all or a portion of the Premises. Tenant shall provide City with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand of repayment or acceleration of a Mortgage from any Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Article 16 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements substantially to the condition they were in prior to such Major Damage or Destruction as if such

Restoration were Subsequent Construction. "**Uninsured Casualty**" means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds the Replacement Reserve Account Funds, and which is not insured (or required to be insured) under the policies of insurance that Tenant is required to carry under Article 22 hereof; or (2) an event of damage or destruction occurring at any time during the Term that is covered under any of Tenant's insurance policies required to be maintained pursuant to this Lease for which Sufficient Restoration Funds are not available.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 18.4(a) above, Tenant shall do all of the following:

(i) In Tenant's Casualty Notice electing to terminate described in Section 18.4(a), Tenant shall provide evidence of the estimated cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible and the Replacement Reserve Account Funds exceed any applicable insurance proceeds payable to Tenant; and

(ii) City may elect, to the extent of Tenant's Restoration Funds, to require that Tenant cause the Improvements to be repaired to the extent required to alleviate any condition caused by such event of damage or destruction that could cause an immediate threat to public safety, as reasonably determined by City ("**Safety Restoration Work**"). Any remaining balance of Tenant's Restoration Funds shall be payable as follows: (w) first, to City (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the Safety Restoration Work; (x) second, to the Mortgagee demanding payment thereof in accordance with its Mortgage and applicable Law (in order of lien and not pro rata), that portion of the remaining casualty proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Mortgagee and secured by the Mortgage under the loan documents therefor; (y) third, to City in the amount owed to City, if any, by Tenant on account of Tenant's obligations hereunder as of the date of the event of damage or destruction; and (z) fourth, the balance of the proceeds shall be divided pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest as defined in Section 19.3(b).

(c) City's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 18.4(a) and (b) as to all or a portion of the Premises, then City may, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises, or the portion thereof described in the Casualty Notice, in their then-existing condition, free of any existing Subleases and Operating Agreements (unless otherwise assumed by City), except for the Existing Subleases, which City shall assume, or (ii) continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed Tenant's Restoration Funds and require Tenant to Restore the Premises in accordance with Section 18.4(b); provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or, destruction, as determined by City in its reasonable judgment; or (iii) continue the

Lease in effect and undertake the Restoration of the Premises itself, without contribution from Tenant, provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment. If City elects to continue the Lease in accordance with this Section 18.4(c), then Rent shall abate until the Premises (or the portion thereof damaged or destroyed by casualty) is delivered to Tenant with the Restoration substantially complete for resumption of operation of the Premises (or the portion thereof damaged or destroyed by casualty).

18.5 Effect of Termination.

Provided that there shall not have occurred any Event of Default under this Lease that has not been waived in writing by the City, if Tenant elects to terminate the Lease under Section 18.4 above (as to all or a portion of the Premises), and City elects not to continue the Lease in effect under Section 18.4(c) with respect to the portion of the Premises described in the Casualty Notice, then, on the date that Tenant has fully complied with all other provisions of Section 18.4(b) to the reasonable satisfaction of City, this Lease, and the Assignment of Agreements shall terminate to the extent provided in the Casualty Notice with respect to the portion of the Premises described in the Casualty Notice. Upon such termination, except otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination with respect to the portion of the Premises for which the termination applies; provided, however, that the following provisions shall survive such termination: (i) all indemnification provisions contained in this Lease with respect to matters arising before the effective date of any such termination only, and (ii) any rights of the Parties or Mortgagee to receive insurance proceeds in accordance with this Lease. At City's request following any termination, Tenant shall promptly deliver to City a duly executed and acknowledged quitclaim deed with respect to all of Tenant's interests related to this Lease with respect to the portion of the Premises to which the termination applies, suitable for recordation and in form and content satisfactory to City. While a termination of this Lease with respect to only a portion of the Premises in accordance with this Section shall require no further action from the Parties to take effect, City and Tenant shall amend this Lease to remove the terminated portion from the definition of the "Premises" and to make other conforming changes as reasonably determined to be necessary by the parties.

18.6 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by City and Tenant, subject to the rights of any Mortgagee, shall be paid to and retained by the party entitled thereto in accordance with this Lease.

18.7 Event of Default.

Subject to Article 42, if an Event of Default has occurred and is continuing under this Article 18 that has not been waived in writing by City, then City shall receive all Property Related Insurance proceeds to the extent required to satisfy Tenant's obligations under this Article 18.

18.8 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all Property Related Insurance proceeds paid to City or Tenant by reason of damage to or destruction of any Improvements, if any, shall be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Article 18 or as otherwise approved by the City.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 18, and except as may otherwise be agreed upon by City and Tenant, if Tenant Restores the Improvements, any insurer paying compensation directly to Tenant in excess of Five Million Dollars ($5,000,000.00) as Indexed under any Property Related Insurance policy required to be carried hereunder, shall pay such proceeds to (i) a trustee (which shall be a bank or trust company, designated by City within thirty (30) days after written request by Tenant, having an office in San Francisco), or (ii) the Mortgagee that is the holder of any Mortgage which is a lien against the Improvements, or a trustee reasonably acceptable to the City designated by such Mortgagee, at the option of such Mortgagee. Such trustees or Mortgagee shall pay to Tenant, from time to time as the work of Restoration shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, then City shall instruct the trustee to pay Tenant the cost of any emergency repairs and site protection necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon reasonable satisfaction that the amount necessary to provide for Restoration of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, are available for such purposes and that the application of such funds for such purposes is assured. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of Five Million Dollars ($5,000,000) as Indexed, or less directly to Tenant for purposes of Restoration in accordance with this Lease.

Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank, or trust company for its services. If any proceeds are held by a trustee pursuant to this Section 18.8(b), the trustee or Mortgagee, as applicable, shall hold all insurance proceeds in an interest-bearing, federally insured account, and all interest thereon shall be added to the proceeds. Provided that no Event of Default that has not been waived by City exists on the date of such Restoration, the Improvements must be Restored in accordance with the provisions of this Section 18.8(b) and all sums due under this Lease must then be paid in full, and any excess money received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant to be deposited into the Replacement Reserve Account.

18.9 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any

obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided in this Article 18.

19. CONDEMNATION

19.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Article 19.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation, or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Article 19, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 19, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

19.2 Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to the payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that all indemnification provisions hereof shall survive any such termination with respect to matters arising before the effective date of such termination.

19.3 Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Article 19, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate, or of property located outside the Premises that substantially or materially eliminates access to the Premises where no alternative access can be constructed or made accessible, shall be a "**Substantial Condemnation**," and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering

written notice of termination to City) if Tenant reasonably determines that such Condemnation renders the Premises unsuitable, untenantable, and economically infeasible for its intended use as described in this Lease; provided, however, a Condemnation described above shall not be a Substantial Condemnation, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Premises unsuitable, untenantable, and economically infeasible for its intended use as described in this Lease, as the case may be, can be cured by the performance of Restoration, and (i) the cost of such Restoration does not exceed the portion of the Award fairly allocable to severance damages suffered by Tenant plus Tenant's Restoration Funds, as applicable, or (ii) City (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within ninety (90) days (subject to extension as provided below) after receipt of Tenant's termination notice that City agrees, at its cost and expense, to pay all amounts by which the cost of such Restoration exceeds the amount of the Tenant's severance damages and such Restoration can be completed within eighteen (18) months after the date of the Substantial Condemnation in City's reasonable judgment. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Article 16 and Section 19.4, within a reasonable time, subject to events of Force Majeure. City's right to exercise the option described in clause (ii) above shall be conditioned upon City and Tenant reaching an agreement with respect to the schedule for performance of required work, the timing of payments of City's contribution to the costs of such work (to the extent not available from City's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, City shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 19.2 or Section 19.3(a) (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and in accordance with all applicable Laws, Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to City. Any Award in connection with a Partial Condemnation shall be payable to Tenant to be applied to the Restoration, with the balance of such Award payable pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest, as defined below. Any such Restoration shall be performed in accordance with the provisions of Article 16.

(c) Definitions. For purposes of this Lease: (1) "**City's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of City's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the applicable Improvements; and (2) "**Tenant's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of any Subtenant's or Operator's interest in the applicable Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements.

19.4 Awards.

Except as provided in Sections 19.3(b) and 19.5 and 19.6, Awards and other payments to either City or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between City and Tenant as follows:

(a) first, if this Lease is not terminated as a result of such Condemnation, to the costs of Restoration;

(b) second, to the extent of Tenant's Percentage Interest of the Net Award and Payment, to the Mortgagee pursuant to the Mortgage (or to the mortgagee(s) of Subtenant(s) that sublease the Premises pursuant to the Subtenant mortgages) for payment of all amounts outstanding thereunder, together with such Mortgagee's or Subtenant mortgagee's reasonable out of pocket expenses and charges in connection with collection of the Net Award and Payment, including, but not limited to its reasonable Attorneys' Fees and Costs incurred in the Condemnation;

(c) third, City and Tenant shall each be allocated the value of their respective City's Percentage Interest and Tenant's Percentage Interest in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. The values of City's Percentage Interest and Tenant's Percentage Interest in the Premises shall be established by the same court of law that establishes the amount of the Award, taking into the account the provisions of Section 19.3(c), and the amounts distributed to the Mortgages pursuant to Section 19.4(b), shall be deducted from the value of Tenant's Percentage Interest in the Premises;

(d) fourth, to City from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to City under this Lease for periods prior to the Condemnation Date;

(e) fifth, to Tenant from the share otherwise allocated to City, in an amount equal to any sum which City has agreed to pay towards the cost of Restoration under clause (ii) of Section 19.3(a).

19.5 Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant solely for the purpose of and only to the extent to perform Restoration and Safety Restoration Work, and to comply with its obligations under Agreements in the event of a temporary Condemnation; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Condemnation.

19.6 Safety Restoration Work; Award for Personal Property, Goodwill, and Relocation.

(a) Safety Restoration Work. Notwithstanding any provision to the contrary in this Article 19, prior to any termination of this Lease in connection with a Substantial Condemnation or Partial Condemnation, Tenant shall conduct Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable.

(b) Award for Personal Property, Goodwill, and Relocation. Notwithstanding anything to the contrary contained in this Article, 19, Tenant shall not be entitled to any portion of any Net Awards and Payments or any separate Award in connection with any loss of business or loss of good will of Tenant, the unexpired value of the leasehold granted under this Lease, or relocation benefits or moving expenses of Tenant. City shall not be entitled to any portion of any Net Awards and Payments payable to Subtenants or Operators in connection with the Condemnation of the Personal Property of any Subtenants or Operators, any loss of business or loss of good will of Subtenants or Operators, or relocation benefits or moving expenses of any Subtenants or Operators.

20. LIENS

20.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises, Tenant's leasehold estate or the Accounts, other than the following (collectively, the "**Permitted Title Exceptions**"): (i) this Lease, the Subleases and any liens, encumbrances, or other exceptions to title existing as of the Effective Date, (ii) liens for non-delinquent Impositions (except for Impositions being contested by Tenant or Subtenants pursuant to Article 12), (iii) Mortgages under Article 42, (iv) Mortgages encumbering the subleasehold interests of Subtenants; and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 12. The provisions of this Section do not apply to liens created by Tenant on its Personal Property to the extent that such liens are permitted under Article 42 below.

20.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of City, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by City or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or City's fee interest in the Premises for or on account of labor, services, or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow City from time to time to post a notice of non-responsibility on the Premises. Subject to Section 12.1 above, if Tenant does not, within sixty (60) days following receipt of notice of the Imposition of any such

lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to City, City shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable expenses incurred by City in connection therewith shall be payable to City by Tenant within thirty (30) days following written demand by City. City shall include reasonable supporting documentation with any such demand.

21. INDEMNIFICATION

21.1 Indemnification.

Subject to Section 21.3 below, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Tenant's use or operation of the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to, or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant or any of Tenant's Agents, Invitees, Subtenants, or Operators; (iii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises, or any part thereof by Tenant or any of Tenant's Agents, Invitees, Subtenants or Operators; (iv) any use, non-use, possession, occupation, operation, maintenance, management, or condition of property near or around the Premises by Tenant or any of Tenant's Agents, Invitees, Subtenants, or Operators; (v) any design, construction or structural defect relating to any Subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, Subtenants, or Operators; (vi) any failure on the part of Tenant or its Agents, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees, Subtenants, or Operators; and (viii) any civil rights actions with respect to the Premises due to Tenant's operation of the Premises other than in accordance with this Lease. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to the Commencement Date, and to the extent not arising from the negligence or willful misconduct of Tenant or any of its Agents, Invitees, Subtenants, or Operators. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit, or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

21.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 21.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment or arbitration decision determining that all or a portion of the claim fell outside the scope of the indemnity, City shall reimburse Tenant for that portion of costs, fees, and expenses expended by Tenant hereunder that was determined to be outside the scope of this indemnity. Notwithstanding the foregoing, in the event of a final judgment or arbitration decision determining that no Indemnified Party is entitled to the indemnification provided in Section 21.1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Tenant is required to carry under the terms of this Lease (or would not have been provided but for Tenant's default in its obligations to maintain such insurance), then City shall reimburse Tenant for the actual out-of-pocket expenses incurred by Tenant in connection with the defense of the Indemnified Party following Tenant's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

21.3 Limited by Insurance.

Tenant's indemnification obligations set forth in Section 21.1 above and all of Tenant's other indemnification obligations set forth in this Lease shall be limited to the amount of insurance proceeds that are available pursuant to the insurance coverage that Tenant is required to maintain pursuant to this Lease or available to Tenant under any of the Agreements.

21.4 Survival.

Tenant's indemnity obligations under this Lease shall survive the expiration or sooner termination of this Lease.

21.5 Other Obligations.

The agreement to Indemnify set forth in this Article 21 and elsewhere in this Lease is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City under this Lease.

21.6 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole

expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Tenant of an invoice therefor.

21.7 Release of Claims Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the City and any and all Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment, or business opportunities and by persons in, upon or about the Premises arising from the City's or any Indemnified Party's exercise of any of their rights or obligations in connection with this Lease, but excluding any claims to the extent arising from the gross negligence or willful misconduct of City or the Indemnified Parties.

22. INSURANCE

22.1 Property and Liability Coverage.

As used herein, terms such as "necessary," "require," "required," "specify," "acceptable," "satisfactory," "approval," "approved," and words of similar import are deemed to be qualified by the words "reasonable" or "reasonably," as the context may be. As used herein, "commercially reasonably available" means commercially reasonably available at a commercially reasonable cost.

(a) Tenant Insurance Requirements. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Commercial General Liability Insurance. Tenant shall, and shall require by written contract that Manager shall, maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 04 13, insuring against liability for bodily injury (including death), property damage, personal and advertising liability, and the products-completed operations hazard, and with "insured contract" coverage as to the indemnity in Section 21.1 and as to any other indemnity of City by Tenant, with respect to occurrences upon the Premises (including the Improvements), and, to the extent commercially reasonably available, operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence, affording coverage for the risks of independent contractors, explosion, collapse, underground (XCU), with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) general aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"); (C) if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Tenant shall require any Subtenant who has (or is required

under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Tenant's policies.

(ii) Workers' Compensation Insurance. During any period in which Tenant has employees as defined-in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation, and maintenance of the Premises and the Improvements.

(iii) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than One Million Dollars ($1,000,000) each accident.

(iv) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or require by written contract that its remediation contractor or remediation consultant shall maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(v) Professional Liability. Tenant shall require by written contract that professionals it engages maintain professional liability (errors and omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with a deductible or self-insured retention reasonably approved by City (such approval not to be unreasonably withheld, conditioned, or delayed), with such insurance to be maintained during any period for which such professional services are being performed and for five (5) years following the completion of any such professional services.

(vi) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and memorialized in a mutually-agreed amendment to this Lease, and as is customary for a comparable civic and cultural center in the San Francisco Bay area.

(b) City Insurance Requirements. City shall obtain, maintain and cause to be in effect at all times from the Commencement Date to the last day of the Term, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during any period of Subsequent Construction, City shall maintain, on a form reasonably approved by Tenant, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction with no coinsurance penalty provision, including all materials and equipment incorporated into the Improvements, and in transit or storage off-site (subject to sublimits), against hazards. The Builder's Risk policy shall identify the City and Tenant as named insureds and the City as loss payee, with any deductible not to exceed Ten Thousand Dollars ($10,000) per occurrence if such deductible amount is commercially reasonably available.

(ii) Property Insurance. City shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 07 ("Causes of Loss - Special Form") in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage) with any deductible not to exceed Ten Thousand Dollars ($10,000) per occurrence, if such deductible amount is commercially reasonably available. In addition to the foregoing, City shall insure the Personal Property leased to Tenant pursuant to this Lease in such amounts as City deems reasonably appropriate and Tenant shall have no interest in the proceeds of such Personal Property insurance; provided, however, that any such proceeds shall be dedicated by City for the operation, maintenance, security, and capital improvement of the Premises.

(iii) Boiler and Machinery Insurance. City shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement cost of such machinery and equipment.

(c) General Requirements. All insurance required under this Lease:

(i) As to property and boiler and machinery insurance, shall name City and Tenant as named insureds and City as loss payee as its interest may appear.

(ii) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." Tenant shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(iii) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(iv) Shall be evaluated by City and Tenant for adequacy not less frequently than every five (5) years. Following consultation with Tenant, City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its umbrella liability policies if in the reasonable judgment of the City's Risk Manager it would be commercially reasonable to do so, when compared with facilities similar to the Premises

in the San Francisco Bay area, to maintain limits substantially greater than the amounts carried by Tenant with respect to risks associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of commercial practice in the San Francisco Bay area and the risks associated with use of the Premises, City shall notify Tenant of such determination, and Tenant shall have the right to decrease the umbrella liability insurance required under this Lease accordingly. In any such event, Tenant shall promptly deliver to City a certificate evidencing such new insurance limits and meeting all other requirements under this Lease with respect thereto.

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(vi) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Sections 22.1(b)(i) and (ii);

(vii) Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Lease and shall not be unreasonably withheld, conditioned or delayed; and

(viii) Except for professional liability insurance which shall be maintained in accordance with Section 22.1(a)(v), if any of the insurance required hereunder is provided under a claims-made form of policy, City or Tenant, as applicable, shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease.

(ix) Shall for Property Related Insurance only, provide that all losses payable under all such policies shall be payable notwithstanding any act or negligence of City.

(d) Certificates of Insurance; Right of to Maintain Insurance.

(i) Tenant shall furnish City certificates with respect to the policies required under Section 22.1(a), together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Tenant shall provide City with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide City with notice of reduction in coverage limits within thirty (30) days of Tenant's knowledge of such event. If at any time Tenant fails to maintain the insurance required pursuant to Section 22.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Tenant and opportunity to cure, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within thirty (30) days

following demand, Tenant shall reimburse City for all reasonable premiums so paid by City, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

(ii) City shall furnish Tenant certificates with respect to the policies required under Section 22.1(b), together with (if Tenant so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. City shall provide Tenant with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide Tenant with notice of reduction in coverage limits within thirty (30) days of City's knowledge of such event. If at any time City fails to maintain the insurance required pursuant to Section 22.1(b), or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to City and opportunity to cure, Tenant may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Tenant. Within thirty (30) days following demand, City shall reimburse Tenant for all reasonable premiums so paid by Tenant, together with all reasonable costs and expenses in connection therewith and interest thereon.

(e) Insurance of Others. Tenant shall require by written contract that general liability insurance policies that Tenant requires to be maintained by Subtenants, Operators, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities on, the Premises, include Tenant and City (using the wording described in Section 22.1(b)(ii)) as additional insureds.

22.2 Tenant Entitled to Participate.

With respect to Property Related Insurance, Tenant shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim or suit for any loss in excess of Five Million Dollars ($5,000,000) covered by the insurance required to be carried hereunder; provided, however, that Tenant's consent shall not be unreasonably withheld, conditioned or delayed.

22.3 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 22.1(a)(i), (ii) or (v) to the extent that such losses and damages are paid by an insurer.

23. HAZARDOUS MATERIALS

23.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Material Laws. Tenant shall comply and cause (i) all persons or entities under any Sublease or Operating Agreement, (ii) to the extent reasonably controllable by Tenant, all Invitees or other persons or entities entering upon the Premises, and

(iii) the Premises and the Improvements, to comply with all Hazardous Material Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Premises. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable Laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all applicable Laws, and (E) pre-existing Hazardous Materials in, on or under the Premises-that are required by Law or prudent business practices to be Handled for Remediation purposes; provided that Tenant Handles such pre-existing Hazardous Materials in compliance with all applicable Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 23.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state, and local governments or agencies relating to Hazardous Material Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Article 23) and all communication with any person or entity relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Article 23).

(c) City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation, or Release of any Hazardous Materials on, under, or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. City shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If City disapproves of any such Hazardous Materials Remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any

impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under, or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Laws, (y) to the reasonable satisfaction of City, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the Regional Water Quality Control Board and the San Francisco Department of Public Health.

(d) Pesticide Prohibition.

(i) Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

(ii) If Tenant or Tenant's contractor would apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application must be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

23.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 21.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage, or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other person or entity (other than City and its Agents and Invitees) directly or indirectly arising out of (A) the Handling, transportation, or Release of Hazardous Materials by Tenant, its Agents, Invitees, or any Subtenants or Operators or any person or entity on or about the Premises (other than City and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees, or Subtenants (other than City and its Agents and Invitees) to comply with Hazardous Material Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 23.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and

payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under, or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage. Tenant acknowledges and agrees that it has an immediate obligation to defend City as set forth in Section 21.2.

24. DELAY DUE TO FORCE MAJEURE OR LACK OF ADEQUATE FUNDING

24.1 Delay Due to Force Majeure.

The cure periods for either Party's failure to perform under this Lease shall be extended by a period of time equal to the duration of the Force Majeure event.

24.2 Delay Due to Lack of Adequate Funding.

Notwithstanding any other provision of this Lease to the contrary, in the event that the dedicated sources of funding for the operation, maintenance, security, and capital improvement of the Premises set forth in Section 7.3(a) above are insufficient to fund the performance of one or more of Tenant's obligations under this Lease (including but not limited to Tenant's obligations under Article 7, Article 10, Article 13, and Article 14 of the Lease), then Tenant's obligation to perform such obligations shall be suspended (and no breach of this Lease shall be deemed to have occurred with respect thereto) until such time as sufficient funding becomes available for the performance of such obligations, provided that (a) Tenant shall notify City of the inadequacy of the dedicated sources of funding and the inability of Tenant to perform one or more of its obligations under this Lease as a result thereof, and (b) City and Tenant thereafter consult in good faith regarding which of Tenant's obligation(s) to suspend until adequate funding becomes available. During the period of any such suspended performance, City and Tenant shall use good faith, diligent efforts to identify and obtain additional funding for the performance of such obligations and/or identify opportunities to reduce expenses as provided in Section 4.4 above. Notwithstanding the foregoing, no such suspension of obligations may result in a shutdown of daily operation, maintenance, and security of the Premises, and in the event of any such shutdown of daily operation, maintenance, and security of the Premises that continues beyond the applicable notice and cure period provided in Section 26.1 and therefore becomes and Event of Default, City shall have the remedies described in Section 27, including without limitation, termination of this Agreement.

25. CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

25.1 City May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by City, City may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, City first gives Tenant such notice and opportunity to take corrective action

as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of City constitutes a Condemnation or an impairment of Tenant's contract with City.

25.2 City May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any party other than City (other than any Imposition, with respect to which the provisions of Section 11.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from City for a period of thirty (30) days, subject to Force Majeure (or, if Section 22.1(d) is applicable, which failure continues for five (5) business days after written notice from City), and is not the subject of a contest under Article 12, then, City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

25.3 Tenant's Obligation to Reimburse City.

If pursuant to the terms of this Lease, (a) Tenant fails to pay any sum or perform any obligation required to be paid or performed by Tenant hereunder following written notice of such failure from City and the passage of any applicable cure period, and (b) City then pays such sum or performs such obligation required to be paid or performed by Tenant hereunder, then (i) Tenant shall reimburse City within thirty (30) days following demand (or by such earlier date specifically provided herein with respect to a particular cost or expense), as Additional Rent, the sum so paid, or the reasonable expense incurred by City in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of City's demand until payment is made, or (ii) at City's election, City may reimburse itself for such sums as a City Cost under Section 10.9 above. City's election under (b) of the previous sentence shall not limit City's rights or remedies for Tenant's failure to pay or perform as provided under this Lease. City's rights under this Article 25 shall be in addition to its rights under any other provision of this Lease or under applicable Laws or in equity.

26. EVENTS OF DEFAULT; TERMINATION

26.1 Events of Default.

Subject to the provisions of Section 26.2, the occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent to City when due, which failure continues for thirty (30) days following written notice from City;

(b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(c) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee, or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within sixty (60) days;

(d) Tenant makes a general assignment for the benefit of its creditors;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, or otherwise abandons or ceases to use the Premises for the Permitted Uses which abandonment is not cured within ten (10) days after notice of belief of abandonment from City;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from City; or

(g) Tenant violates any provision of Article 7 or fails to perform any other obligation to be performed by Tenant under such Article at the time such performance is due, and such violation or failure continues without cure for more than sixty (60) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (60)-day period, if Tenant does not within such thirty (60)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from the City;

(h) Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, or enters into a Sublease or Operating Agreement for all or any portion of the Premises or Improvements in violation of this Lease and such violation continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within one hundred eighty (180) days after such written notice from City;

(i) Tenant engages in or allows any use not permitted hereunder or engages in any activity prohibited by Section 4.5(a), and such activity continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion sixty (60) days after such written notice from City;

(j) Tenant fails to maintain its status as a tax exempt non-profit entity and such failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, and provided such failure is curable, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from City; provided, however, that if Tenant's failure to maintain its status as a tax exempt non-profit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for

tax-exempt status, such failure shall be an Event of Default only under the terms and conditions set forth in Section 44.1(c) below; or

(k) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than sixty (60) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (60) day period, if Tenant does not within such sixty (60) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

Unless otherwise provided above, there shall be no cure period for a default on the part of Tenant.

26.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

27. REMEDIES

27.1 City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of City following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by Law or the terms of this Lease), City shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies of City for any Event of Default by Tenant under the prevailing wage provisions (described in Section 16.7(e) above), the First Source Hiring Program (described in Section 45.10 below) shall be limited to the remedies provided in such programs. All of City's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

27.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, City has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event City elects this remedy, City shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of City's rights, including the right to collect Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, City may (i) enter the Premises and relet the portions of the Premises that

are not then subject to Subleases to third parties for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements that are not then subject to Subleases. Upon the occurrence of an Event of Default or abandonment of the Premises by Tenant and following the issuance of a notice of default for such abandonment, City shall have the right to be reimbursed from the Accounts for the reasonable costs City incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying, and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining, and preserving the Premises or the Improvements, or any portion thereof (collectively, the "**Lease Enforcement Costs**"). Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term unless such obligations are otherwise specified in this Lease to remain in effect after the termination or expiration of the Term.

(b) No Termination without Notice. No act by City allowed by this Section 27.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If City elects to relet the Premises as provided in Section 27.2(a), the rent that City receives from reletting shall be applied to the payment of:

(i) First, the Lease Enforcement Costs;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to City, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 27.2(c), any sum remaining from the rent City receives from reletting shall be deposited into the Accounts in accordance with this Lease, and a portion thereof shall be reserved and applied to the annual installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by City. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any Lease Enforcement Costs, including those for maintenance which City incurred in reletting, remain after applying the rent received from the reletting as provided in Section 27.2(c)(i)-(iii), City shall have the right to seek reimbursement from the funds in the Accounts in the amount of such costs.

(d) Payment of Rent. Tenant shall pay to City the Rent due under this Lease on the dates the Rent is due, less the rent City has received from any reletting which exceeds all costs and expenses of City incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

27.3 Right to Terminate Lease.

(a) Damages. Subject to the rights of a Mortgagee pursuant to Article 42, City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination and termination of this Lease shall thereafter occur on the date set forth in such notice. Notwithstanding the foregoing, City may, rather than terminate the Lease outright, in its sole and absolute discretion, reclassify such portion of the Premises that is subject to the Event of Default any time after the occurrence (and during the continuation) of an Event of Default with respect to such portion of the Premises by giving at least thirty (30) days' advanced written notice of such election by the City to reclassify such portion of the Premises property that is applicable to the Event of Default. Any such reclassification will be in response to any outstanding Events of Default related to certain Subleases, Operating Agreements or management issues. Such reclassification action will constitute a cure of the relevant Event of Default provided that both parties execute the amendment to the Lease to be processed administratively by the City to include the reclassification of such portion the Premises. City electing to cure an Event of Default through such a reclassification and an associated administrative amendment to the Lease shall in no way eliminate the City's right to terminate this Lease in the event of another future Event of Default. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

(v) "The worth at the time of the award," as used in Section 27.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The

worth at the time of the award", as used in Section 27.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises pursuant to this Section 27.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding anything in Section 6, to the contrary, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without City's written consent, which may be given or withheld in City's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 42.

27.4 Continuation of Subleases and Other Agreements.

Following an Event of Default and termination of Tenant's interest in this Lease, and subject to the terms of any non-disturbance agreements entered into by City, City shall have the right, at its sole option, to assume any and all Subleases, Operating Agreements, and agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement. Notwithstanding the foregoing, with respect to the Subleases, following an Event of Default and termination of Tenant's interest in this Lease, City shall assume Tenant's obligations under such Subleases (and shall not disturb the Subtenants thereunder provided the Subtenants are not then in default under the Subleases following any applicable notice and cure periods). Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City, or cause to be executed, acknowledged and delivered to City, such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing Subleases, Operating Agreements, and other agreements then in force, as above specified.

28. EQUITABLE RELIEF

28.1 City's Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, City shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

28.2 Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

29. NO WAIVER

29.1 No Waiver by City or Tenant.

No failure by City or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of City or Tenant with respect to any other then existing or subsequent breach.

29.2 No Accord or Satisfaction.

No submission by Tenant or acceptance or reimbursement as a City Cost by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance, payment, or reimbursement and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

30. DEFAULT BY CITY; TENANT'S REMEDIES

30.1 Default by City; Tenant's Exclusive Remedies.

City shall be deemed to be in default hereunder only if City shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, City does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default. Upon the

occurrence of default by City described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right to (a) seek damages for Losses incurred by Tenant as a direct result of City's default, provided that Tenant shall have no right to seek damages in excess of the dedicated funding for the Premises (i.e., up to the amount of Gross Revenues, GMOS Payments, Developer Exactions, and Supplemental Capital Funds that City is required to collect and that Tenant otherwise has a right to receive pursuant to this Lease), and (b) seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on City or its Agents; provided, however, (i) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedies for a default by City hereunder, and (ii) Tenant shall have no remedy of self-help.

31. NO RECOURSE AGAINST SPECIFIED PERSONS

31.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that except as otherwise specified in this Section 31.1, Tenant will have no recourse with respect to, and City shall not be liable for, any obligation of City under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of City's fee interest in the Premises (as encumbered by this Lease). By Tenant's execution and delivery hereof and as part of the consideration for City's obligations hereunder, Tenant expressly waives such liability.

31.2 Tenant's Recourse Against City.

No commissioner, officer, director, or employee of City, or any other Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any default by City, and Tenant agrees that it will have no recourse with respect to any obligation or default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

31.3 City's Recourse Against Tenant.

No member, officer, director, shareholder, agent, or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

32. LIMITATIONS ON LIABILITY

32.1 Limitation on Tenant's Liability.

Notwithstanding any provision of this Lease to the contrary, Tenant's liability for damages to City for Losses in any way related to (a) the condition of the Premises on or prior to the Effective Date, (b) the Substructure, or (c) Losses covered by the insurance that Tenant is required to maintain hereunder shall, in each case, not exceed the amount of insurance proceeds then available

from the insurance that Tenant is required to maintain pursuant to this Lease (it being the parties' intent that Tenant's liability for damages to City hereunder for such matters shall be limited to the availability and amount of insurance proceeds payable).

32.2 Limitation on City's Liability Upon Transfer.

In the event of any transfer of City's interest in and to the Premises, City, subject to the provisions hereof (and in case of any subsequent transfers, the then transferor), will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of City, but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that such subsequent transferor assumes the covenants and obligations of City hereunder,

32.3 Mutual Release.

Tenant and City, as a material part of the consideration of this Lease, each hereby waives and releases any and all claims against each other and their respective Agents (and, with respect to the Tenant's waiver and release, also against the Indemnified Parties) for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) in connection with this Lease and the Premises, regardless of whether such party has been informed of the possibility of such damages or is negligent for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of such party. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the foregoing waiver and release.

33. ESTOPPEL CERTIFICATES BY TENANT

33.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to City (or at City's request, to a prospective purchaser or mortgagee of City's interest in the Premises), within ten (10) business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by City. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct, and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by City, and any purchaser, prospective purchaser, mortgagee or prospective mortgagee of the Premises or any part of City's interest therein. Tenant will also

use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c), and (d) above with respect to such Sublease.

34. ESTOPPEL CERTIFICATES BY CITY

34.1 Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease), within ten (10) business days after a request, a certificate stating to City's knowledge (limited to only that of the Director of Property) (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), (d) that no security deposit is being held by City under this Lease, and (e) any other matter actually known to City, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, City shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by City that, to its knowledge (limited to only that of the Director of Property), such attachment is a true, correct, and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease, and in the case of a prospective Mortgagee or prospective permitted transferee, shall be in substantially the form requested by such party if agreed upon by City.

35. APPROVALS BY CITY

35.1 Approvals by City as Landlord.

The City Administrator, or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the City Administrator, or his or her designee, determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The Director of Property's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by City of its consent or approval in its proprietary capacity as landlord, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City in its proprietary capacity as landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable Law, including the City's Charter.

35.2 Fees for Review.

Within thirty (30) days after City's written request, Tenant shall pay City, as Additional Rent, City's costs, including, without limitation, Attorneys' Fees and Costs incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed

assignment or Agreement, Mortgage, estoppel certificate, Non-Disturbance Agreement or Subsequent Construction. Tenant shall pay such costs from the dedicated sources of funding set forth in Section 7.3(a) above, consistent with the allowable uses of such funding sources, regardless of whether or not City consents to such proposal, except only in any instance where City has wrongfully withheld, delayed, or conditioned its consent in violation of this Lease.

36. NO MERGER OF TITLE

36.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same party may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all parties having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

37. QUIET ENJOYMENT

37.1 Quiet Enjoyment.

Subject to the terms and conditions of this Lease and applicable Laws, City agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under City. Notwithstanding the foregoing, City shall have no liability to Tenant in the event any defect exists in the title of City as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant. Notwithstanding the foregoing, the City will cooperate in good faith with Tenant's attempts to resolve title matters which adversely affect the Premises, this Lease, or any Sublease.

38. SURRENDER OF PREMISES

38.1 Expiration or Termination.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to City the Premises in good order and in clean and operable condition, reasonable wear and tear excepted, to the extent the same is consistent with maintenance of the Premises in the condition required hereunder, and free of any liens or encumbrances except for any Permitted Title Exceptions and any other liens and encumbrances as may be consented to by City. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions, and replacements thereto subject to Section 38.1(c) and Section 38.1(d) below. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination.

(b) Subleases and Agreements. Upon any termination of this Lease, City shall have the right to terminate all Agreements and any and all agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement, except for the Existing Subleases, and for those Subleases with respect to which City has entered into Non-Disturbance Agreements, and any and all agreements for the maintenance or operation of the Premises with respect to that City has agreed to assume pursuant to Section 27.4.

(c) Personal Property. Upon the expiration or termination of this Lease, title to the Personal Property shall vest in City without any further action by any Party, subject to the rights of a Mortgagee in such Personal Property that are superior to the rights of City pursuant to the terms of this Lease. Tenant shall remove, at no cost to City, any Personal Property belonging to solely to Tenant and not used in the operation, maintenance, or management of the Premises and not purchased with funds from the Accounts, unless City and Tenant agree otherwise. If the removal of such Personal Property causes damage to the Premises or the Retained Other Gardens Areas, Tenant shall promptly repair such damage, at no cost to City, from the Accounts.

(d) Safety Restoration Work. Upon the expiration or termination of this Lease resulting from an event of damage or destruction pursuant to Section 18.4, a Condemnation event under Section 19, or an Event of Default pursuant to Article 26, upon written instructions from City, Tenant shall, at Tenant's sole cost and expense, complete all Safety Restoration Work, and return the Premises to City in a clean condition. Such Safety Restoration Work shall be conducted in accordance with the provisions of this Lease relating to construction on the Premises, including without limitation, Article 16.

39. HOLD OVER

39.1 Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. If Tenant holds over in the Premises, at City's option, such holdover shall constitute (a) a tenancy at sufferance, or (b) a month-to-month tenancy, terminable on thirty (30) days' written notice by either party to the other, subject to all of the terms, covenants, and conditions of this Lease. Notwithstanding the foregoing, the expiration or earlier termination of this Lease shall not affect the rights of Subtenants under Subleases that are still in effect as of the date of expiration or termination of this Lease, and in each case, the rights of the Subtenants under those Subleases shall be as set forth in those Subleases and/or non-disturbance agreements.

40. NOTICES

40.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given and effective (i) on the date of receipt or refusal if delivered by a reputable overnight delivery service, all fees for such delivery prepaid, or if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or (ii) if mailed, on the date

that is three business days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Tenant:	Yerba Buena Gardens Conservancy 5 Third St, Suite 914 San Francisco, CA 94960 Attention: Executive Director Telephone: (415) 493-8755
with a copy to:	Cox, Castle & Nicholson LLP 50 California Street, Suite 3200 San Francisco, CA 94111 Attention: Gregory B. Caligari Email: gcaligari@coxcastle.com
To City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attention: Director of Property Email: andrico.penick@sfgov.org
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attention: Real Estate/Finance Team

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by email to the email address set forth above or such other address as may be provided from time to time by notice given in the manner required hereunder; however, no copies of notices sent by email will be deemed given or will be deemed official or binding notice.

40.2 Form and Effect of Notice.

Every notice given to a Party or other party under this Section must state (or shall be accompanied by a cover letter that states):

(a) the section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 40.2.

41. INSPECTION OF PREMISES BY CITY

41.1 Entry.

Subject to the rights of Subtenants under the Subleases and Operators under Operating Agreements, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing Substructure maintenance, repair, or capital improvement work pursuant to Section 14.2, (iii) performing any work that City may have a right to perform under Section 25, or (iv) inspecting, sampling, testing, and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of City to perform any work that Tenant is required to perform under any provision of this Lease, nor to place upon City any obligation or liability, for the care, supervision, or repair of the Premises, except as otherwise expressly set forth in this Lease. City agrees to use reasonable efforts to minimize interference, to the extent practicable, with the activities and tenancies of Tenant, Subtenants, Operators, and their respective Invitees. If City elects to perform work on the Premises pursuant to Section 25, then City shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies, and equipment into or through the Premises during the course thereof, provided City uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, Operators, and their respective Invitees.

41.2 Exhibit for Lease.

Subject to the rights of Subtenants and Operators, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer, or other conveyance of City's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

41.3 Notice, Right to Accompany.

City agrees to give Tenant reasonable prior notice of City's entering on the Premises for the purposes set forth in Sections 41.1 and 41.2, except in an emergency. Such notice shall be not less than forty-eight (48) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany City or its Agents on any entry into the Premises. Notwithstanding the

foregoing, no notice shall be required for City's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 41.1 and 41.2.

41.4 Rights with Respect to Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant and Operator to include a provision similar to this Section 41 in its Agreement) to require each Subtenant and Operator to permit City to enter its premises for the purposes specified in this Section 41.

42. MORTGAGES

42.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Article 42, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises, the Accounts, or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 20.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in the Premises, or its right to receive Rent, to any Mortgagee of Tenant. Notwithstanding the foregoing, the City Administrator is in the best interest of the City, furthers the City's interest in the operation of the Premises, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance, or lien not permitted by this Article 42 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

42.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to compliance with this Article 42, at any time and from time to time, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease by way of leasehold mortgages, deeds of trust, or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent under this Lease, and for the performance of all other obligations contained in this Lease. Notwithstanding anything to the

contrary in this Lease, Tenant and each and every Subtenant shall have the right to assign, mortgage, or encumber and grant a security interest in and to its Personal Property located in the Premises to any lender, equipment lessor, or other financier, provided that such party provides written notice thereof to City within ten (10) business days of granting such security interest.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. The foregoing shall not limit any rights specifically granted to a Mortgagee in any non-disturbance agreement entered into among City, Tenant, and a Mortgagee pursuant to Section 42.2(e).

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time. If at any time there is more than one (1) Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Article 42 to the exclusion of the holder of any junior Mortgage; provided, however, that if the holder of the senior Mortgage fails to exercise the rights set forth in this Article 42, each holder of a junior Mortgage shall succeed to the rights set forth in this Article 42 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 42. No failure by the senior Mortgagee to exercise its rights under this Article 42 and no delay in the response of any Mortgagee to any notice by City shall extend any cure period or Tenant's or any Mortgagee's rights under this Article 42. For purposes of this Section 42.2(c), in the absence of an order from a court jurisdiction that is properly served on City, a title report prepared by a reputable title company licensed to do business in the State of California and having offices in the City, setting forth the order of priority of lien of the Mortgages, may be relied on by City as conclusive evidence of priority.

(d) No Invalidation of Lien of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including the use of any proceeds of any debt, the repayment of which is secured by a Mortgage, shall be deemed to invalidate, defeat, or subordinate the lien of a Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards expressed in Article 7 above.

(e) Agreements Regarding Personal Property. Upon the request of Tenant, or any Subtenant, City shall enter into any commercially reasonable written agreement acceptable to City with Tenant and its Mortgagee or other lessor and/or lender for Tenant's or such Subtenant's Personal Property, wherein City shall agree to subordinate any landlord lien rights it may have in and to such Personal Property to the interest of Mortgagee, lessors, and/or lenders therein and waive any claim that the same are part of the Premises by virtue of being affixed thereto but only to the extent that the provisions of this Lease authorize Tenant to remove such Personal Property upon the expiration or earlier termination of this Lease. Additionally, such agreement shall (a) contain a requirement that each such Mortgagee, lessor and/or lender give proper notice to City (i) of any such default by Tenant, and (ii) prior to any entry of the Premises to remove any Personal

Property due to such default and City's approval of the timing thereof, (b) prohibit the sale of such Personal Property on the Premises, (c) contain an agreement by such Mortgagee, lessor, and/or lender to repair any damage to the Premises caused by such entry and removal and Indemnify City for Losses related to such entry and removal, and (d) provide that such agreement will terminate with respect to any of Personal Property that is not removed from the Premises within thirty (30) days after the expiration or any earlier termination of this Lease or the applicable Sublease, regardless of whether full payment or performance by Tenant or such Subtenant under its agreement with such Mortgagee, lessor and/or lender has then yet occurred.

42.3 Notice of Liens.

Tenant shall notify City promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements, the Premises, or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

42.4 Purpose of Mortgage.

(a) Purpose. A Mortgage shall be made only for the purposes of securing the financing of the construction of the Improvements and subsequent repairs, alterations, or improvements to the Premises and permanent take-out financing, or refinancing any of the foregoing, and for no other purpose except as may be approved in writing by the City Administrator, in consultation with the City Controller but otherwise at his or her sole discretion, and any Mortgage made for such other purpose shall be subject to such other conditions and restrictions as the City Controller deems reasonably prudent. No Mortgage shall be cross-collateralized with any other debt of the Tenant or any other party. Tenant shall not be permitted to create any structure that would directly or indirectly be an obligation or security of City.

(b) Statement. City agrees after request by Tenant to give to any Mortgagee or proposed Mortgagee a statement in recordable form as to whether a Mortgage is permitted hereunder, or if permitted subject to conditions, then listing all such conditions (a "**Mortgage Confirmation Statement**"). In making a request for such Mortgage Confirmation Statement, Tenant shall furnish City true, accurate and complete copy of the promissory note evidencing the loan secured by the Mortgage and a copy of the Mortgage and any other documents or information as are required reasonably by City to permit City to make the determination whether such Mortgage is permitted hereby, together with a draft of the form and content of the Mortgage Confirmation Statement proposed by Tenant or such Mortgagee. If a Mortgage Confirmation Statement provided by City confirms (or confirms with conditions) that such Mortgage is permitted hereunder, such a statement shall conclusively establish that the Mortgage is permitted hereunder and shall stop City from asserting against Tenant or the Mortgagee anything to the contrary or from declaring an Event of Default by Tenant for entering into such Mortgage in compliance with any applicable conditions if the financing contemplated by the Mortgage is accomplished as was proposed, but other than the foregoing estoppel, such a statement shall create no liability for the City. City shall deliver to Tenant an executed Mortgage Confirmation Statement (in form and content approved by City, with such modifications or additions as such prospective Mortgagee may reasonably request and City shall reasonably approve) within thirty (30) days following receipt by City of the financing documents reasonably requested by City. If City does not provide

the Mortgage Confirmation Statement by such date, Tenant may provide City with written notice of such failure, together with another copy of the draft of the Mortgage Confirmation Statement proposed by Tenant or the Mortgagee. If City fails to deliver a Mortgage Confirmation Statement within ten (10) business days after such notice, then Tenant may at Tenant's election provide a second written notice to City that Mortgage Confirmation Statement was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "MORTGAGE CONFIRMATION STATEMENT REQUEST FOR YERBA BUENA. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE STATEMENT BEING DEEMED APPROVED," if City does not provide a Mortgage Confirmation Statement within five (5) business days after such second written notice from Tenant, City shall be deemed to have approved the draft Mortgage Confirmation Statement provided by Tenant without conditions; provided, however that, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws. Tenant shall pay City's costs for all Attorneys' Fees and Costs and other costs, including staff time, incurred in connection with reviewing the financing documents and preparing the Mortgage Confirmation Statement within ten (10) days following demand, and notwithstanding any provision in this Section 42.4(b) to the contrary, if City demands such reimbursement prior to the deadline provided above for City's deemed approval of the proposed Mortgage Confirmation Statement, City may condition delivery and deemed approval of the Mortgage Confirmation Statement on receipt of such reimbursement.

42.5 Interest Covered by Mortgage.

A Mortgage may attach to any and all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises and Improvements created hereby, (ii) any Personal Property of Tenant, and (iii) products and proceeds of the foregoing, and (iv) any other property rights and interests of Tenant arising under this Lease, including, without limitation, Tenant's interests in all insurance policies carried by Tenant and all Awards and other payments on account of Condemnation, provided that the Mortgagee agrees in writing that, except to the extent provided in the following sentence, the proceeds from all property insurance covering the Improvements and all Awards and other payments on account of Condemnation shall be used or paid over to Restore the Improvements or perform Safety Restoration Work as provided in this Lease. Notwithstanding the foregoing, the City Administrator may consent to provisions in the Mortgage permitting the application of insurance proceeds and Awards to the outstanding loan balance under circumstances in which the failure to so apply the proceeds and Awards would result in a material impairment to the Mortgagee's security interest, as demonstrated to the City Administrator's or a neutral third party's reasonable satisfaction, provided that the City Administrator determines that such conditions are necessary or desirable to facilitate transactions required to provide construction or other funding for the Premises, are commercially reasonable and are fair to Tenant and City. As provided in Section 42.1(b), Tenant may not in any manner encumber City's interest in or under this Lease or City's fee simple interest in the Property or City's personal and other property in, on, or around the Property.

42.6 Institutional Lender; Other Permitted Mortgagees.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, (ii) any Community Development Entity, as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code

of 1986, as amended, or (iii) any other lender approved by City in its sole and absolute discretion. In any instances in which City's approval of a lender is required and City does not respond within thirty (30) days after Tenant's notice requesting approval, then Tenant may provide a second written notice to City requesting approval of the lender, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "LENDER APPROVAL REQUEST FOR YERBA BUENA. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE LENDER BEING DEEMED APPROVED," if City does not provide an approval or disapproval of the lender within thirty (30) days after such second written notice from Tenant, City shall be deemed to have approved the lender; provided, however that, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

42.7 Rights Subject to Lease.

(a) Subject to Lease. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights of City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing.

(b) Construction and Restoration Obligations.

(i) Notwithstanding any provision of this Lease to the contrary, no Mortgagee, including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof (but excluding (A) any other party who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or (B) any other purchaser at a foreclosure sale) shall be obligated by the provisions of this Lease to construct any Improvements on the Premises or Restore the Improvements, subject to Section 42.10(c); provided, however, (1) except as provided in Section 42.7(b)(ii) nothing in this Section or any other Section or provisions of this Lease shall be deemed or construed to permit or authorize any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized in this Lease, as hereafter amended or extended from time.to time, and (2) in the event that Mortgagee obtains title to the leasehold estate and chooses not to Restore the Improvements, it shall so notify City in writing of its election within sixty (60) days following its acquisition of the leasehold estate and shall use good faith efforts to sell its leasehold interest to a purchaser that shall be obligated, as applicable, to Restore the Improvements to the extent this Lease obligates Tenant to Restore, but in any event Mortgagee shall use good faith efforts to cause a sale to occur within one (1) year following written notice to City of its election not to Restore (the "**Sale Period**"). If Mortgagee fails to sell its leasehold estate using good faith efforts within the Sale Period, such failure shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to Restore the Improvements to the extent this Lease obligates Tenant to Restore. If Mortgagee agrees to Restore the Improvements, then all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations.

(ii) Notwithstanding the provisions of Section 42.7(b)(i), if Mortgagee proposes that the Premises be used for uses other than the Permitted Uses ("**Proposed Uses**"), then City may, but shall not be obligated to, extend the Sale Period to three (3) years (the. "**Extended Sale Period**"). If City so extends the Sale Period, then during the Extended Sale Period Mortgagee shall diligently pursue re-entitlement of the Premises for the Proposed Uses, including the pursuit of required Regulatory Approvals and/or the marketing of the Premises to a purchaser that would use the Premises for the Proposed Uses. If Mortgagee fails to diligently pursue re-entitlement of the Premises during the Extended Sale Period, and such failure shall continue for sixty (60) days after written notice from City, then, upon additional written notice from City, the Extended Sale Period shall be deemed to have expired and Mortgagee shall be obligated to Restore the Improvements, as applicable, to the extent this Lease obligates Tenant to so complete or Restore. Tenant acknowledges that any proposed amendments to this Lease to allow Proposed Uses shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion.

42.8 Required Provisions of any Mortgage.

Every Mortgage permitted under this Lease shall provide: (a) that the Mortgagee shall give written notice to City (in the same manner as provided in Article 40) of the occurrence of any event of default under the Mortgage at the same time that such Mortgagee notifies Tenant thereof; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

42.9 Notices to Mortgagee.

(a) Copies of Notices. City shall give a copy of each notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of City's consent to any Transfer to any Mortgagee that has given to City written notice substantially in the form provided in Section 42.9(b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by City, addressed to such Mortgagee at the address last furnished to City. City's delay or failure to give such notice to a Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee for cure. Any such notices to Mortgagee shall be given in the, same manner as provided in Article 40.

(b) Notice from Mortgagee to City. Each Mortgagee shall be entitled to receive notices from time to time given to Tenant by City under this Lease in accordance with subsection (a) above, provided such Mortgagee has delivered a notice to City in substantially the following form:

> The undersigned certifies that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, acting through the Real Estate Division of the Office of Administrative Services, as landlord, and Yerba Buena Gardens Conservancy, a California nonprofit public benefit corporation, as tenant (the "Lease"), of Tenant's interest in the Lease, a legal description of which is attached hereto as Exhibit A-1 and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices

from time to time given under the Lease to Tenant by City be sent to the undersigned at the following address: _____.

If Mortgagee desires to have City acknowledge receipt of Mortgagee's name and address delivered to City pursuant to his Section 42.9 then such request shall be made in such notice from Mortgagee in bold, underlined, and capitalized letters.

42.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, mortgage this Lease in compliance with the provisions hereof, then, so long as any such Mortgage remains unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. The Mortgagee with rights as provided in 42.2(c), shall have the right, but not the obligation, at any time prior to termination of this Lease to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act required of Tenant hereunder and to do any act which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions hereof to prevent termination of this Lease; provided that all such acts shall be performed in compliance with the terms of this Lease. Except after the Mortgagee acquires Tenant's interest under this Lease, no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, the Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by the Mortgagee shall be as effective to comply with Tenant's obligations under the Lease, to cure a default by Tenant under the Lease or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any notice of default given by City to Tenant and/or Mortgagee in accordance with Section 42.9, the Mortgagee shall have the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of Tenant's cure period, or (ii) the date that City has served such notice of default upon the Mortgagee. City shall accept such performance by or at the instance of the Mortgagee as if the same had been done by Tenant. If a non-monetary default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended at Mortgagee's request so long as Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with due diligence, subject to Force Majeure, or if such default cannot be reasonably cured or remedied by Mortgagee within such (30) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period shall be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than a monetary Event of Default or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within ninety (90) days after notice of such Event of Default is given to the Mortgagee, the Mortgagee shall have (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified City of its intention to institute

foreclosure proceedings (or to commence actions to obtain possession of the Premises through a receiver) or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings and Force Majeure. A Mortgagee, upon acquiring Tenant's interest in this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this Section 42.10(b) are subject to the following: (A) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after an Event of Default is cured; (B) nothing herein contained shall preclude City, subject to the provisions of this Section 42.10(b), from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default during the pendency of any foreclosure proceedings; and (C) the Mortgagee shall agree with City in writing to comply during the foreclosure period with such of the terms, conditions, and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee, including the payment of all sums due and owing hereunder. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (C) of the preceding sentence, Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease (unless such Event of Default has been cured) and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of Section 42.10(c)–(k) below shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (x) have fully cured any monetary Event of Default, (y) continue to pay currently Rent as and when the same become due, and (z) perform all other obligations of Tenant under this Lease to the extent that such obligations are reasonably susceptible of being performed by Mortgagee, including at any time Mortgagee is in possession of the Premises (which Mortgagee shall be obligated to use reasonable efforts to obtain), the use restrictions set forth in Article 4 above, the operating covenants set forth in Article 7 above, and the maintenance and repair obligations set forth in Section 14.1 above. City acknowledges that the requirements of Section 44(c) are not reasonably susceptible of being complied with by a Mortgagee.

(c) Construction.

(i) Subject to Section 42.7(b), if an Event of Default occurs following any damage or destruction but prior to completion of the Restoration of the Improvements, to the extent this Lease obligates Tenant to so Restore, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless, such Mortgagee expressly assumes Tenant's obligations to Restore the Improvements by written

agreement reasonably satisfactory to City and submits evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the construction or Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the City on account of an Event of Default or rejection of this Lease by a trustee of Tenant in bankruptcy by Tenant as a debtor in possession, except (i) by Condemnation, or (ii) as the result of damage or destruction as provided in Article 18 (subject to Section 18.5), City shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. Each Mortgagee shall thereupon have the option to obtain a new Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the most senior Mortgagee giving notice within such thirty (30) day period or its designee, subject to the provisions set forth in this Section and provided that such Mortgagee assumes Tenant's obligations as sublandlord under the any Sublease then in effect; and

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee thereunder, shall be subject to approval by the City's Board of Supervisors and the Mayor, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants, and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). The New Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease shall require Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of any Subsequent Improvements, which obligations shall be performed by Mortgagee, if applicable, in accordance with Section 42.10(c). Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution, and delivery of such New Lease. The provisions of this Section 42.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section

42.10(d)), and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 42.10, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any New Lease executed pursuant to Subsection 42.10(d), any Agreement then in effect shall be assigned and transferred without recourse by City to Mortgagee. Between the date of termination of this Lease and commencement of the term of the New Lease, City shall not (1) enter into any new Agreements that would be binding upon Mortgagee if Mortgagee enters into a New Lease, (2) cancel or materially modify any of the existing Agreements for the maintenance of the Premises or the supplies therefor, or (3) accept any cancellation, termination, or surrender of any Agreement without the written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned, or delayed. Effective upon the commencement of the term of the New Lease, City shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property that City has in its possession and with respect to which City has the right to so transfer.

(g) Limited to Permitted Mortgagees. Notwithstanding anything to the contrary in this Lease, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages that are permitted under this Article.

(h) Consent of Mortgagee. No modification, termination, or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the proposed modification, termination, or cancellation has been delivered to such Mortgagee and such Mortgagee has approved the modification, termination, or cancellation in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. No voluntary surrender of the Lease shall be accepted by the City without the approval of Mortgagee. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation, or surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its permitted designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. If a Mortgagee becomes the owner of the leasehold estate under this Lease or under a New Lease, (i) except to the extent further limited by other provisions hereof, such Mortgagee shall be liable to City for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Mortgagee remains the owner of the leasehold estate, and (ii) in no event will

Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and the City will have no recourse against Mortgagee's assets other than its interest herein or therein.

(j) Limitation on Obligation to Cure. Notwithstanding anything in the Lease to the contrary, a Mortgagee, and its permitted designee or nominee (other than Tenant), shall have no obligation to cure (i) any Event of Default under this Lease occurring pursuant to Section 26.1(b), (c), (d), (e), (i), (j), or (k) (but with respect to Section 26.1(e), (i), or (k) only if such covenant or obligation is not susceptible to being cured without possession of the Premises or is otherwise not reasonably susceptible of being cured), or (ii) any other Event of Default by Tenant under this Lease that is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default. All of the defaults listed in clause (i) of this Section 42.10(j) shall be deemed defaults not "reasonably susceptible of being complied with" or "not reasonably susceptible of being cured" for purposes of Section 42.10(b).

(k) Cooperation. City, through its City Administrator, and Tenant shall cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by any Mortgagee to implement the provisions and intent of Sections 42.7, 42.8, 42.9, and 42.10; provided that the City Administrator determines that the proposed amendment is in the best interest of the City and is necessary or desirable to effectuate the purpose and intent of such Sections, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

42.11 Assignment by Mortgagee.

Notwithstanding any provision of this Lease to the contrary, including, without limitation, Article 6, foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale, or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to Transfer this Lease or such New Lease shall be subject to the restrictions of Article 21. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease obtained pursuant to Section 42.10(d), and in connection with any such Transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 42 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

42.12 **Transfer of Mortgage**.

City hereby consents to a Transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such Transfer, the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

42.13 **Appointment of Receiver**.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

43. NO JOINT VENTURE

43.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other party, or cause City to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

44. REPRESENTATIONS AND WARRANTIES

44.1 Representations and Warranties of Tenant.

(a) Representations and Warranties. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

(i) Valid Existence; Non-Profit Status; Good Standing. Tenant is a nonprofit public benefit corporation duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

(ii) Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated by this Lease.

(iii) No Limitation on Ability to Perform. Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Tenant is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation, or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any

governmental authority, regulatory body, or any other party is required for the due execution, delivery, and performance by the Tenant of this Lease or any of the teams and covenants contained in this Lease, except for consents, authorizations, and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no pending or threatened suits or proceedings or undischarged judgments affecting Tenant before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant.

(iv) Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid, and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

(v) Defaults. The execution, delivery, and performance of this Lease (A) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (1) any agreement, document, or instrument to which Tenant is a party or by which Tenant's assets may be bound or negatively affected, (2) any Law applicable to the Tenant, its business or the Premises or (3) the articles of incorporation or the bylaws of the Tenant, and (B) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as set forth in this Lease.

(vi) Meeting Financial Obligations. No federal or state tax liens have been filed against Tenant; and Tenant is not in default and has not received notice asserting that it is in default under any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(b) Survival. The representations and warranties in this Section shall survive any termination of this Lease.

(c) Tenant to Maintain Tax-Exempt Status. Tenant shall maintain its status as a tax exempt non-profit entity throughout the Term of this Lease. If at any time Tenant becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity, Tenant shall promptly provide City with written notice of such failure, which notice shall indicate Tenant's proposed measures to regain such status, if practicable, and the estimated timeline for regaining such status (the "**Status Change Notice**"). If City becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity prior to the date City receives Tenant's Status Change Notice, City shall provide Tenant with written notice of such failure. If Tenant's failure to maintain its status as a tax exempt nonprofit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, or if Tenant's Status Change Notice indicates that Tenant does not expect to regain such status within twelve (12) months, then Tenant and City shall attempt in good faith to meet no fewer than two (2) times during the ninety (90) day period following Tenant's Status Change Notice or City's notice to City, as applicable (or within another mutually agreed period), to attempt to resolve any detrimental financial impact of Tenant's loss of status, which may include proposals for Tenant to form a successor entity that would qualify

for tax exempt status and proposals for Tenant to transfer its interest in the Lease to a tax exempt entity capable of performing Tenant's obligations under this Lease and the Subleases, or proposed amendments to this Lease that allow the Permitted Uses to continue on the Premises. Tenant acknowledges that any proposed amendments to this Lease shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion. If Tenant does not regain its tax exempt status within twelve (12) months after Tenant's Status Change Notice or City's notice to Tenant, as applicable, then, at the election of City's Director of Property, in consultation with the City Controller but otherwise at his her sole discretion, upon written notice to Tenant such failure shall be an Event of Default under this Lease.

45. SPECIAL PROVISIONS

45.1 Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Lease shall have the meanings given to them in the cited ordinance. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Article 26 of this Lease, unless (i) such failure is otherwise specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section. Tenant hereby agrees to comply with the applicable provisions of the following code sections as such sections may apply to the Premises.

45.2 Non-Discrimination.

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

(b) Subleases and Other Subcontracts. Tenant will include in all Subleases and other Agreements relating to the Premises a non-discrimination clause applicable to the Subtenant, Operator, or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant will incorporate by reference in all Agreements the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all Subtenants, Operators, and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

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

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

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

45.3 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. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

45.4 Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8

of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

45.5 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

45.6 Sunshine Ordinance.

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

45.7 Waiver of Relocation Assistance Rights.

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Law, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Laws (including, but not limited to, California Government Code Section 7260 et seq. , or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq.).

45.8 Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's Subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

45.9 Conflicts of Interest.

Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the terms of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Lease.

45.10 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Tenant shall enter into one or more agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements attached hereto as Exhibit M. Tenant shall comply with such First Source Hiring Agreements, with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

45.11 Public Access to Meetings and Records.

If Tenant receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. Tenant agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Lease, partially or in its entirety.

45.12 Resource-Efficient Building Ordinance; Energy Reporting.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises. Tenant consents to Tenant's utility service providers disclosing, and will obtain consent from all Subtenants and Operators for their utility providers (whether in a Sublease or Operating Agreement or otherwise) to disclose, energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("**Energy**

Consumption Reporting Laws"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

45.13 Drug Free Work Place.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents, or assigns shall be deemed a material breach of this Lease.

45.14 Preservative Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

45.15 Compliance with Disabled Access Laws; Accessibility Disclosures.

(a) Tenant acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Tenant or contractor, must be accessible to the disabled public. Tenant shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

(b) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

45.16 Graffiti.

Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant shall remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within two (2) business days of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The team "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Tenant to comply with this Section of this Lease shall constitute a default of this Lease.

45.17 Notification of Limitations in Contributions.

Through its execution of this Lease, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The foregoing

restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Tenant acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Tenant further agrees to provide to City the name of the each person, entity, or committee described above.

45.18 Food Service Waste Reduction.

Tenant will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules, and will include the provisions in where applicable in Agreements. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant acknowledges that the Food Service and Packaging Waste Reduction Ordinance contains penalties for noncompliance of One Hundred Dollars ($100.00) for the first breach, Two Hundred Dollars ($200.00) for the second breach in the same year, and Five Hundred Dollars ($500.00) for subsequent breaches in the same year and agrees that these sums are reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Lease was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Lease, at law, or in equity.

45.19 San Francisco Packaged Water Ordinance.

Tenant will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from the City's Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Lease and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

45.20 Vending Machines; Nutritional Standards.

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not

permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

45.21 All-Gender Toilet Facilities.

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

45.22 Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant must incorporate by reference the provisions of Chapter 12T in all Agreements for some or all of the Premises, and require all Subtenants and Operators to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and Subtenants and Operators may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and Subtenants and Operators may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and Subtenants and Operators may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and Subtenants and Operators will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or Subtenant or Operator at the Premises, that the Tenant

or Subtenants or Operators will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and Subtenants and Operators will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and Subtenants and Operators understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including, but not limited to a, penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

45.23 Requiring Health Benefits for Covered Employees.

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. City will notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract (as defined in Chapter 12Q) entered into by Tenant must require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Fifty Thousand Dollars ($50,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

45.24 Public Transit Information.

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Building and encouraging use of them.

45.25 Taxes, Assessments, Licenses, Permit Fees, and Liens.

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on its possessory interest.

(b) Tenant will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Premises and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

45.26 Restrictions on the Use of Pesticides.

(a) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. Tenant will comply, and will require all of Tenant's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

(b) If Tenant or Tenant's contractor would apply pesticides to outdoor areas at the Premises, Tenant will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

45.27 Prohibition of Alcoholic Beverage Advertising.

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

45.28 Tenant's Compliance with City Business and Tax and Regulations Code.

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

46. GENERAL

46.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday, or City, state or federal holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease.

46.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as," or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein," or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section, or paragraph of this Lease or any specific subdivision thereof.

46.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of City, Tenant, and any Mortgagee, subject to the terms and provisions of this Lease. Where the term "Tenant," "City", or "Mortgagee" is used in this Lease, it means and includes their respective permitted successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee.

46.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other party and shall not be deemed to have conferred any rights, express or implied, upon any other party, except as provided in Article 42 with regard to Mortgagees.

46.5 Real Estate Commissions. City is not liable for any real estate commissions, brokerage fees, or finder's fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, agent, or finder in connection with this transaction. In the event any broker, agent, or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

46.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

46.7 Entire Agreement.

This Lease (including the Exhibits), for so long as such agreement is in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parole evidence of any prior of other agreement shall be permitted to contradict or vary the terms of this Lease.

46.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended, or modified except by a written instrument executed by the Parties.

46.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the City and County of San Francisco of the State of California, and Tenant consents to the jurisdiction of any such local, state, or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

46.10 Recordation.

On the Effective Date, City and Tenant shall execute the memorandum of lease in the form attached hereto as Exhibit N (the "**Memorandum of Lease**"), and Landlord shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Promptly upon City's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to City a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to City and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. City may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

46.11 Extensions by City.

Upon the request of Tenant, City in its sole discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant, or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant, or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

46.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

46.13 Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then 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 on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

46.14 Effective Date.

This Lease shall become effective on the Effective Date.

46.15 Severability.

If any provision of this Lease, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other party or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

46.16 Reasonably Prompt Approval.

City and Tenant agree that unless otherwise set forth in this Lease, any approval or consent required to be given by either Party shall be given or denied reasonably promptly; provided that

the Party required to give approval or consent receives reasonably complete information or documentation upon which such decision must be made.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT 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 OR ENACTED AN ORDINANCE APPROVING THIS LEASE, AND ANY AMENDMENTS THERETO, 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, AND ANY AMENDMENTS THERETO, SHALL BE NULL AND VOID UNLESS THE CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, AND ANY AMENDMENTS THERETO, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE, AND ANY AMENDMENTS THERETO, 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.

[No further text this page.]

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

TENANT: YERBA BUENA GARDENS CONSERVANCY,
a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

EXHIBIT A

DESCRIPTION OF THE PREMISES

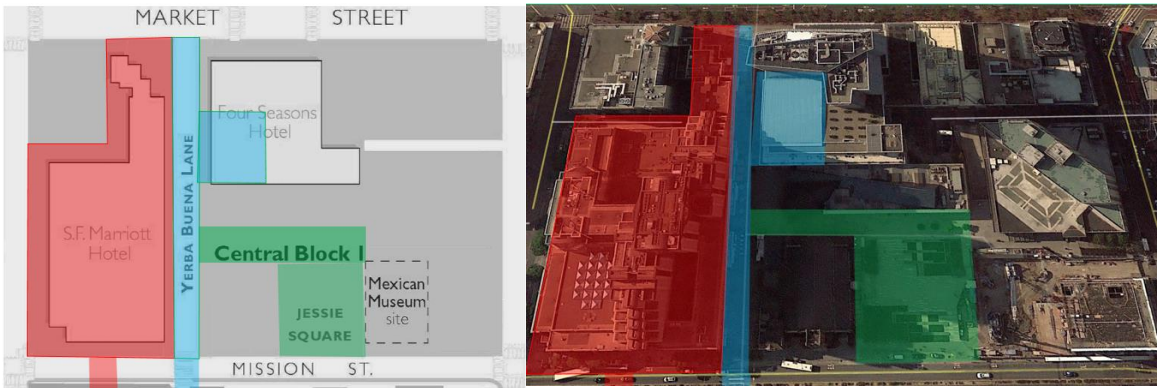
(Attached)

EXHIBIT B-1

DEPICTION OF THE PREMISES

CB-1 Block

Premises (Blue)



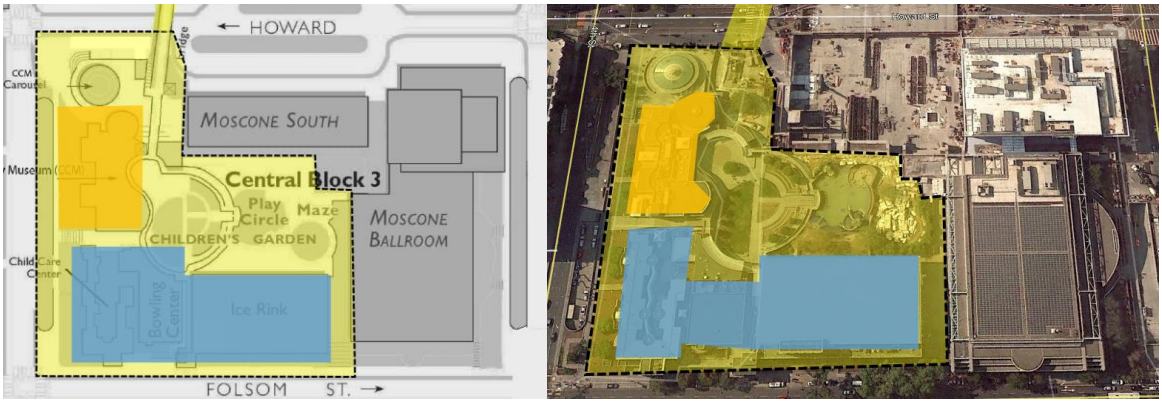
CB-2 Block

Premises (Blue and Yellow and Orange)

[Exhibit B-1 continues on the next page]

CB-3 Block

Premises (Blue and Yellow and Orange)



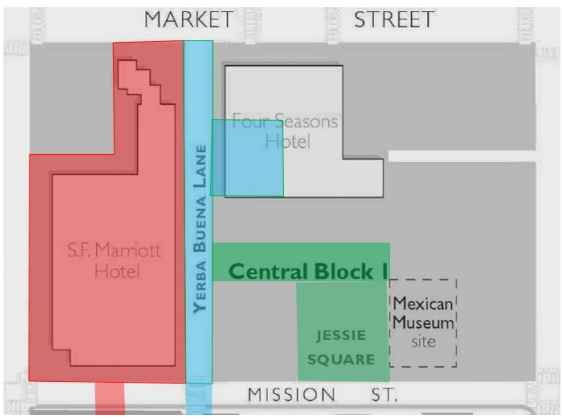
[Note: The CB-3 Block depiction of the Premises will be updated to include the new cafe space and new community room at the top of the paseo within Moscone and to exclude the stairwell between Moscone and the ice rink.]

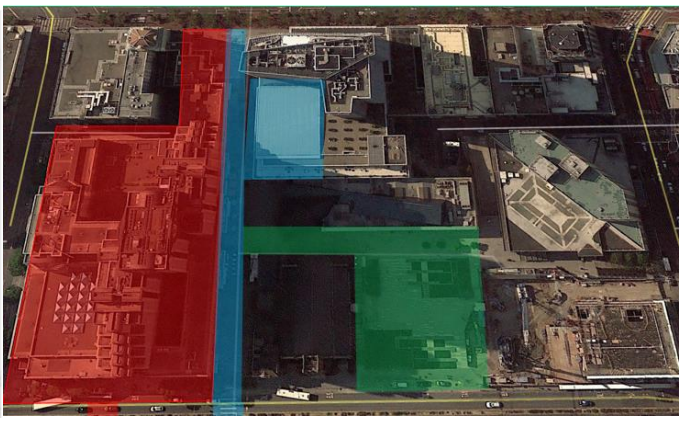
EXHIBIT B-2

DEPICTION OF THE RETAINED LEASE AREAS

CB-1 Block

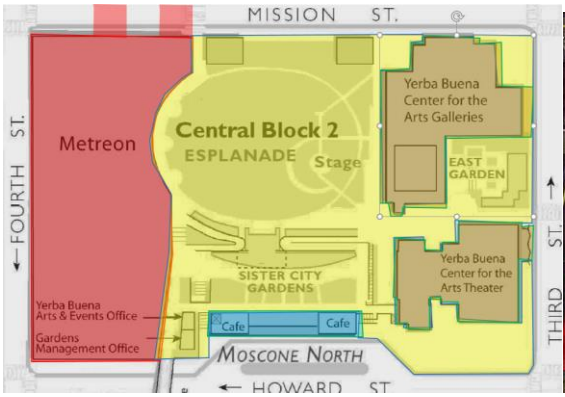
Retained Lease Areas (Red - Marriott)





CB-2 Block

Retained Lease Areas (Red - Metreon)



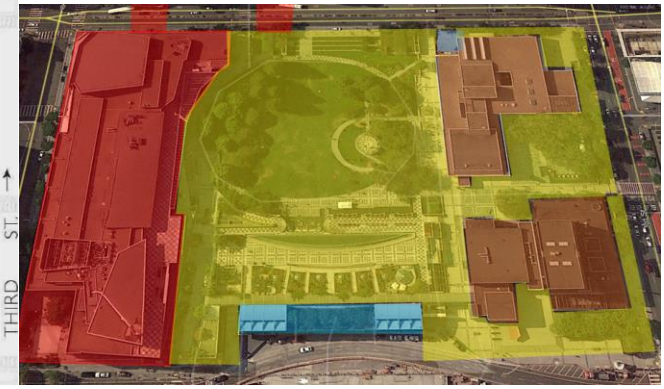
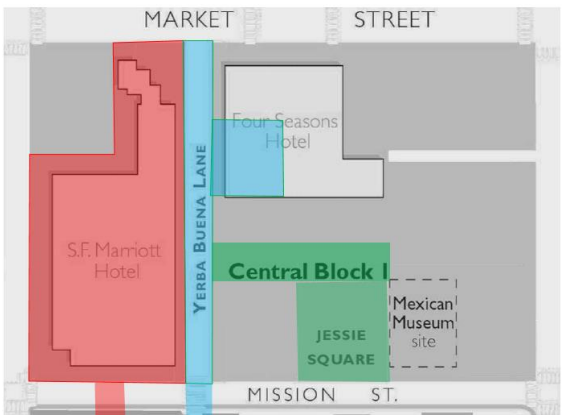


EXHIBIT B-3

DEPICTION OF THE RETAINED PUBLIC SPACE AREAS

CB-1 Block

Retained Public Space Areas (Green – Jessie Square + connector parcel)



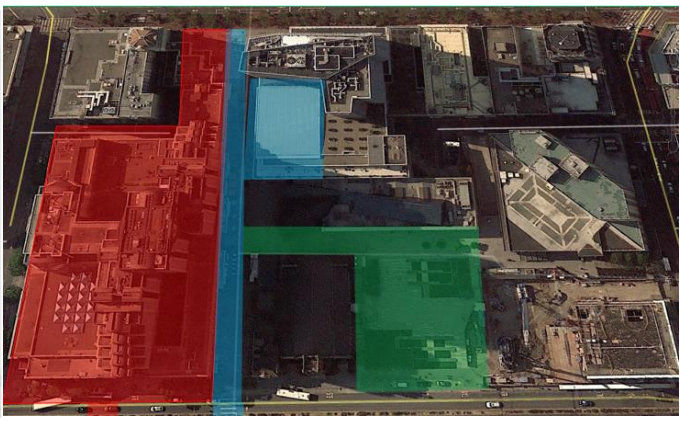


EXHIBIT B-4

DEPICTION OF THE RETAINED OTHER GARDENS AREAS

[To be attached, if any. None at the time of Lease execution.]

EXHIBIT C

YBC CLOSEOUT AGREEMENT

(Attached)

EXHIBIT D

FORM ASSIGNMENT OF AGREEMENTS

(Attached)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

The undersigned hereby declare this instrument to be exempt from recording fees per Government Code §27383 and §27388.1

Space Above for Recorder's Use

APNs: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Yerba Buena Gardens Leases and Contracts)

This Assignment and Assumption Agreement ("**Assignment**") is executed as of this _____ day of _____, 2019 (the "**Assignment Effective Date**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Department of Real Estate ("**Assignor**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation ("**Assignee**").

RECITALS

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted as the "Premises" on Exhibit B attached hereto (the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3" and includes the Yerba Buena Gardens ("**YBG**"). Notwithstanding the foregoing, the Premises shall exclude the Substructure (as defined in the Lease, which is in turn defined in Recital C below).

B. City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted as the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas" on Exhibit B attached hereto (collectively, the "**City Retained Areas**"), which City Retained Areas are composed of the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas," as each of those terms is defined in the Lease (as defined in Recital C below). The City Retained Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The City Retained Areas are not included in the Premises; however, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and Retained Public Space Areas, including over certain leases, subleases, licenses,

concessions or other agreements for the use or occupancy of the Retained Lease Areas or the Retained Public Space Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

C. Concurrently herewith, Assignor and Assignee are entering into that certain Lease (the "**Lease**") pursuant to which Assignor, as landlord, is leasing to Assignee, as tenant, the Premises, and pursuant to which Assignor is granting to Assignee certain rights with respect to certain other portions of the YBG Properties, all as more particularly described in the Lease.

D. This Assignment transfers Assignor's rights, titles, and interests in and to the those certain leases more particularly described in Attachment 1 attached hereto and incorporated herein (the "**Existing Subleases**") and those agreements described in Attachment 2 attached hereto and incorporated herein (the "**Existing Operating Agreements**" and together with the Existing Subleases, collectively the "**Existing Subleases and Agreements**") to Assignee for the Term (defined below), and Assignee has agreed to accept and assume Assignor's obligations under the Existing Subleases and Agreements for the Term, subject to the terms and conditions of the Lease.

NOW THEREFORE, for good and valuable consideration received, Assignor and Assignee agree as follows:

1. Assignor hereby grants, conveys, assigns and transfers to Assignee for the Term (as defined below) all of Assignor's rights, titles, and interests in and to the Existing Subleases and Agreements.

2. Assignee hereby accepts assignment of Assignor's rights, titles and interests in the Existing Subleases and Agreements from Assignor for the Term and assumes Assignor's obligations under the Existing Subleases and Agreements, including all covenants and conditions therein, arising from and after the Assignment Effective Date for the Term, including, but not limited to, the YBC Closeout Agreement requirements for treating all future proceeds from the sale or lease of the YBG Properties as Program Income, and the funding restrictions for expenditure of the revenues under the Existing Operating Agreements.

3. Assignor shall give notice, in accordance with requirements set forth in the Existing Subleases, to the tenants under the Existing Subleases that Assignor has assigned, and Assignee has assumed, the landlord's interests in the Existing Subleases. Assignor shall also give notice, in accordance with requirements set forth in the Existing Operating Agreements, to the parties to the Existing Operating Agreements that Assignor has assigned, and Assignee has assumed, all of Assignor's rights, titles, and interest in the Existing Operating Agreements.

4. The term of this Assignment (the "**Term**") shall be coterminous with the term of the Lease. Upon the expiration or earlier termination of the Lease, this Assignment shall automatically terminate and Assignee's interests in the Existing Subleases and Agreements shall automatically vest back in Assignor.

5. Assignor represents to Assignee, to its knowledge: (1) Assignor has delivered true and correct copies of the Existing Subleases and Agreements to Assignee; (2) Assignor is not aware of any defaults under the Existing Subleases and Agreements; and (3) there is no known

litigation pending or threatened against the Assignor that might detrimentally affect the use or operation of the YBG Properties as intended.

6. This Assignment shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Assignment.

8. This Assignment may be executed, in one or more counterparts, each of which so executed shall be deemed an original, regardless of its date and\ or delivery, and said counterparts, taken together, shall constitute one document.

9. This Assignment shall be enforced and interpreted according to the laws of the State of California as applied to contracts that are executed and performed entirely in the State of California, without regard to, or giving effect to any choice of laws doctrine.

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IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the Assignment Effective Date.

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

ASSIGNEE: YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION AGREEMENT

LEGAL DESCRIPTION OF PREMISES

[To Be Attached]

EXHIBIT B TO ASSIGNMENT AND ASSUMPTION AGREEMENT

DIAGRAM OF PREMISES AND CITY RETAINED AREAS

[To Be Attached]

ATTACHMENT 1 TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Existing Subleases

	Lease	**Recorded in the Official Records of the City and County of San Francisco**	**Assessor's Parcel Number**
1.	Operating Lease for the Ice Rink/Bowling Center at Yerba Buena Gardens, dated May 19, 1998.	Unrecorded	3734-091
2.	Commercial Retail Lease (West Café), dated October 18, 2005.	Unrecorded	3723-115
	First Amendment, dated September 14, 2015.	Unrecorded	
3.	Commercial Retail Lease (East Café), dated January 17, 2006.	Unrecorded	3723-115
	First Amendment, dated September 14, 2015.	Unrecorded	
4.	Yerba Buena Gardens Central Block 3 Agency Rooftop Surface Lease, dated July 1, 1996 (the "Agency Rooftop Surface Lease")**	November 17, 2011, in Reel K525, Image 0002, as Document #J301100-001.	3734-091

**The assignment of the Agency Rooftop Surface Lease includes an assignment of both the City's rights and obligations as landlord (referred to as the "City") under the Agency Rooftop Surface Lease and the City's rights and obligations as tenant (referred to as the "Agency") under the Agency Rooftop Surface Lease; provided, however, that to the extent the Agency Rooftop Surface Lease imposes greater obligations on Assignee with respect to a particular subject matter than the Lease imposes on Assignee, then Assignee shall only be required to perform under the Agency Rooftop Surface Lease to the extent of its obligations as Tenant under the Lease (e.g., Assignee's maintenance and repair obligations shall be no greater than under the Lease). Furthermore, and without limiting the foregoing, to the extent of any inconsistency between the Agency Rooftop Surface Lease and the Lease, the terms of the Lease shall control as to Assignee's rights and obligations.

ATTACHMENT 2 TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Existing Operating Agreements

	Agreement	**Recorded in the Official Records of the City and County of San Francisco**	**Assessor's Parcel Number**
1.	Agreement for Working Capital Funding and Operation of a Child Care Center, dated August 19, 1997..	Unrecorded	3734-091
	Authorization of an Extended Term Under the Agreement for Working Capital Funding and Operation of a Child Care Center, dated August 1, 2017.	Unrecorded	
2.	Operating Agreement Youth Arts and Education Center Yerba Buena Gardens, dated July 1, 1997.	Unrecorded	3734-091
3.	Amended and Restated Agreement for Operation of Cultural Facilities, dated June 15, 2004.	Unrecorded	3723-115
4.	Yerba Buena Gardens Programming Agreement, dated July 11, 2000.	Unrecorded	3706-097, 098, 119-124, 301 3723-115 3734-091
	First Amendment, dated June 4, 2013.	Unrecorded	
	Second Amendment, dated May 5, 2015.	Unrecorded	
	Third Amendment, dated March 20, 2018.	Unrecorded	
5.	Personal Services Contract (Property Management Services — Yerba Buena Gardens), dated July 1, 2009.	Unrecorded	3723-115 3734-091
	First Amendment, dated August 3, 2010.	Unrecorded	
	Second Amendment, dated May 5, 2015.	Unrecorded	
	Third Amendment, dated March 20, 2018.	Unrecorded	
6.	Permit to Enter (Bike Share Station), dated October 4, 2016.	Unrecorded	3723-115
7.	Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens, dated March 31, 1998 ("CB-1 REA").*	April 7, 1998 in Reel H106, Image 579, as Document #G331392.	3723-115 3734-091
	First Amendment, dated October 28, 1998.	October 28, 1998 in Reel H250, Image 581, as Document #G458534	
	Second Amendment, dated May 24, 2016.	May 24, 2016 as Document #K250102.	

8.	1988 Reciprocal Easement Agreement, dated March 1, 1988 ("CB-3 REA").**	July 13, 1988 in Reel E635, Image 1153 as Document E204001.	3723-115 3734-091
	Amendment to 1988 Reciprocal Easement Agreement and Restatement of Certain Provisions of the 1988 REA dated July 1, 1996.	November 11, 2011 in Reel K525, Image 0001 as Document #J301099.	

*To the extent of Assignor's rights as a "Party" under the CB-1 REA, Assignor authorizes Assignee to operate as its agent during the Term of the Lease in exercising Assignor's rights on behalf of Assignor under the CB-1 REA, including Assignor's authority to manage the programming of the outdoor City Retained Areas on "Central Block 1", specifically, the Retained Public Space Areas.

**To the extent of the Assignor's rights as a "Party" under the CB-3 REA, Assignor authorizes Assignee to operate as its agent during the Term of the Lease in exercising Assignor's rights on behalf of the Assignor under the CB-3 REA.

To the extent the CB-1 REA or the CB-3 REA impose greater obligations on Assignee with respect to a particular subject matter than the Lease imposes on Assignee, then Assignee shall only be required to perform under the CB-1 REA or the CB-3 REA to the extent of Assignee's obligations as Tenant under the Lease (e.g., Assignee's maintenance and repair obligations shall be no greater than under the Lease). Furthermore, and without limiting the foregoing, to the extent of any inconsistency between the CB-1 REA and/or the CB-3 REA and the Lease, the terms of the Lease shall control as to Assignee's rights and obligations.

EXHIBIT E

INITIAL APPROVED ANNUAL BUDGET

(Attached)

EXHIBIT F

RETAINED LEASES

	Lease	**Recorded in the Official Records of the City and County of San Francisco**	**Assessor's Parcel Number**
1.	Lease for the Yerba Buena Gardens Center Hotel, dated August 26, 1986, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and YBG Associates, as tenant.	August 27, 1986 in Book E160, Page 1132, as Document #D855245.	3706-096, 110, 111 3723-113, 116, 117
	First Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated March 18, 1987.	April 14, 1987, in Book E319, Page 1210, as Document #D973397.	
	Second Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 8, 1991.	May 10, 1991, in Book F373, Page 435, as Document #E903679.	
	Third Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book F378, Page 228, as Document #E907058.	
	Fourth Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book 378, Page 229, as Document #E907059.	
	Letter Agreement dated April 18, 2013, regarding the definition of Fiscal Year.	Unrecorded	
	Amended and Restated (Nunc Pro Tunc) Yerba Buena Gardens Amendment to Legal Description to Lease for the Yerba Buena Gardens Center Hotel, dated October 28, 1998	October 28, 1998, in Reel H250, Image 582, as Document #G458535; December 14, 2000, in Reel H784, Image 209, as Document #G875561.	
2.	Central Block 2 Entertainment and Retail Lease, dated May 9, 1997, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Yerba Buena Entertainment Center, as tenant.	May 13, 1997, in Book G881, Page 310, as Document #97-G159383.	3723-114, 115
3.	Lease dated August 6, 1993, by and between the Redevelopment Agency of the City and County of San Francisco, as lessor, and Marriott Corporation, as lessee.	Unrecorded	

EXHIBIT G

BILL OF SALE

(Attached)

EXHIBIT H

CITY INDEMNITY REQUIREMENTS FOR NEW AGREEMENTS

INDEMNIFICATION

1. Indemnification.

Subject to Section 4 below, Subtenant/Operator shall indemnify, defend, and hold harmless ("**Indemnify**") the City and County of San Francisco ("**City**"), including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City (collectively, the "**Indemnified Parties**") from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Subtenant/Operator's use of or operation on the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to, or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (iii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises, or any part thereof by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (iv) any use, non-use, possession, occupation, operation, maintenance, management, or condition of property near or around the Premises by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (v) any design, construction or structural defect relating to any improvements constructed by or on behalf of Subtenant/Operator, and any other matters relating to the condition of the Premises caused by Subtenant/Operator or any of its Agents or Invitees; (vi) any failure on the part of Subtenant/Operator or its Agents, as applicable, to perform or comply with any of the terms of this Agreement or with applicable Laws; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Subtenant/Operator or any of its Agents or Invitees; and (viii) any civil rights actions with respect to the Premises due to Subtenant/Operator's operation of the Premises other than in accordance with this Agreement. Notwithstanding the foregoing, however, Subtenant/Operator shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to the effective date of the Agreement, and to the extent not arising from the negligence or willful misconduct of Subtenant/Operator or any of its Agents or Invitees. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any occurrence for which Subtenant/Operator is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Subtenant/Operator of such action, suit, or proceeding. Subtenant/Operator may, and upon the request of such Indemnified Party will, at Subtenant/Operator's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Subtenant/Operator and reasonably approved by such Indemnified Party in writing.

2. Immediate Obligation to Defend.

Subtenant/Operator specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 1, even if such allegation is or may be groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to Subtenant/Operator by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment or arbitration decision determining that all or a portion of the claim fell outside the scope of the indemnity, City shall reimburse Subtenant/Operator for that portion of costs, fees, and expenses expended by Subtenant/Operator hereunder that was determined to be outside the scope of this indemnity. Notwithstanding the foregoing, in the event of a final judgment or arbitration decision determining that no Indemnified Party is entitled to the indemnification provided in Section 1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Subtenant/Operator is required to carry under the terms of this Agreement (or would not have been provided but for Subtenant/Operator's default in its obligations to maintain such insurance), then City shall reimburse Subtenant/Operator for the actual out-of-pocket expenses incurred by Subtenant/Operator in connection with the defense of the Indemnified Party following Subtenant/Operator's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

3. Defense.

Subtenant/Operator shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Subtenant/Operator's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Subtenant/Operator shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Subtenant/Operator's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Subtenant/Operator of an invoice therefor.

4. Not Limited by Insurance.

None of the other provisions of this Agreement shall limit the Subtenant/Operator indemnity obligations under this Agreement.

5. Survival.

Subtenant/Operator's indemnity obligations under this Agreement shall survive the expiration or sooner termination of this Agreement.

6. Definitions.

As used herein, the term **"Loss"** or **"Losses"** means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, (including, without limitation, attorneys' fees and costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits, or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Agreement, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

As used herein, the term **"Invitees"** means the customers, patrons, invitees, guests, permittees, contractors, and subcontractors of Subtenant/Operator.

As used herein, the term "**Agents**" means the members, officers, directors, commissioners, employees, agents and contractors of Subtenant/Operator or other person or entity, and their respective heirs, legal representatives, successors and assigns.

EXHIBIT I

AGREEMENT CONDITIONS (I.E., NEW AGREEMENT AND AMENDMENT TO EXISTING AGREEMENT CONDITIONS)

The Agreement Conditions contained in this Exhibit I reflect City subleasing, contracting, and related insurance requirements in force as of the reference date of this Lease. The Agreement Conditions will be updated and changed from time to time to comply with Laws and City requirements. Tenant should periodically request from City updated Agreement Conditions in order to ensure Tenant is complying with the Lease.

INSURANCE

Property and Liability Coverage.

As used herein, terms such as "necessary," "require," "required," "specify," "acceptable," "satisfactory," "approval," "approved," and words of similar import are deemed to be qualified by the words "reasonable" or "reasonably," as the context may be. As used herein, "commercially reasonably available" means commercially reasonably available at a commercially reasonable cost.

(a) Subtenant/Operator Insurance Requirements. Subtenant/Operator shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Subtenant/Operator (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Commercial General Liability Insurance. Subtenant/Operator shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 04 13, insuring against liability for bodily injury (including death), property damage, personal and advertising liability, and the products-completed operations hazard, and with "insured contract" coverage as to the indemnity in Section 21.1 and as to any other indemnity of City by Subtenant/Operator, with respect to occurrences upon the Premises (including the Improvements), and, to the extent commercially reasonably available, operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence, affording coverage for the risks of independent contractors, explosion, collapse, underground (XCU), with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) general aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"); (C) if Subtenant/Operator has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Subtenant/Operator shall require any Subtenant

who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Subtenant/Operator's policies.

(ii) Workers' Compensation Insurance. During any period in which Subtenant/Operator has employees as defined-in the California Labor Code, Subtenant/Operator shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Subtenant/Operator in connection with the use, operation, and maintenance of the Premises and the Improvements.

(iii) Business Automobile Insurance. Subtenant/Operator shall maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Subtenant/Operator's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than One Million Dollars ($1,000,000) each accident.

(iv) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Subtenant/Operator shall maintain, or require by written contract that its remediation contractor or remediation consultant shall maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(v) Professional Liability. Subtenant/Operator shall require by written contract that professionals it engages maintain professional liability (errors and omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Subtenant/Operator's activities under this Agreement, with a deductible or self-insured retention reasonably approved by City (such approval not to be unreasonably withheld, conditioned, or delayed), with such insurance to be maintained during any period for which such professional services are being performed and for five (5) years following the completion of any such professional services.

(vi) Other Insurance. Subtenant/Operator shall obtain such other insurance as is reasonably requested by City's Risk Manager and memorialized in a mutually-agreed amendment to this Agreement and as is customary for a comparable civic and cultural center in the San Francisco Bay area.

(b) General Requirements. All insurance required under this Agreement:

(i) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS,

DIRECTORS, EMPLOYEES AND AGENTS AND THE YERBA BUENA GARDENS CONSERVANCY AND ITS DIRECTORS, EMPLOYEES AND AGENTS." Subtenant/Operator shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(ii) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(iii) Shall be evaluated by City for adequacy not less frequently than every five (5) years. Following consultation with Subtenant/Operator, City may, upon not less than ninety (90) days prior written notice, require Subtenant/Operator to increase the insurance limits for all or any of its umbrella liability policies if in the reasonable judgment of the City's Risk Manager it would be commercially reasonable to do so, when compared with facilities similar to the Premises in the San Francisco Bay area, to maintain limits substantially greater than the amounts carried by Subtenant/Operator with respect to risks associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of commercial practice in the San Francisco Bay area and the risks associated with use of the Premises, City shall notify Subtenant/Operator of such determination, and Subtenant/Operator shall have the right to decrease the umbrella liability insurance required under this Agreement accordingly. In any such event, Subtenant/Operator shall promptly deliver to City a certificate evidencing such new insurance limits and meeting all other requirements under this Agreement with respect thereto.

(iv) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(v) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Sections 22.1(b)(i) and (ii);

(vi) Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Agreement and shall not be unreasonably withheld, conditioned or delayed; and

(vii) Except for professional liability insurance which shall be maintained in accordance with Section 22.1(a)(v), if any of the insurance required hereunder is provided under a claims-made form of policy, Subtenant/Operator shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Agreement, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Agreement.

(c) Certificates of Insurance; Right of to Maintain Insurance. Subtenant/Operator shall furnish City certificates with respect to the policies required under Section 22.1(a), together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Subtenant/Operator shall provide City with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide City with notice of reduction in coverage limits within thirty (30) days of Subtenant/Operator's knowledge of such event. If at any time Subtenant/Operator fails to maintain the insurance required pursuant to Section 22.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Subtenant/Operator and opportunity to cure, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within thirty (30) days following demand, Subtenant/Operator shall reimburse City for all reasonable premiums so paid by City, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 22.1(a)(i), (ii) or (v) to the extent that such losses and damages are paid by an insurer.

SPECIAL PROVISIONS

Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Agreement are incorporated by reference as though fully set forth in this Agreement. The descriptions below are not comprehensive but are provided for notice purposes only; Subtenant/Operator is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Agreement shall have the meanings given to them in the cited ordinance. Failure of Subtenant/Operator to comply with any provision of this Agreement relating to any such code provision shall be governed by Article 26 of this Agreement, unless (i) such failure is otherwise specifically addressed in this Agreement or (ii) such failure is specifically addressed by the applicable code section. Subtenant/Operator hereby agrees to comply with the applicable provisions of the following code sections as such sections may apply to the Premises.

Non-Discrimination.

(d) Covenant Not to Discriminate. In the performance of this Agreement, Subtenant/Operator will not to discriminate against any employee, any City employee working with Subtenant/Operator, or applicant for employment with Subtenant/Operator, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of

a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes.

(e) Subleases and Other Subcontracts. Subtenant/Operator will include in all Subleases and other Agreements relating to the Premises a non-discrimination clause applicable to the Subtenant, Operator, or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant/Operator will incorporate by reference in all Agreements the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all Subtenants, Operators, and other subcontractors to comply with those provisions. Subtenant/Operator's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

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

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

(h) 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 City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Agreement. Subtenant/Operator will comply fully with and be bound by all of the provisions that apply to this Agreement under those Chapters of the Administrative Code, including but not limited to the remedies provided in those Chapters. Without limiting the foregoing, Subtenant/Operator understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars ($50) for each person for each calendar day during which the person was discriminated against in violation of the provisions of this Agreement may be assessed against Subtenant/Operator and/or deducted from any payments due Subtenant/Operator.

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. Subtenant/Operator acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Subtenant/Operator shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant/Operator fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant/Operator shall be liable for liquidated damages for each violation in any amount equal to Subtenant/Operator's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

Tobacco Product Advertising Prohibition.

Subtenant/Operator acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sunshine Ordinance.

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

Waiver of Relocation Assistance Rights.

Subtenant/Operator acknowledges that it will not be a displaced person at the time this Agreement is terminated or expires by its own terms, and Subtenant/Operator fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Law, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Laws (including, but not limited to, California Government Code Section 7260 et seq. , or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq.).

Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Subtenant/Operator acknowledges and agrees that Subtenant/Operator shall comply, and it shall cause Subtenant/Operator's Subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

Conflicts of Interest.

Subtenant/Operator states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Subtenant/Operator becomes aware of any such fact during the terms of this Agreement Subtenant/Operator shall immediately notify the City. Subtenant/Operator further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Subtenant/Operator believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant/Operator to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Agreement.

First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Subtenant/Operator shall enter into one or more agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements. Subtenant/Operator shall comply with such First Source Hiring Agreements, with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

Public Access to Meetings and Records.

If Subtenant/Operator receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Subtenant/Operator shall comply with and be bound by all the applicable provisions of that Chapter. Subtenant/Operator agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Subtenant/Operator acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Subtenant/Operator further acknowledges that such material breach of the Agreement shall be grounds for City to terminate and/or not renew this Agreement, partially or in its entirety.

Resource-Efficient Building Ordinance; Energy Reporting.

Subtenant/Operator acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Subtenant/Operator hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises. Subtenant/Operator consents to Subtenant/Operator's utility service providers disclosing, and will obtain consent from all Subtenants and Operators for their utility providers to disclose, energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

Drug Free Work Place.

Subtenant/Operator acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Subtenant/Operator agrees that any violation of this prohibition by Subtenant/Operator, its Agents, or assigns shall be deemed a material breach of this Agreement.

Preservative Treated Wood Containing Arsenic.

Subtenant/Operator may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant/Operator may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Subtenant/Operator from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall

mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Compliance with Disabled Access Laws; Accessibility Disclosures.

(i) Subtenant/Operator acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Subtenant/Operator or contractor, must be accessible to the disabled public. Subtenant/Operator shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

(j) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Subtenant/Operator is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Subtenant/Operator from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Subtenant/Operator if requested by Subtenant/Operator. City and Subtenant/Operator will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Graffiti.

Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Subtenant/Operator shall remove all graffiti from the Premises and any real property owned or leased by Subtenant/Operator in the City and County of San Francisco within two (2) business days of the earlier of Subtenant/Operator's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Subtenant/Operator to breach any lease or other agreement that it may have concerning its use of the real property. The team "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and

without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Subtenant/Operator to comply with this Section of this Agreement shall constitute a default of this Agreement.

Notification of Limitations in Contributions.

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

Food Service Waste Reduction.

Subtenant/Operator will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules, and will include the provisions in where applicable in Agreements. The provisions of Chapter 16 are incorporated into this Agreement by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement,

Subtenant/Operator acknowledges that the Food Service and Packaging Waste Reduction Ordinance contains penalties for noncompliance of One Hundred Dollars ($100.00) for the first breach, Two Hundred Dollars ($200.00) for the second breach in the same year, and Five Hundred Dollars ($500.00) for subsequent breaches in the same year and agrees that these sums are reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Agreement, at law, or in equity.

San Francisco Packaged Water Ordinance.

Subtenant/Operator will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Subtenant/Operator may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Subtenant/Operator obtains a waiver from the City's Department of the Environment. If Subtenant/Operator violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

Vending Machines; Nutritional Standards.

Subtenant/Operator may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Subtenant/Operator will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be a material breach of this Agreement. Without limiting Landlord's other rights and remedies under this Agreement, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

All-Gender Toilet Facilities.

If applicable, Subtenant/Operator will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Subtenant/Operator has any question about applicability or compliance, Subtenant/Operator should contact the Director of Property for guidance.

Criminal History in Hiring and Employment Decisions.

(c) Unless exempt, Subtenant/Operator will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Agreement as if fully set forth, with respect to applicants and employees of Subtenant/Operator who would be or are performing work at the Premises.

(d) Subtenant/Operator must incorporate by reference the provisions of Chapter 12T in all Agreements for some or all of the Premises, and require all Subtenants and Operators to comply with those provisions. Subtenant/Operator's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(e) Subtenant/Operator and Subtenants and Operators may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(f) Subtenant/Operator and Subtenants and Operators may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Subtenant/Operator and Subtenants and Operators may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(g) Subtenant/Operator and Subtenants and Operators will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Subtenant/Operator or Subtenant or Operator at the Premises, that the Subtenant/Operator or Subtenants or Operators will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(h) Subtenant/Operator and Subtenants and Operators will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(i) Subtenant/Operator and Subtenants and Operators understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Agreement, including, but not limited to a, penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Agreement in whole or in part.

(j) If Subtenant/Operator has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

Requiring Health Benefits for Covered Employees.

(k) Unless exempt, Subtenant/Operator will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Agreement have the meanings assigned to those terms in Chapter 12Q.

(l) For each Covered Employee, Subtenant/Operator will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant/Operator chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(m) Notwithstanding the above, if the Subtenant/Operator is a small business as defined in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with subsection (a) above.

(n) Subtenant/Operator's failure to comply with the HCAO will constitute a material breach of this Agreement. City will notify Subtenant/Operator if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Subtenant/Operator fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Subtenant/Operator fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(o) Any Subcontract (as defined in Chapter 12Q) entered into by Subtenant/Operator must require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Subtenant/Operator will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant/Operator will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Subtenant/Operator based on the Subcontractor's failure to comply, provided that City has first provided Subtenant/Operator with notice and an opportunity to cure the violation.

(p) Subtenant/Operator may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Subtenant/Operator's

compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(q) Subtenant/Operator represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(r) Subtenant/Operator will keep itself informed of the current requirements of the HCAO.

(s) Subtenant/Operator will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(t) Subtenant/Operator will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(u) City may conduct random audits of Subtenant/Operator to ascertain its compliance with HCAO. Subtenant/Operator will cooperate with City when it conducts the audits.

(v) If Subtenant/Operator is exempt from the HCAO when this Agreement is executed because its amount is less than Fifty Thousand Dollars ($50,000), but Subtenant/Operator later enters into an agreement or agreements that cause Subtenant/Operator's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant/Operator and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

Public Transit Information

At its sole expense, Subtenant/Operator will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant/Operator employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Building and encouraging use of them.

Taxes, Assessments, Licenses, Permit Fees, and Liens

(k) Subtenant/Operator recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Subtenant/Operator may be subject to the payment of property taxes levied on its possessory interest.

(l) Subtenant/Operator will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Agreement and to pay all other taxes, excises, licenses, permit charges, and assessments based on Subtenant/Operator’s use of the Premises and imposed on Subtenant/Operator by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(m) Subtenant/Operator will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Subtenant/Operator, if it desires, may have reasonable opportunity to contest the validity of the same.

(n) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Agreement be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Subtenant/Operator must provide a copy of this Agreement to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Subtenant/Operator to timely provide a copy of this Agreement to the County Assessor will be a default under this Agreement. Subtenant/Operator will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

Restrictions on the Use of Pesticides

(o) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Subtenant/Operator may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant/Operator may need to apply to the Premises during the Term, (ii) describes the steps Subtenant/Operator will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Subtenant/Operator's primary IPM contact person with City. Subtenant/Operator will comply, and will require all of Subtenant/Operator's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Subtenant/Operator were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Subtenant/Operator to keep certain records and to report to City all pesticide use at the Premises by Subtenant/Operator's staff or contractors.

(p) If Subtenant/Operator or Subtenant/Operator's contractor would apply pesticides to outdoor areas at the Premises, Subtenant/Operator will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

Prohibition of Alcoholic Beverage Advertising

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

Subtenant/Operator's Compliance with City Business and Tax and Regulations Code

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

EXHIBIT J

EXISTING PRIORITY REQUIREMENTS FOR THE USE OF LEASE REVENUES UNDER THE METREON LEASE, CB-1 RETAIL LEASE, AND CB-1 REA

The following agreements include priority of use requirements for Gross Revenues (as defined in the Agreement):

1. CB-2 Entertainment and Retail Lease ("Metreon Lease") dated May 9, 1997
2. CB-1 Retail Lease (for the Yerba Buena Lane commercial parcels) dated March 31, 1998
3. Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens ("CB-1 REA") dated March 31, 1998

Relevant excerpts from the above-noted agreements are included below in addition to the priority of use requirements of each agreement.

Metreon Lease

Section 2.14(b):

"Because of the integrated nature of the development of CB-2 and the CB-3 Gardens Parcel; and because of the importance to the Landlord that the uses on such real property be successfully operated as part of the integrated development; and because appropriate operation of the cultural activities by Landlord's cultural subtenants and sub-subtenants, and the appropriate operation, maintenance and security of the Gardens Parcels is necessary to the integration and feasibility of the development, directly benefits Tenant and is important to Tenant, and, in the opinion of the parties, essential to the ultimate commercial and noncommercial success of the uses and CB-2 and the CB-3 Gardens Parcel, Landlord shall establish a separate bank account (the **"Separate Account")**[1] into which:

(i) Tenant, shall pay its share of the GMOS, as provided in Section 2.15;
(ii) Tenant shall pay Rent;
(iii) Landlord shall deposit all rent received from the tenant under the Hotel Lease (Marriott Lease) or other tenants of the CB-2 Hotel Parcel; and
(iv) Other tenants of Landlord may deposit rent and other sums.

CB-1 Retail Lease

Section 2.7(b):

[1] Now referenced as the "Accounts" under the Lease.

"Because of the integrated nature of the development of CB-1 and the Gardens Parcels; and because of the importance to the Landlord that the uses on such real property be successfully operated as part of the integrated development; and because appropriate operation of the cultural activities by Landlord's cultural subtenants and sub-subtenants, and the appropriate operation, maintenance and security of the Gardens Parcels is necessary to the integration and feasibility of the development, directly benefits Tenant and is important to Tenant, and, in the opinion of the parties, essential to the ultimate commercial and noncommercial success of the uses and CB-1, CB-2 and the Gardens Parcels, Landlord shall, in accordance with term and provisions of the CB-2 Lease, establish a separate bank account (the **"Separate Account")** into which:

(i) Tenant, shall pay its share of the GMOS, as provided in Section 2.8;
(ii) Tenant shall pay Rent;
(iii) Landlord shall deposit all rent received from the tenant under the Hotel Lease (Marriott Lease) or other tenants of the CB-1; and
(iv) Other tenants of Landlord may deposit rent and other sums.

CB-1 REA

Section 7.7.(2):

"A separate account (the "**Separate Account**") shall be established by SFRA at a bank or trust company designated by SFRA having an office in San Francisco, California, and which has capital and surplus of at least Fifty Million Dollars ($50,000,000), into which SFRA shall deposit all amounts received by it which comprise Net Cash Flow [i.e., rent revenue, any revenue in connection with the use of any portion of the CB-1 Real Property, or any portion of CB-2 or CB-3, and interest earnings]."

Funds are disbursed from the Accounts for the following restricted uses:

Metreon Lease

Section 2.14(e): "Until the same (GMOS) has been paid in full for any calendar year, the Landlord shall pay the **CMO** ([City's] annual payments to [City's] cultural tenants or operators…for operating, maintaining and securing the [City]-owned Cultural Parcels) and the **GMOS** (annual expenditure of maintenance costs for the Gardens for the maintenance, operation and security of the Gardens Parcels … and costs of Promotional Events in the Gardens) from the [Accounts] and shall not use funds in the [Accounts] for any other purpose. Until GMOS for any Lease Year has been paid in full, Landlord shall use that portion of the GMOS paid to Landlord by Tenant solely for uses required by this Lease."

Section 2.14(f): "After payment in full of the applicable CMO and GMOS for any calendar year, at the option of the Landlord, unexpended and legally uncommitted amounts remaining in the [Accounts] may be paid to Landlord or carried forward."

Section 2.14(g): "Landlord shall maintain, repair and operate the Gardens Parcels as a first-class open space, consistent with the level of maintenance, repair and operation required of Tenant with respect to the Premises."

CB-1 Retail Lease

Section 2.7(a)(i): "GMOS means the [City's] annual expenditure of maintenance costs for the Gardens Parcels to be made pursuant to the Gardens Budget for maintenance, operation and security of the Gardens Parcels necessary to maintain, operate and secure the Gardens Parcels in a first-class condition, and costs of promotional, marketing, cultural and recreational events in the Gardens Parcels limited, however, to the funds annually available for such purposes from the [Accounts].

Any income from promotional, marketing, cultural and recreational events in the Gardens Parcels shall be utilized to offset the costs thereof and any excess after the payment of such costs shall be deposited into the [Accounts].

Section 2.7(e): "…the Landlord shall pay the GMOS from the [Accounts] and shall not use funds in the [Accounts] for any other purpose. Until GMOS for any Lease Year has been paid in full, Landlord shall use that portion of the GMOS paid to Landlord by Tenant solely for uses required by this Lease."

Section 2.7(f): "After payment in full of the applicable GMOS for any calendar year, at the option of the Landlord, unexpended and legally uncommitted amounts remaining in the [Accounts] may be paid to Landlord or carried forward."

Section 2.7(g): "…Landlord shall maintain, repair and operate the Gardens Parcels as a first-class open space, consistent with the level of maintenance, repair and operation …"

CB-1 REA

Section 7.7(2)

"Funds from the [Accounts] shall be applied by [City] in the following order and priority, to the extent that [City] does not pay such obligations from sums obtained from other sources:

(a) First, to the payment of all costs of maintenance, operation and security of gardens and open space uses developed by SFRA on CB-2 and CB-3;
(b) Then, to the payment of [City] to [City's] cultural tenants or operators, in such amount as [City] shall be obligated to pay such cultural tenants and/or operators for operating, maintaining, repairing and securing [City]-owned cultural parcels and/or [City's] subleased property located on CB-2;
(c) Then, to the payment by [City] of its Allocable Share of Allocable Costs as Owner under this Section 7.7(2), first to the extent of any unpaid portion thereof for the Accounting Period preceding the current Accounting Period…, and thereafter to its Allocable Share of Allocable Costs for the current Accounting Period;

(d) Then, to the payment of rent to the City and County of San Francisco, if applicable, under SFRA's lease of all portions of CB-3[2];
(e) Then in such manner as [City] shall determine in its sole and absolute discretion."

[2] No longer applicable following the transfer of the Premises to the City.

EXHIBIT K

GMOS PAYMENT AGREEMENTS

1. Commercial Retail Lease dated as of October 18, 2005, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and PJR LLC, as tenant, as amended by the First Amendment to Commercial Retail Lease dated September 14, 2015 (the "Samovar Lease").

2. Commercial Retail Lease dated as of January 17, 2006, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Gourmet Provisions, LLC, as tenant, as amended by the First Amendment to Commercial Retail Lease dated September 14, 2015 (the "B Café Lease").

3. Central Block 2 Entertainment and Retail Lease dated May 9, 1997, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Yerba Buena Entertainment Center, as tenant (the "Metreon Lease").

4. Central Block 1 Retail Lease dated as of March 31, 1998 between the Redevelopment Agency of the City and County of San Francisco, as landlord, and CB-1 Entertainment Partners LP, as tenant (the "CB-1 Retail Lease").

EXHIBIT L

DEVELOPER EXACTIONS AGREEMENTS

1. Development Agreement dated as of December _____, 2015, between the City and County of San Francisco and 5M Project, LLC, and recorded on January 4, 2016, in Book ____, Page ____, as Document No. 2016-K183795-00

2. Disposition and Development Agreement dated as of May 25, 1999, between the Redevelopment Agency of the City and County of San Francisco and CC California LLC, and recorded on November 17, 2000, in Book H767, Page 0369, as Document No. 2000-G865171-01, as assigned and amended ("St. Regis DDA").

3. Agreement for the Purchase and Sale of Real Property dated as of July 16, 2013, between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, as transferor, 706 Mission Street Co LLC, as transferee, and The Mexican Museum, as third party beneficiary, and recorded on April 17, 2014, as Document No. 2014-J864850-00 (the ("706 Mission PSA") with respect to 50% of the "Open Space Fee" described in Section 8.3(a)-(c) of the 706 Mission PSA.

EXHIBIT M

FORM OF FIRST SOURCE HIRING AGREEMENT

(Attached)

EXHIBIT N

FORM MEMORANDUM OF LEASE

(Attached)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

The undersigned hereby declare this instrument to be exempt from recording fees per Government Code §27383 and §27388.1

Space Above for Recorder's Use

APNs: _____

MEMORANDUM OF LEASE

This Memorandum of Lease (this "**Memorandum**") is dated as of _____, 2019 (the "**Effective Date**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Department of Real Estate ("**City**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation ("**Tenant**").

R E C I T A L S

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted as the "Premises" on Exhibit B attached hereto (the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3" and includes the Yerba Buena Gardens. Notwithstanding the foregoing, the Premises shall exclude the Substructure (as defined in the Lease, which is in turn defined in Recital C below).

B. City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted as the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas" on Exhibit B attached hereto (collectively, the "**City Retained Areas**"), which City Retained Areas are composed of the Retained Lease Areas, the Retained Public Space Areas, and the Retained Other Gardens Areas, as each of those terms is defined in the Lease (as defined in Recital C below). The City Retained Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The City Retained Areas are not included in the Premises; however, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and Retained Public Space Areas, including over certain leases, subleases, licenses, concessions or other agreements for the use or occupancy of the Retained Lease Areas or the Retained Public Space

Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

C. Concurrently herewith, City and Tenant have entered into that certain unrecorded Lease (the "**Lease**"), pursuant to which City has leased the Premises to Tenant, subject to the terms and conditions set forth therein. Also concurrently herewith, City and Tenant have entered into that certain Assignment and Assumption Agreement (Yerba Buena Gardens Leases and Contracts) (the "**Assignment of Agreements**"), pursuant to which City has assigned, and Tenant has assumed the "Existing Subleases and Agreements" (as defined in the Assignment of Agreements), subject to the terms and conditions set forth in the Assignment of Agreements and the Lease.

D. City and Tenant desire to execute this Memorandum to provide constructive notice of City's and Tenant's rights under the Lease to all third parties.

A G R E E M E N T

1. Lease of the Premises. Pursuant to the Lease, which Lease is incorporated herein by this reference, City has leased to Tenant, and Tenant has leased from City, the Premises and all improvements affixed thereto. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall govern and control.

2. City Retained Areas. Pursuant to the Lease, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and the Retained Public Space Areas, including over certain leases, subleases, licenses, concessions or other agreements for the use or occupancy of the Retained Lease Areas or the Retained Public Space Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

3. Term. The term of the Lease commenced on the Effective Date and shall expire with respect to the entire Premises on September 1, 2061, unless earlier terminated in accordance with the terms of the Lease.

4. Counterparts. This Memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the Effective Date.

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

TENANT: YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

[To Be Attached]

EXHIBIT B TO MEMORANDUM OF LEASE

DIAGRAM OF PREMISES AND CITY RETAINED AREAS

[To Be Attached]

EXHIBIT O

MODIFICATIONS TO REPORTING REQUIREMENTS FROM SECTIONS 7.3A, 10.2 & 10.3

[To be attached after Lease execution, if necessary]

TABLE OF CONTENTS

CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
as Landlord

and

YERBA BUENA GARDENS CONSERVANCY,
a California nonprofit public benefit corporation
as Tenant

for the lease of real property and improvements
collectively known as the Yerba Buena Gardens

in San Francisco, California

Dated as of _____

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LEASE

THIS LEASE (this "**Lease**"), dated for reference purposes as of _____, 2019, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit corporation (the "**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted on Exhibit B-1 attached hereto (as further defined in Section 1.73 and Section 2.1 below, the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3," and includes the Yerba Buena Gardens.

B. The City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-2 attached hereto (the "**Retained Lease Areas**"). The Retained Lease Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The Retained Lease Areas are not part of the Premises; however, revenue generated from the Retained Lease Areas is dedicated to fund the operation, maintenance, security, and capital improvement of the Premises and Tenant shall have certain other rights with respect to the Retained Lease Areas as set forth in this Lease

C. The City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-3 attached hereto (the "**Retained Public Space Areas**"). The Retained Public Space Areas are not part of the Premises; however, Tenant shall have certain rights and obligations with respect to the Retained Public Space Areas as set forth in this Lease.

D. The City is also the owner in fee simple of other real property located in the City and County of San Francisco, State of California, depicted on Exhibit B-4 attached hereto (the "**Retained Other Gardens Areas**), which as of the reference date of the Lease, are not incorporated into the Lease. Any Retained Other Gardens Areas are not part of the Premises as of the Effective Date; however, Tenant shall also have certain rights with respect to the Retained Other Gardens Areas as set forth in Section 2.6 of this Lease.

E. The Premises, the Retained Lease Areas, the Retained Public Space Areas, and any Retained Other Gardens Areas (collectively, the "**Yerba Buena Gardens Properties**") are located within the boundaries of the former Yerba Buena Center Approved Redevelopment Project Area D-1 (the "**Project Area**") and was subject to the Redevelopment Plan for the Yerba Buena Center Approved Redevelopment Project Area D-1 (the "**Redevelopment Plan**"), which was duly adopted by Ordinance No. 98-66 (April 29, 1966) in accordance with Community Redevelopment Law, and which expired by its own terms on January 1, 2011. The objectives of

the Redevelopment Plan included the development of destination cultural facilities, public open spaces, museums, hotels, and market-rate and affordable housing in the Project Area.

F. Pursuant to Section 3.3(b) and Section 27.3, the parties may agree or, pursuant to certain remedies under the terms of this Lease, to cause certain City property described, depicted or contemplated under this Lease to be considered as Retained Other Gardens Areas, Retained Public Space Areas or to be incorporated as part of the Premises, and the Lease shall be administratively amended to describe and depict such properties on the applicable exhibit(s) within this Lease.

G. From 1967 to 1983, the former Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic (the "**SFRA**") acquired the parcels of land that constitute the Yerba Buena Gardens Properties for the purpose of satisfying the objectives of the Redevelopment Plan. The improvements on the Yerba Buena Gardens Properties were constructed between 1993 and 2008 and represent a civic investment of approximately $175 million. The Yerba Buena Gardens Properties now consist of a collection of urban mixed-use spaces that include private uses (*i.e.,* commercial and retail properties) that are primarily located on the Retained Lease Areas and public uses (*i.e.,* cultural facilities, performance venues, recreational venues, and vast amounts of public open space that includes garden areas, plazas, children's play areas, artwork, a historic carousel, and fountains) that are primarily located on the Premises.

H. For almost 30 years, the SFRA developed, owned, and managed the Yerba Buena Gardens Properties as a self-financing portfolio of public assets, where revenue from the private uses (including lease payments, developer exactions, and fees) supported the maintenance of the public uses and the operation of the cultural facilities. Pursuant to certain enforceable obligations related to the Yerba Buena Gardens Properties, the SFRA was obligated to use this revenue to operate, maintain, and program the open space and cultural operations at the Premises. The enforceable obligations also required the SFRA to deposit certain revenues generated from the Yerba Buena Gardens Properties into a restricted, segregated account.

I. On February 1, 2012, the SFRA was dissolved pursuant to California Health and Safety Code Sections 34170 *et seq.* (the "**Redevelopment Dissolution Law**"). As a result of dissolution, all of the SFRA's non-housing assets, including the Premises, were transferred to the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (the "**Successor Agency**" and commonly known as the Office of Community Investment and Infrastructure or "**OCII**"), and the Successor Agency assumed all of the authority, rights, powers, duties, and obligations of the SFRA that remained after its dissolution. (Cal. Health & Safety Code 34173 (a).)

J. As required by the Redevelopment Dissolution Law, the Successor Agency prepared a Long-Range Property Management Plan ("**PMP**"), which sets forth an inventory and disposition plan for all the property that the Successor Agency owns or leases, including the Premises. On November 25, 2013, by Resolution No. 12-2013, the Oversight Board to the Successor Agency approved the PMP, which was subsequently transmitted to the State Department of Finance ("**DOF**") for review and approval. In response to comments from

DOF, the Successor Agency revised the PMP, and on November 23, 2015, by Resolution No. 14-2015, the Oversight Board approved the revisions to the PMP requested by DOF. Pursuant to a letter dated December 7, 2015, DOF approved the revised PMP.

K. The PMP proposed that the Successor Agency would transfer the Yerba Buena Gardens Properties, related enforceable obligations, and associated operating and reserve accounts to the City, and that the City would manage the Yerba Buena Gardens Properties as a single, unified set of properties using the revenues currently generated from the Yerba Buena Gardens Properties. The PMP stated that the City and Yerba Buena Gardens community stakeholders were working together to determine the best management structure for the Yerba Buena Gardens Properties, and that the community had expressed a strong preference for a management model that involved a community-based, non-profit entity managing the Premises under a master lease agreement with the City.

L. The SFRA originally acquired the Yerba Buena Gardens Properties with urban renewal funds provided through a federal Contract for Loan and Capital Grant dated December 2, 1966 (Contract No. Calif. R-59) and approved by the U.S. Department of Housing and Urban Renewal (the "**HUD Contract**"). Under the HUD Contract, the SFRA was required to use the federal funds to carry out redevelopment activities in accordance with the Redevelopment Plan and the federal standards for urban renewal under Title I of the Housing Act of 1949. Upon the demise of the federal urban renewal grant program, HUD required that the SFRA treat all future proceeds from the sale or lease of the Yerba Buena Gardens Properties as program income under the federal Community Development Block Grant ("**CDBG**") program ("**Program Income**"), as set forth in the Yerba Buena Center Redevelopment Project Closeout Agreement ("**YBC Closeout Agreement**"), executed in 1983 by the SFRA and the City with HUD concurrence, and attached hereto as Exhibit C.

M. In 1999, the SFRA established a capital reserve for the Yerba Buena Gardens Properties, including, but not limited to, the Premises and the Retained Other Gardens Areas to ensure that adequate funds would be available to replace, repair, and renovate the public facilities at Yerba Buena Gardens Properties over the coming decades. The Successor Agency has funded the capital reserve from excess operating revenue to the extent available.

N. On, or prior to the Effective Date, Successor Agency has: (i) conveyed fee title to the Yerba Buena Gardens Properties; (ii) assigned the enforceable obligations relating to the Yerba Buena Gardens Properties to City; (iii) transferred the associated operating and reserve accounts for the Premises to City.

O. The City and Tenant now desire to enter into this Lease upon the terms, conditions, and covenants set forth herein.

P. All initially capitalized terms used herein are defined in Article 1 below or have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in this Article. In the event of any conflict between a definition given in this Article and any more specific provision of this Lease, the more specific provision shall control.

1.1 "**Accounts**" has the meaning set forth in Section 7.3(b)i.

1.2 **"Acknowledged Non-Conforming Agreement"** has the meaning set forth in Section 6.3(i).

1.3 "**Additional Rent**" means any and all sums (other than the payment of Base Rent) that may become due or be payable by Tenant under this Lease as further defined in Section 10.5.

1.4 "**Agents**" means, when used with reference to either Party to this Lease or any other person or entity, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other person or entity, and their respective heirs, legal representatives, successors and assigns.

1.5 "**Agreement**" means any lease, sublease, license, operating agreement, management agreement, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Agreements.

1.6 **"Agreement Conditions"** has the meaning set forth in Section 6.3(c).

1.7 **"Assignment of Agreements"** means that certain Assignment and Assumption Agreement (Yerba Buena Gardens Leases and Contracts) assigning certain agreements, while reserving certain rights regarding payment of Gross Revenues, to the Tenant pursuant to the terms of this Lease and attached hereto as Exhibit D.

1.8 "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of the City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications, expenses, court costs and other costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law films with approximately the same number of attorneys as employed by the City Attorney's Office.

1.9 "**Award**" means all compensation, sums or value paid, awarded or received for a Condemnation, whether pursuant to judgment, agreement, settlement or otherwise.

1.10 "**Base Rent**" has the meaning set forth in Section 10.1.

1.11 "**Books and Records**" has the meaning set forth in Section 7.3(d).

1.12 "**Building Permit**" means a building or site permit issued by the City's Department of Building Inspection.

1.13 "**Capital Repairs and Replacements**" has the meaning set forth in Section 7.3(b)(v).

1.14 "**CB-1 REA**" means that certain Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens, dated as of March 31, 1998, and recorded in the Official Records on April 7, 1998 as Document Number 98-G331392-00, as amended by that certain First Amendment to Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated as of October 28, 1998, and recorded in the Official Records on October 28, 1998 as Document Number 98-G458534-00, as furtherer amended by that certain Second Amendment to Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens dated as of May 24, 2016, and recorded in the Official Records on May 24, 2016 as Document Number 2016-K250102.

1.15 "**CB-1 Retail Lease**" means that certain Central Block 1 Retail Lease dated as of March 31, 1998 and recorded in the Official Records on April 7, 1998, as Instrument No. 1998-G331396, as amended by that certain Amendment to Legal Description of Central Block 1 Retail Lease dated as of October 28, 1998, and recorded in the Official Records on October 28, 1998 as Instrument No. 1998-G458536, as amended by that certain Second Amendment to Central Block 1 Retail Lease dated as of October 22, 2002, and recorded in the Official Records on April 29, 2003, as Instrument No. 2003-H425860.

1.16 "**City Administrator**" means the City Administrator of the City and County of San Francisco or his or her designee, or successor that succeeds to the rights and obligations of the City Administrator under applicable Law.

1.17 "**City Costs**" has the meaning set forth in Section 10.9(a).

1.18 "**City Retained Areas**" means, collectively, the Retained Lease Areas, the Retained Public Space Areas, and the Retained Other Gardens Areas (if any) as depicted on Exhibit B-2, Exhibit B-3, and Exhibit B-4 hereto.

1.19 "**City Staff Costs**" means those City Costs incurred for City staff time in connection with fulfilling City's roles and responsibilities under this Lease, management of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not as regulator).

1.20 "**City Third Party Costs**" means those City Costs incurred that are not City Staff Costs, including City Costs incurred for consultants retained by City to perform internal tasks for the City in connection with fulfilling City's roles and responsibilities under this Lease,

management of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not in its regulatory capacity).

1.21 "**Commencement Date**" means the later of (i) the Effective Date, or (ii) the date that the deed transferring fee title to the Premises from OCII to the City is recorded in the official records of the City and County of San Francisco.

1.22 "**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the Law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any entity having the power of eminent domain (or to a designee of any such entity), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

1.23 "**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

1.24 "**Cultural Expenditures**" means the contributions of Program Income, subject to the priority of use requirements in Section 10.9(e) of this Lease, for third party costs, grants, and expenditures that Tenant incurs in connection with cultural programs and events at the Premises in accordance with the approved Annual Operating Budget, including without limitation, such expenditures made pursuant to applicable Operating Agreements and/or Subleases.

1.25 "**Default Rate**" means an annual interest rate equal to the lesser of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act. However, interest shall not be payable to the extent such payment would violate any applicable usury or similar law.

1.26 "**Deferred City Staff Costs**" has the meaning set forth in Section 10.9(d).

1.27 "**Disabled Access Laws**" means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and disabled access Laws under the City's building code.

1.28 "**Effective Date**" means the later of (i) the date on which the Parties have executed and delivered this Lease or (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

1.29 "**Estimated City Costs**" has the meaning set forth in Section 10.9(b).

1.30 "**Event of Default**" has the meaning set forth in Section 26.1.

1.31 "**Existing Agreements**" means the Existing Operating Agreements and the Existing Subleases existing upon or within the Premises as of the Effective Date.

1.32 "**Existing Improvements**" means all Improvements existing upon or within the Premises as of the Effective Date.

1.33 "**Existing Operating Agreements**" means the Operating Agreements and Management Agreement listed on Attachment 2 to Exhibit D hereto.

1.34 **"Existing Operators"** means any person or entity with a right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises pursuant to an Existing Operating Agreement

1.35 "**Existing Subleases**" means the Subleases listed on Attachment 1 to Exhibit D hereto.

1.36 "**Existing Subtenants**" means any person or entity with a possessory interest in any portion of the Premises pursuant to an Existing Sublease.

1.37 "**Expiration Date**" means September 1, 2061.

1.38 "**Final Construction Documents**" means plans and specifications sufficient for the processing of an application for a Building Permit in accordance with applicable Laws.

1.39 "**Force Majeure**" means events or conditions which result in delays in a Party's performance (excluding a Party's performance of the payment of money required under the terms of this Lease) of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of the delayed Party, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, war, explosion, invasion, insurrection, rebellion, riots, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, and inclement weather which is materially inconsistent with customary weather patterns. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, and to Restore if appropriate, and to complete performance of the hindered act.

1.40 "**Gross Revenues**" has the meaning set forth in Section 7.3(a)(2).

1.41 "**Handle**" when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge, or dispose of any Hazardous Material. (**"Handling"** has a correlative meaning.)

1.42 "**Hazardous Material**" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under 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

any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

1.43 "**Hazardous Material Claims**" means any and all enforcement, investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City, or any of the other Indemnified Parties and any of their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

1.44 "**Hazardous Material Laws**" means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Material Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the Effective Date, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

1.45 "**Impositions**" has the meaning set forth in Section 11.1(b).

1.46 "**Improvements**" means all buildings, structures, fixtures, and other improvements erected, built, placed, installed, or constructed upon or within the Premises, including, but not limited to, the Existing Improvements.

1.47 "**Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City.

1.48 "**Indemnify**" means indemnify, defend, and hold harmless.

1.49 "**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

1.50 "**Initial Approved Annual Budget**" means the approved Annual Operating Budget and Annual Capital Budget for the period of July 1, 2019 through June 30, 2020 attached hereto as Exhibit E.

1.51 **"Invitees"** when used with respect to Tenant means the customers, patrons, invitees, guests, permittees, members, contractors, assignees, transferees, and Subtenants of Tenant and the customers, patrons, invitees, guests, permittees, members, contractors, licensees, concessionaires, assignees, transferees, and sub-tenants of such Subtenants.

1.52 **"Law"** or "**Laws**" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises, or any portion of any of them (including, without limitation, any subsurface area, the use thereof and of the Premises, or any portion thereof, and of the Improvements thereon), whether or not in the contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county, and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Premises, or any portion thereof. The term Law or Laws shall also include Tenant's compliance with General Order 143-B and 95 of the Public Utilities Commission of the State of California (notwithstanding the fact that such General Orders may not be directly applicable to Tenant).

1.53 **"Lease"** means this Lease, as it may be amended from time to time in accordance with its terms.

1.54 **"Lease Year"** means, for the Term of this Lease, any applicable twelve (12) month period beginning on the Commencement Date, or the applicable anniversary thereof and ending on the date immediately prior to the next succeeding anniversary of the Commencement Date.

1.55 **"Loss"** or **"Losses"** means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, (including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits, or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

1.56 **"Major Damage or Destruction"** means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed eighty percent (80%) of the hard costs to replace such Improvements on the Premises in

their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

1.57 **"Management Agreement"** has the meaning set forth in Section 7.2(a).

1.58 **"Manager"** has the meaning set forth in Section 7.2(a).

1.59 **"Market Rent"** has the meaning set forth in Section 6.4(a).

1.60 **"Mortgage"** means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.

1.61 **"Mortgagee"** means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is, being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

1.62 **"Net Awards and Payments"** has the meaning set forth in Section 19.4.

1.63 **"Net Effective Rental Rate"** means the rental rate, including periodic increases, minus the tenant improvement allowance (other than any tenant improvement allowance for "green building" components, equipment, or other features intended to assist a Subtenant in complying with applicable "green building" Laws) and the value of all leasing concessions amortized over the Sublease term, on a per square foot basis.

1.64 "**OCII**" has the meaning set forth in Recital F.

1.65 **"Official Records"** means, with respect to the recordation of any documents and instruments, the Official Records of the City and County of San Francisco.

1.66 **"Operating Account"** has the meaning set forth in Section 7.3(b)(iii).

1.67 **"Operating Agreement"** means any operating agreement, Management Agreement, or other agreement, other than a Sublease, by which Tenant grants to any person or entity in conformity with the provisions of this Lease, the right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Operating Agreements.

1.68 **"Operating Reserve Account"** has the meaning set forth in Section 7.3(b)(iv).

1.69 **"Operator"** means any person or entity with a right or obligation to operate, manage, perform works on, occupy, or use any portion of the Premises by virtue of an Operating Agreement.

1.70 **"Partial Condemnation"** has the meaning set forth in Section 19.3(b).

1.71 **"Party"** means City or Tenant, as a party to this Lease; **"Parties"** means both City and Tenant, as Parties to this Lease.

1.72 **"Permitted Uses"** has the meaning set forth in Section 4.1.

1.73 **"Personal Property"** means all trade fixtures, furniture, furnishings, equipment, machinery, supplies, software, and other tangible personal property that is incident to the ownership, development, or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, and whether owned by Tenant, leased to Tenant pursuant to the terms of this Lease, and/or in which Tenant has or may hereafter acquire an ownership or leasehold interest, together with all present and future attachments, accessions, replacements, substitutions, and additions thereto or therefor.

1.74 **"Premises"** shall mean the real property and all Improvements affixed thereto from time to time leased to Tenant pursuant to the terms of this Lease. The "Premises" shall mean the real property and property rights described on Exhibit A attached hereto and depicted on Exhibit B-1 attached hereto (and further defined in Section 2.1 below). The Premises leased hereunder may be modified in accordance with the terms of this Lease, or by boundary adjustments or other modifications as may otherwise be agreed to by the Parties from time to time in one or more written Lease amendments to this Lease. The Premises shall include the Existing Improvements, together with any additions, modifications, or other Subsequent Improvements thereto permitted hereunder.

1.75 "**Prime Rate**" means the rate of interest designated as the "prime rate" in The Wall Street Journal, or, if such publication ceases to exist, in a business publication of similar substance and reputation thereto.

1.76 "**Program Income**" has the meaning set forth in Recital I.

1.77 "**Property Related Insurance**" means the insurance set forth in items (i), (ii), and (iii) of Section 22.1(b).

1.78 "**Regulatory Approval**" means any authorization, approval, or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Art Commission, and the City's Department of Building Inspection.

1.79 "**Release**" when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any Existing Improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

1.80 "**Retained Leases**" means those certain leases to which City is a party described on Exhibit F attached hereto.

1.81 "**Retained Lease Areas**" means that certain real property leased by the City to third parties pursuant to the Retained Leases as depicted on Exhibit B-2 attached hereto.

1.82 "**Retained Other Gardens Areas**" means that certain real property, if any, retained by the City as depicted on Exhibit B-4 attached hereto.

1.83 "**Retained Public Space Areas**" means that certain real property retained by the City as depicted on Exhibit B-3 attached hereto. (The Retained Public Space Areas are the portions of "Central Block 1" that are owned by the City and that are not Retained Lease Areas which are comprised entirely of (i) Jessie Square Plaza and; and (ii) the City Property connecting Jessie Square Plaza to Yerba Buena Lane (Yerba Buena Lane is a portion of the CB-1 Retail Lease Premises). The two areas within the Retained Public Space Areas plus Yerba Buena Lane are referred to as "Common Areas" under the CB-1 REA and have specific restrictions, rights and obligations assigned to the parties under the CB-1 REA.

1.84 "**Remediate**" or "**Remediation**" when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor, or otherwise control Hazardous Materials located in, on, under or about the Premises or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of "remedy" or "remedial action" in California Health and Safety Code Section 25322 and "remove" or "removal" in California Health and Safety Code Section 25323.

1.85 "**Rent**" means Base Rent and Additional Rent.

1.86 "**Rent Roll**" has the meaning set forth in Section 6.3(l).

1.87 "**Replacement Reserve Account**" has the meaning set forth in Section 7.3(b)(v).

1.88 "**Reserve Account**" has the meaning set forth in Section 7.3(b)(vi).

1.89 "**Restoration**" means the repair, restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable to substantially the same condition they were in immediately before an event of damage or destruction or, in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. All Restoration shall be conducted in accordance with the provisions of Article 16. ("**Restore**" and "**Restored**" have correlative meanings.) Notwithstanding the foregoing, in the event of a Major Damage or Destruction occurring at any time during the Term, Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements as Restored, constitute a first class civic and cultural destination. In connection with any such Restoration after an event of Major Damage or Destruction, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that Improvements so redesigned is a first class project affording similar public benefits as the original Existing Improvements.

1.90 "**Significant Change**" means any dissolution, merger, consolidation, or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in a Subtenant, directly or indirectly, in one or more transactions, by operation of law or otherwise, that results in any of the following: (1) a change in the identity of persons or entities controlling a Subtenant, provided that a Significant Change will not include the Transfer of

beneficial interests in any entity as a result of the trading of shares on the open-market where such entity is a publicly-traded company, (2) the admission of any equity investor that has the right to exercise day-to-day management or day-to-day control over the business of a Subtenant, (3) the dissolution of a Subtenant, (4) the sale of fifty percent (50%) or more of a Subtenant's assets, capital or profits, or the assets, capital or profit of any person or entity controlling the Subtenant, except for sales of publicly traded stock.

1.91 "**Sublease**" means any lease, sublease, license, concession, or other agreement by which Tenant leases, subleases, demises, licenses, or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities), including Existing Subleases.

1.92 "**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration, or modification of any Improvements, or any construction of additional Improvements after the Effective Date.

1.93 "**Substantial Condemnation**" has the meaning set forth in Section 19.3(a).

1.94 "**Subtenant**" means any person or entity leasing, occupying, or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

1.95 "**Supplemental Capital**" has the meaning set forth in Section 7.3.

1.96 "**Sufficient Restoration Funds**" has the meaning set forth in Section 18.3.

1.97 "**Tenant**" has the meaning set forth in the introductory paragraph of this Lease and includes Tenant's permitted successors and assigns.

1.98 "**Tenant's Restoration Funds**" has the meaning set forth in Section 18.3.

1.99 "**Term**" has the meaning set forth in Section 3.1.

1.100 "**Total Condemnation**" has the meaning set forth in Section 19.2.

1.101 "**Transfer**" means to sell, convey, assign, transfer, encumber, alienate, or otherwise dispose (directly or indirectly, by one or more transactions, and by operation of law or otherwise) of all or any interest or rights in the Premises, the Improvements, and/or this Lease, including but not limited to any right or obligation to develop or operate the Premises (other than pursuant to a Sublease made in the ordinary course), or otherwise do any of the above or make any contract of agreement to do any of the same, or permit a Significant Change to occur.

1.102 "**Uninsured Casualty**" has the meaning set forth in Section 18.4(a).

1.103 **"Unmatured Event of Default"** means any event, action, or inaction that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

1.104 "**Yerba Buena Gardens Properties**" means collectively the Premises and the City Retained Areas, as depicted on Exhibit B-1, Exhibit B-2, Exhibit B-3, and Exhibit B-4 attached hereto.

2. PREMISES; CONDITION OF PREMISES

2.1 Premises. For the Rent and subject to the terms and conditions of this Lease, City hereby leases to Tenant, and Tenant hereby leases from City, (a) the Premises, including, without limitation, the Existing Improvements, together with all rights, privileges, and licenses appurtenant to the Premises, and owned by City, and (b) the Personal Property used in the operation of the Premises and included in the Bill of Sale from OCII to City, as described in Exhibit G attached hereto. The Premises is depicted on Exhibit B-1 attached hereto. Portions of the Premises are presently occupied by the Existing Subtenants and Existing Operators pursuant to those Existing Agreements listed on Attachment 1 and Attachment 2 to the Assignment of Agreements attached hereto as Exhibit D and incorporated herein by reference, which Assignment of Agreements provides for the assignment from City, and the assignment and assumption by Tenant, of the Existing Operating Agreements and Existing Subleases as provided therein, and which Assignment of Agreements will be entered into by City and Tenant and effective concurrent with the Effective Date of this Lease. City shall have no obligation to deliver the Premises to Tenant free of occupancy by any of the Existing Subtenants or Existing Operators.

2.2 Correction of Premises Description.

The Parties reserve the right, upon mutual agreement of the City's Director of Property and Tenant, to enter into one or more memoranda setting forth the legal description of the Premises or technical corrections to reflect any non-material changes in the legal description and square footages of the Premises discovered after the Commencement Date, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

2.3 Condition of Premises.

(a) Condition of the Premises. Tenant represents and warrants that Tenant has had the opportunity to conduct inspections and investigations, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for the Permitted Use.

(b) Acceptance of Premises. Tenant acknowledges and agrees that the Premises, and each increment thereof, are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation, and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, and other title matters affecting the Premises or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological, or environmental condition of the Premises, including, without limitation, any water lines, sewer lines, or Existing Improvements, other facilities, structures,

equipment and Personal Property, or fixtures located on or under the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's intended uses, (v) the feasibility, cost, or legality of constructing any Improvements on the Premises, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Waiver and Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits, and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical, or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises (including, but not limited to, soils and groundwater conditions), (ii) any Laws applicable thereto, including without limitation, Hazardous Material Laws; provided that the foregoing waiver and release shall not be applicable in the event of the intentional concealment of a material fact or matter with respect to the Premises that was actually known by the City Administrator, the Director of Property, or any Indemnified Party at or before the Commencement Date and not disclosed to Tenant in writing.

In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Tenant's Initials: _____

Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(d) Assignment of Warranties. The City hereby assigns to Tenant for the Term of the Lease the City's interest in all warranties and guaranties relating to the Premises and the Existing Improvements that OCII provided to City or assigned to City, including pursuant to that certain Assignment and Assumption of Leases, Assignment and Assumption of Contracts, and Quitclaim of Improvements (Yerba Buena Gardens) dated June 27, 2018. City retains its warranties and guaranties relating to the City Retained Areas.

(e) Title Matters. Without limiting the foregoing provisions of this Section 2.2, City shall cooperate in good faith with Tenant's attempts to resolve title matters which

adversely affect the Premises, Tenant, or any Subtenant (including, to the extent necessary, making claims under the owner's policy of title insurance that City purchased in connection with the transfer of the Premises from the Successor Agency to the City).

(f) Work In Progress Improvements. With respect to any and all Improvements that have been or are being constructed as of the Effective Date and are related to the Moscone Expansion work in progress and are located within the area shown as the Premises on attached as Exhibit B-1 (the "**Work In Progress Improvements**") (which Work in Progress Improvements will not be included in the Premises until such time that a Notice of Final Completion related to such improvements is recorded, at which time such Work In Progress Improvements will automatically become part of the Premises), the City will retain the right and obligation, at the City's cost (and not as part of the City Costs that are reimbursed to City), to cause all such Work In Progress Improvements to be completed, even after the Effective Date, and the City will remain responsible for enforcing its rights with respect to any contractor warranties and guaranties under the existing agreements (the "**Existing Moscone Agreements**") related to such Work In Progress Improvements and the correction of any defects related to the Work In Progress Improvements (the "**Contract Work**"). Notwithstanding the foregoing, any work within the Premises that City and Tenant agree is required to be done by the City or is otherwise required to be done by City under the Lease beyond the Contract Work shall be covered as City Costs under the terms of this Lease. Tenant will be responsible for ordinary maintenance of the Work In Progress Improvements after recordation of the Notice of Final Completion related thereto, subject to City's enforcement of contractor warranties and guaranties and correction of any defects related to the Work In Progress Improvements as described in this Section 2.3(f).

2.4 Reserved Rights.

(a) Reserved Rights. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(i) Any and all water and water rights, including, but not limited to any and all surface water and surface water rights, riparian rights and appropriative water rights to surface streams and the underflow of streams;

(ii) Any and all minerals and mineral rights of every kind and character, now known to exist or hereafter discovered in the Premises, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to City or its successors and assigns, but without entering upon or using the surface of the lands of the Premises and conducted in such manner as not to damage the surface of the Premises or any Improvements constructed thereon or to interfere with the permitted use thereof by Tenant, without Tenant's prior written consent;

(iii) The right, subject to Tenant's prior written approval not to be unreasonably withheld, to grant future rights and easements over, across, under, in and upon the Premises. No such future rights or easements shall unreasonably interfere with Tenant's or any Subtenant's use of the Premises.

2.5 **Retained Leases; Retained Lease Areas; Retained Public Space Areas; CB-1 REA.**

(a) The Premises does not include the Retained Lease Areas, and City has not assigned the Retained Leases to Tenant. Notwithstanding the foregoing, pursuant to Section 7.3 below, City is dedicating the Gross Revenues and GMOS Payments payable by the tenants under the Retained Leases to fund the operation, maintenance, security, and capital improvement of the Premises and the Retained Other Gardens Areas and the performance of Tenant's obligations under this Lease. Because the Retained Leases provide a critical source of dedicated funding for the Premises and the performance of Tenant's obligations under this Lease, and because the Retained Lease Areas and the Premises are in proximity to each other and, together with the Retained Public Space Areas and the Retained Other Gardens Areas, form a unified set of properties that constitute the Yerba Buena Gardens Properties, Tenant shall have certain consultation and approval rights over the Retained Leases and Retained Lease Areas and Retained Public Space Areas, as set forth in this Section 2.5, to the extent of City's consultation and approval rights under the Retained Leases and Agreements.

(b) City shall consult with Tenant regarding, and Tenant shall have the right to approve or disapprove, which approval or disapproval shall not be unreasonably withheld, delayed, or conditioned, any of the following:

(i) any proposed amendment, modification, or extension of any Retained Lease (a "**Retained Lease Amendment**") that would (I) adversely affect the Gross Revenues and/or GMOS Payments that are payable by a tenant under the Retained Lease or the CB-1 Retail Lease or any other Sublease or Operating Agreement, or (II) materially affect the use, operation, and programing of, or visually impact the City Retained Areas;

(ii) any new lease, sublease, license, concession or other agreement by which City leases, subleases, demises, licenses, or otherwise grants to any person or entity the right to occupy or use any portion of the Retained Lease Areas or Retained Public Space Areas (whether in common with or to the exclusion of other persons or entities) (a "**New Retained Lease**"), and any amendment, modification, or extension of any New Retained Lease ("**New Retained Lease Amendment**"), that would (I) adversely affect the Gross Revenues and/or GMOS Payments that are payable by a tenant under the New Retained Lease or New Retained Lease Amendment, or (II) materially affect the use, operation, or programing of the Retained Lease Area subject to the New Retained Lease or New Retained Lease Amendment; and

(iii) decisions and approvals related to the exterior architectural design, alteration of any Improvements, or any other visual impacts within the Retained Lease Areas and Retained Public Space Areas, or any exterior signage in the Retained Lease Areas or Retained Public Space Areas, to the extent City has such approval rights.

(c) All Gross Revenue, GMOS Payments, and any other form of rent or revenue payable under any Retained Lease Amendment or New Retained Lease shall be transferred into the Accounts in accordance with Section 7.3 below.

(d) To the extent City has such rights, this Lease grants to Tenant for the benefit of Tenant, Tenant's Invitees, Subtenants, and the public in general, a right of ingress, egress, and access over the Retained Lease Areas and Retained Public Space Areas, subject to the rights of tenants under the Retained Leases (and any amendments thereto or replacements thereof) and the rights of any other parties under documents affecting the Retained Lease Areas and Retained Public Space Areas (for example, under any recorded documents). Tenant shall have no obligations or liabilities with respect to the Retained Lease Areas and Retained Public Space Areas except to the extent Tenant's liability is caused by Tenant's negligence or misconduct. Tenant shall have the right to request from City a license to use the Retained Public Space Areas, subject to compliance with all Laws, requirements of then-existing contracts affecting such Retained Public Space Areas, and recorded documents.

(e) To the extent of the City's rights as a "Party" under the CB-1 REA, City authorizes Tenant to operate as its agent during the Term of this Lease in exercising City's rights on behalf of the City under the CB-1 REA, including the City's authority to manage the programming of the outdoor City Retained Areas on "Central Block 1", specifically, the Retained Public Space Areas.

2.6 Retained Other Gardens Areas. The Premises does not include the Retained Other Gardens Areas, but because the Retained Other Gardens Areas along with the Premises, the Retained Lease Areas, and the Retained Public Space Areas form a unified set of properties that constitute the Yerba Buena Gardens Properties, Tenant shall have certain rights over the Retained Other Gardens Areas, as set forth in this Section 2.6.

(a) City shall consult with Tenant regarding the use, operation, and programing of the Retained Other Gardens Areas to ensure reasonable conformity with Tenant's programming of the Premises prior to the commencement of any new or changed use, operations, or programming of the Retained Other Gardens Areas.

(b) City agrees that the following uses of the Retained Other Gardens Areas are prohibited:

(i) Automobile sale, rental, repair or maintenance facility;

(ii) Adult bookstore, adult theater or encounter studio, all as defined in the Police Code of the City and County of San Francisco;

(iii) Hospital, medical center, medical clinic or laboratory with regular visiting patients;

(iv) Public health clinic, provided that a first class, private medical office shall be permitted;

(v) Hotel, whether tourist or residential;

(vi) Manufacturing or industrial uses;

(vii) Massage parlor, except that a day spa providing first class services such as facials, hair styling, manicures, pedicures, and professional massage therapy, shall be permitted;

(viii) Mortuary, crematorium or funereal services;

(ix) Recycling center or collection facility unless collection bins are required by law, and then only to the extent required by law;

(x) Dry cleaners with on-site cleaning of clothing involving any use of cleaning chemicals; provided that a drop-off and pick up service shall be permitted;

(xi) Smoke shop;

(xii) Drug or substance abuse treatment or rehabilitation center, clinic or facility;

(xiii) Needle exchange services; or

(xiv) Tattoo parlor.

To the extent there is any dispute over the definition of the uses described above, the definitions found in the Planning Code of the City and County of San Francisco shall apply.

(c) To the extent City has such rights, the City grants to Tenant for the benefit of Tenant, Tenant's Invitees, Subtenants, and the public in general, a right of ingress, egress, and access over the Retained Other Gardens Areas, but nothing in this Lease will preclude City from entering into any lease, license, concession, or other agreement for the exclusive occupancy of any portion of the Retained Other Gardens Areas (provided the lease, license, concession, or other agreement for exclusive occupancy does materially impair access to the Premises) and the rights granted to Tenant, Tenant's Invitees, and Subtenants will be subordinate and subject to that lease, license, concession, or other agreement Tenant shall have no obligations or liabilities with respect to the Retained Other Gardens Areas except to the extent Tenant's liability is caused by Tenant's negligence or misconduct. Notwithstanding the foregoing, the parties recognize that as of the execution of this Lease no Retained Other Gardens Areas have been identified; however, the parties may mutually agree to administratively amend this Lease, at any point during the term to reclassify certain real property within Yerba Buena Garden Properties as Retained Other Gardens Areas and to update Exhibit B-4 accordingly.

3. TERM

3.1 Term.

The term of this Lease shall expire with respect to the entire Premises on September 1, 2061 (the "**Expiration Date**"), unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until the Expiration Date is referred to as the "**Term**." Any expiration or termination of this Lease shall result in the termination of the Assignment of Agreements.

3.2 Access and Entry by Tenant Prior to Commencement Date.

In the event that the Commencement Date occurs after the Effective Date, Tenant shall have the right of access to and entry upon and around the Premises prior to the Commencement Date for the purposes of performing inspections, studies and tests necessary to carry out the obligations under this Lease, provided Tenant shall first obtain a written agreement from the OCII, or the City, as applicable, on terms reasonably satisfactory to OCII, or the City, as applicable, allowing such access, which agreement shall include, among other things, indemnification and insurance requirements (a "**Permit to Enter**"). In making any entry upon the Premises authorized in accordance with this Section, Tenant shall not materially interfere with or obstruct the permitted, lawful use of the Premises by the OCII or the City, as applicable, the Existing Subtenants, Existing Operators, or their invitees.

3.3 Discussions Regarding Possible Future Use of the Premises.

(a) In order to allow Tenant and Subtenants and Operators to plan for the orderly continuation, transition, or termination, as applicable, of business under this Lease and the Agreements approximately five (5) years before the Expiration Date, provided that this Lease has not been earlier terminated, City's Director of Property, or his or her designee, and Tenant shall meet to discuss whether the Parties are interested in extending the Term of this Lease or entering into a new lease for the Premises or some portion thereof. Tenant acknowledges that any future agreement to extend the Term of the Lease or to enter into a new lease would be subject to the prior approval of the then-Board of Supervisors, in its sole and absolute discretion.

(b) Notwithstanding any other provisions of this Lease, including Section 27.3, both parties may mutually agree to administratively amend this Lease at any point during the Term to reclassify certain real property within Yerba Buena Gardens Properties. For example, if real property within Yerba Buena Gardens Properties is agreed by both City and Tenant to be more appropriately classified as Retained Other Gardens Areas, as referenced in section 2.6(c) above, the parties would update Exhibit B-4 and/or any other applicable exhibits to reflect any addition or reclassification.

4. USES

4.1 Permitted Use.

Tenant shall use the Premises for civic, cultural, museum, gardens/open space, entertainment, and recreational uses, with ancillary/supporting uses such as food establishments, cafes, retail, gift shops, and event space, and including, without limitation, all uses permitted under the Existing Subleases and Existing Operating Agreements (collectively, the "**Permitted Use**" or "**Permitted Uses**"), consistent with existing zoning (or as amended in the future). Tenant shall have the right to use the Premises or portions thereof, including the public plazas and gardens, for temporary uses as set forth in Section 6.7 below. Tenant shall also have the right to install art works throughout the Premises subject to compliance with any applicable City Laws regarding the installation of public art. Any exceptions to the Permitted Uses set forth herein shall require prior written approval of City, which may be withheld or granted in City's reasonable discretion.

4.2 Ongoing Operations.

Tenant shall operate and manage the Premises in a first class condition. Tenant acknowledges that a material consideration for this Lease is Tenant's agreement to maintain and operate the Premises in the manner described in this Article 4 and Article 7 below.

4.3 Cultural Enrichment and Community Involvement.

Tenant shall use good faith efforts to support programs and events that highlight San Francisco's rich cultural diversity and history, including, as appropriate, exploration of ways to cultivate stronger connections with adjacent neighborhoods and cultural venues, as well to the wider San Francisco community.

4.4 Financial Sustainability.

If Sublease and Retained Lease revenues and the other sources of dedicated funding for the operation, maintenance, security, and capital improvement of the Premises as set forth in Section 7.3(a) below are insufficient to fund the performance of one or more of Tenant's obligations under this Lease, Tenant shall have the right to seek, obtain, and use other sources of revenue and funding for the operation, maintenance, security, and capital improvement of the Premises. Tenant shall also have the right, but not the obligation, to seek and obtain financing and enter indebtedness (which indebtedness may be secured by the dedicated funding sources outlined above), and City will cooperate with Tenant as necessary to facilitate and close such financing and indebtedness. If the foregoing revenue and funding sources are insufficient to fully fund the operation, maintenance, security, and long-term capital funding of the Premises, then Tenant and City shall cooperatively use diligent, good faith efforts to identify and obtain other funding sources or, identify opportunities to reduce expenses, for operating and capital costs within the Premises. If such efforts do not result in sufficient funding of the operation, maintenance, security, and long-term capital funding of the Premises, then the provisions of Section 24.2 below shall apply.

4.5 Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

(a) any activity that creates a public or private nuisance;

(b) any activity that is not a Permitted Use;

(c) any activity that will cause damage to the Premises or the Improvements;

(d) any activity that is reasonably determined by City to constitute waste, disfigurement, or damage to the Premises;

(e) any activity that is reasonably determined by City to constitute a material nuisance to owners or occupants of adjacent properties. Such activities include, without limitation, the preparation, manufacture, or mixing of anything that emits any materially objectionable or unlawful odors, noises or lights onto adjacent properties, or the unreasonable or unlawful use of loudspeakers or sound apparatus that can be heard outside the Premises or the

unlawful or unreasonable use of any light apparatus that can be seen outside of the Premises (taking into account the Permitted Uses and the hours of operation of the businesses in the Premises and Public or Private Events), subject to any right given Tenant to alter, modify, repair, maintain, restore or construct Improvements; provided, however, that such activities are performed in accordance with all Laws and all terms and conditions of this Lease as applicable;

(f) any activity that will materially injure, obstruct or interfere with the rights of Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress, to their properties (taking into account the Permitted Uses hereunder), except to the extent necessary on a temporary basis to alter, modify, repair, maintain, restore or construct Improvements and conducted within the Permitted Uses hereunder in accordance with all Laws and Regulatory Approvals;

(g) any activity that attracts members of the general public to the Premises in a manner that materially obstructs, conflicts with, or interferes with the activities of Subtenants or Operators (taking into account the Permitted Uses hereunder); and,

(h) any auction, distress, fire, bankruptcy, or going out of business sale on the Premises without the prior written consent of City.

4.6 Continuous Use

Tenant shall use good faith efforts to ensure that the Premises are used continuously during the Term in accordance with the Permitted Uses and shall not allow the Premises to remain unoccupied or unused without the prior written consent of City, which City may withhold in its sole discretion, subject to Article 18 [Damage or Destruction], Article 19 [Condemnation] and Force Majeure, and further subject to customary vacancies of space that may arise from time to time in connection with retenanting.

4.7 Public Use and Access

During the Term, the Premises shall remain open for public use and public access, excluding such support facilities within the Premises that house mechanical equipment; engineering, property management, custodial, or security support staff or other resources; or serve as back of the house or pre-function areas in support of public presentation spaces. Notwithstanding the foregoing, the public's right to use and access the Premises pursuant to this Section 4.7 shall be subject to (a) the rights of Subtenants under Subleases and Operators under Operating Agreements, (b) the provisions of Section 6.7 [Public or Private Events], Article 14 [Repair and Maintenance], Article 16 [Subsequent Construction], Article 18 [Damage or Destruction], and Article 19 [Condemnation], and (c) the right of Tenant to impose reasonable restrictions on public use of and public access to the Premises so long as such closure does not violate any Laws.

5. INTENTIONALLY DELETED

6. ASSIGNMENT, SUBLETTING, AND CONTRACTING

6.1 Assignment of Lease.

(a) Consent of City. Except as otherwise expressly permitted in Sections 6.1(b) and (c), Tenant, its successors and permitted assigns shall not Transfer any interest in this Lease, without the prior written consent of City, which consent shall not be unreasonably withheld, delayed or conditioned by City. Notwithstanding anything to the contrary set forth in this Lease, the Premises shall remain subject to this Lease regardless of any Transfer made at any time or from time to time, whether or not City approved such Transfer.

(b) Mortgaging of Leasehold. As further provided in Section 42 [Mortgages] hereof, at any time during the Term of this Lease, Tenant shall have the right, without City's consent, to Transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage.

(c) Conditions. Any Transfer described in Section 6.1(a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof (the "**Transfer Conditions**"):

(i) Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant under this Lease (including, without limitation, the provisions of Section 7 hereof), and any other agreements or documents entered into by and between City and Tenant relating to the Premises.

(ii) The Transfer is made for a legitimate business purpose and not to deprive City of the benefits of this Lease. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however effected or occurring, and whether voluntary or involuntary, by operation of law or otherwise, foreseen or unforeseen, shall operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that City would have had, had there been no such Transfer.

(iii) All instruments and other legal documents effecting the Transfer shall have been submitted to City for review, including the agreement of sale, transfer, or equivalent, and City shall have approved such documents which approval shall not be unreasonably withheld, delayed, or conditioned.

(iv) Tenant shall have complied with the provisions of Section 6.1(d) below.

(v) There shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease or any of the other documents or obligations to be assigned to the proposed transferee, or if not cured, Tenant or the proposed transferee have made

provisions to cure the Event of Default, which provisions are satisfactory to City in its sole and absolute discretion.

(vi) The proposed transferee (A) has demonstrated to City's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable Law from transacting business or entering into contracts with City; (C) is subject to the jurisdiction of the courts of the State of California; and (D) is not in default with respect to any obligations that it has to City.

(vii) The proposed Transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond, or certificates of participation financing as determined by City in its sole discretion.

(viii) Tenant deposits with City sufficient funds, in City's reasonable opinion, to reimburse City for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. Subject to Section 42 [Mortgages], no Transfer of any interest in this Lease made with City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to City, within thirty (30) days after Tenant entered into such Transfer, an executed counterpart of the agreement affecting the Transfer containing an agreement, a memorandum of which shall be in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on Tenant's part to be performed under this Lease, and the other assigned documents (if any) to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit City's rights or remedies under this Lease or under applicable Law). The form of such instrument of Transfer shall be subject to City's approval, which approval shall not be unreasonably withheld, delayed, or conditioned.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of a Transfer of Tenant's entire interest in this Lease, approved by City under Sections 6.1(a), (c), and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by City to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of City to any further Transfer.

(f) Reports to City. At such time or times as City may reasonably request, Tenant must furnish City with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant, if any, and the extent of their respective holdings, if any, and in the event any other persons or entities have a beneficial interest in Tenant, their names and the extent of such interest. Tenant's furnishing of such information, however, will not relieve Tenant from liability for its failure to comply with the provisions of this Lease.

(g) Request for Proposed Transfer. At any time Tenant may submit a request to City for the approval of the terms of a Transfer of this Lease (all of the foregoing being collectively referred to herein as a "**Proposed Transfer**") or for a decision by City as to whether in its opinion a Proposed Transfer requires City consent under the provisions of this Section 6.1. Within thirty (30) days of the making of such a request and the furnishing by Tenant to City of all documents and instruments with respect thereto as shall be reasonably requested by City, City shall notify Tenant in writing of City's approval or disapproval of the Proposed Transfer or of City's determination that the Proposed Transfer does not require City's consent. If City disapproves the Proposed Transfer, or determines that it requires the consent of City, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 6.1 will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 6.3, or (ii) the granting of any security interest expressly permitted by this Lease, subject to compliance with Article 42 [Mortgages] and other applicable terms of this Lease.

(i) Participation in Proceeds from Sale of Lease. Upon an assignment, sale, or other Transfer of Tenant's interest in this Lease, occurring at any time and from time to time during the Term, Tenant shall pay to City as Additional Rent hereunder, all sums paid or payable to Tenant by the transferee after subtracting expenses for verifiable, reasonable and customary brokerage commissions and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer.

6.2 Assignment of Rents.

Tenant hereby assigns to City all rents and other payments of any kind, due or to become due from any present or future Subtenant or Operator; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Article 42 of which City has been made aware in writing until such time as City has terminated this Lease, at which time the rights of City in all rents and other payments assigned pursuant to this Section 6.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing assignment, Tenant shall have the right to collect, use for any purpose (subject to the terms of this Lease) and retain the balance thereof, of all such assigned rents and other payments of any kind, due or to become due from any present or future Subtenant, at all times prior to the commencement of legal proceedings to terminate this Lease due to an Event of Default. Following the commencement of any such legal proceedings, City shall apply any net amount collected by it from such Subtenants and Operators (after the payment of Operating Expenses required for the on-going operation of the Premises) to the payment of Rent due under this Lease or for the payment of any other amounts under this Lease owed to City by Tenant.

6.3 Subleases and Operating Agreements.

(a) Existing Agreements. The Existing Agreements are hereby approved and consented to by City. No further approval or consent of City shall be required with respect to the Existing Agreement, unless an Existing Agreement is amended, and then only to the extent that the City's consent to such amendment is otherwise required by the terms of this Section 6.3.

City and Tenant acknowledge that because the Existing Agreements were entered into prior to this Lease, the rights and obligations of the Existing Subtenants and Existing Operators under the Existing Agreements may potentially conflict with the City's rights and Tenant's obligations under this Lease. In the event of a conflict between an Existing Subtenant's or Existing Operator's rights under an Existing Agreement and the City's rights under this Lease, where the exercise of the City's rights would cause Tenant to breach its obligations as party under the Existing Agreement, City shall exercise its rights under this Lease in a manner that will avoid conflicting with the Existing Subtenant's or Existing Operator's exercise of its rights under the Existing Agreement. Furthermore, to the extent that this Lease imposes greater or more restrictive obligations on Tenant with respect to a particular subject matter than an Existing Agreement imposes on an Existing Subtenant or Existing Operator, the Existing Subtenant or Existing Operator shall only be required to comply with its obligations under the Existing Agreement, and not the greater or more restrictive obligations of Tenant under this Lease. The City's obligations and the Existing Subtenants' and Existing Operators' rights under this Section 6.3 shall only apply to the Existing Agreements and shall not apply to Agreements that Tenant enters into after the Effective Date (which must be consistent with the terms and conditions of this Lease and other Laws pursuant to Section 45.1).

(b) Future Agreements and Amendments to Existing Agreements. Subject to this Section 6.3, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to enter into or amend Agreements from time to time that, by their terms, are subject to and in compliance with the provisions of this Lease without the necessity of obtaining the consent of City, to such persons or entities and upon such terms and conditions which are consistent with the provisions of this Lease. Except as specifically provided in this Section 6.3, Tenant shall not enter into a new Agreement or an amendment to an Existing Agreement that is inconsistent with the requirements set forth in this Section 6.3, including, without limitation, Section 6.3(c).

(c) Requirements for Conforming Agreements and Amendments Not Requiring Consent. In addition to any other requirement set forth in this Section 6.3, the following conditions must be satisfied with respect to any new Agreement or amendment to an Existing Agreement in order that City's consent shall not be required: (A) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses, (B) the Subtenant and the Sublease or the Operator and Operating Agreement, as applicable, are expressly subject to all the terms and provisions of this Lease related to Subtenant's or Operator's use of the subleased premises, (C) the term of the Agreement, including any extension options, shall not exceed thirty (30) years and does not extend beyond the term of this Lease, (D) there exists no Event of Default or Unmatured Event of Default under the Lease, (E) with respect to new Agreements only, the Subtenant or Operator Indemnifies the City for any loss or damage arising in connection with the Agreement in form required under Exhibit H, (F) Tenant remains liable

under this Lease, (G) with respect to new Agreements only, the Subtenant or Operator provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City, (H) if a Sublease, the rent to be charged under the Sublease conforms with the Minimum Rent Requirements set forth in Section 6.3(e) below, and (I) with respect to new Agreements and amendments to Existing Agreements to extend the term, the Agreement shall include the provisions set forth in Exhibit I. The foregoing conditions are sometimes referred to as the "**Agreement Conditions**."

(d) Requirements Regarding Rent in Subleases. Tenant shall use good faith efforts to achieve Market Rent in Subleases whenever possible and to enter into Subleases with terms that are reasonable in light of the market conditions existing at the time of such Sublease. Notwithstanding the above, all Subleases shall have a Net Effective Rental Rate that is not less than ninety percent (90%) of the Market Rent for the type of space/improvement to be subleased in light of and restricted to the Intended Use of such space/improvement (the "**Minimum Rent Requirement**"), unless Tenant expressly proposes, and City approves, an Acknowledged Non-Conforming Sublease, as set forth in Section 6.3(i) below. For the purposes of determining Market Rent, the "**Intended Use**" of a space/improvement to be subleased shall be the intended use of such space/improvement as determined by Tenant, which "Intended Use" shall be either a Permitted Use or another use approved by City as an Acknowledged Non-Conforming Sublease under Section 6.3(i) below. For example, in determining the Market Rent of the ice skating facility, the Intended Use of the ice skating facility as a community-serving ice rink shall be considered as opposed to other, potentially more economically beneficial, uses of the facility.

(e) Requirements for Payments under Operating Agreements. Tenant shall use good faith efforts to pay not more than the reasonable market rate for services, works, maintenance, operations, and improvements in light of the market conditions existing at the time of such Operating Agreement.

(f) Pre-Execution Deliveries to City. Prior to executing a new Agreement or amendment to an Existing Agreement, Tenant shall submit to City (i) a summary of the key terms of the proposed Agreement (including location, proposed use, square footage of the space/improvement, length of term, rental rate (for Subleases and Sublease amendments only), tenant improvement allowances and leasing concessions (if any, for Subleases and Sublease amendments only), for Operating Agreements: payment obligations of Tenant, and work to be performed, and schedule for completion, if applicable), (ii) a calculation of the Net Effective Rental Rate for such proposed Sublease, which may include, if Tenant elects to obtain an appraisal of the Market Rent of the space/improvement to be subleased, a copy of such appraisal and (iii) evidence as reasonably required by the City that payments to be made under any Operating Agreement are reasonable in light of the current market and comply with all Laws (collectively, the "**Pre-Execution Submittal Package**"). The City shall reasonably review the Pre-Execution Submittal Package for conformance with the Agreement Conditions, including the Permitted Uses and the Minimum Rent Requirement, if applicable. If the Net Effective Rental Rate for the proposed Sublease is less than Market Rent for space/improvement to be subleased in light of its Intended Use (as set forth in the appraisal submitted by Tenant), then the summary shall contain an appendix that describes why Tenant determined that the proposed Net Effective Rental Rate is appropriate for such space/improvement. If the Net Effective Rental Rate is less than ninety percent (90%) of the Market Rent for such space/improvement, then such proposed

Sublease shall be subject to the provisions of Section 6.3(i) below. If payments to be made under an Operating Agreement are above the then current market rate, then then the summary shall contain an appendix that describes why Tenant determined that the proposed payments are appropriate for such services, works, maintenance, operations, or improvements. If the payments under an Operating Agreement are in excess of then current market rate, in City's reasonable determination, then the proposed Operating Agreement shall be subject to the provisions of Section 6.3(i) below.

(g) Nonconformance with Permitted Uses or Other Agreement Conditions. If City reasonably determines that a proposed Agreement (other than an Acknowledged Non-Conforming Agreement, as described in Section 6(h) below) is inconsistent with the Permitted Uses or any other Agreement Conditions, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package:

(i) disapprove such Sublease, in its reasonable discretion, by providing written notice to Tenant describing the claimed inconsistencies; or

(ii) request additional information from Tenant regarding the reason(s) why the proposed Agreement should be approved despite such inconsistency(ies).

(h) Nonconformance with Minimum Rent Requirement or Market Rate Requirement.

(i) This subparagraph applies to Subleases. If the Pre-Execution Submittal Package that Tenant submits does not include an appraisal of the Market Rent from an Approved Appraiser, and if City reasonably determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease) has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the space/improvement to be subleased, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package, notify Tenant that Tenant must either resubmit such proposed Sublease as an Acknowledged Non-Conforming Sublease in accordance with the provisions of Section 6.3(i) below or submit an appraisal of the Market Rent of the space/improvement to be subleased from an Approved Appraiser pursuant to Section 6.4(b) below. Notwithstanding the foregoing, City shall have no right to object to or disapprove any determination of Market Rent set forth in an appraisal prepared by an Approved Appraiser in accordance with Section 6.4(b) below, and City's rights pursuant to this Section 6.3(h) are limited to City's reasonable review of the calculation of the Net Effective Rental Rate.

(ii) This subparagraph applies to Operating Agreements. If the City reasonably determines that a proposed Operating Agreement (other than an Acknowledged Non-Conforming Agreement) that Tenant submits in a Pre-Execution Submittal Package obligates Tenant to pay more than 10% more than the then current market rate for such services, works, maintenance, operations, or improvements under the Operating Agreement, in City's reasonable determination, then City may, no later than ten (10) business days after receipt of the Pre-Execution Submittal Package, may notify Tenant that Tenant must either resubmit such proposed Operating Agreement as an Acknowledged Non-Conforming Agreement in accordance with the

provisions of Section 6.3(i) below or submit the required contract documentation required under Section 6.3(f) above.

(i) Acknowledged Non-Conforming Agreements. In order to meet certain goals of this Lease, including the operation and maintenance of the Premises with a diverse and healthy mix of civic and cultural uses and Subtenants and Operators, it may be necessary or desirable, from time to time, for Tenant to enter into particular Agreements that are not consistent with the Permitted Uses or have a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable space/improvement to be subleased or require payments of more than one hundred ten percent (110%) of the market rate for services, works, maintenance, operations, or improvements (each, an "**Acknowledged Non-Conforming Agreement**"). If Tenant proposes to enter into an Acknowledged Non-Conforming Agreement, then Tenant shall submit, in addition to the summary of key terms required under Section 6.3(f) above, a written explanation of the reason(s) why the proposed Acknowledged Non-Conforming Sublease should be approved despite such inconsistency(ies).

(i) City may, in its sole discretion, disapprove any proposed Acknowledged Non-Conforming Agreement that proposes a use other than a Permitted Use by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Agreement, then City shall provide a written explanation of the reason(s) therefor.

(ii) City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a Net Effective Rental Rate that is less than ninety percent (90%) of the Market Rent for space/improvement to be subleased for the Intended Use of such space/improvement by written notice to Tenant given no later than ten (10) business days after receipt of the Pre-Execution Submittal Package. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

(iii) City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Agreement that proposes a payments by Tenant that are more than one hundred ten percent (110%) of the market rate for the services, works, maintenance, operations, or improvements to be contracted for, as reasonably determined by City, by written notice to Tenant given no later than ten (10) business days after receipt of the Pre-Execution Submittal Package. If City elects to disapprove the proposed Agreement, then City shall provide a written explanation of the reason(s) therefor.

(iv) City may, in its reasonable discretion, request additional information from Tenant regarding the reason(s) why the Acknowledged Non-Conforming Agreement should be approved.

(j) Cooperation. Tenant and City shall use good faith efforts to promptly resolve any dispute about whether an Agreement is inconsistent with the Permitted Uses or other Agreement Conditions or has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space or payments by Tenant that are more than one hundred ten percent (110%) of the market rate for the services, work, or improvement to be contracted for.

(k) No Execution of Agreements Disapproved or Subject to Information Requests. Tenant shall not enter into any proposed Agreement for which Tenant has timely received a disapproval notice or a request for additional information unless City subsequently approves such proposed Agreement in writing.

(l) Deemed Approval. If City fails or declines to respond to Tenant within the applicable ten (10) business day period described above following submission of a Pre-Execution Submittal Package, then Tenant may at Tenant's election provide written notice to City that no notice of objection, disapproval, or request for additional information was received from the City, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "AGREEMENT REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Agreement shall be deemed approved if City does not disapprove the Agreement in accordance with the terms of this Section 6.3 within ten (10) days of such notice. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws (e.g., San Francisco Administrative Code Chapter 23).

(m) Post-Execution Deliveries to City; Rent Rolls. Tenant shall provide City with a copy of each Agreement (and each assignment of Agreement and sub- Agreement) within ten (10) business days after execution, amendment, or extension thereof. Within ten (10) business days after receipt of a written request from the City, Tenant shall provide City with a current rent roll for all Agreement and include such other matters as reasonably required by City (a "**Rent Roll**").

6.4 Determination of Market Rent for Subleases.

(a) Market Rent. For purposes of this Lease, the term "**Market Rent**" shall mean the Net Effective Rental Rate that would be payable in an arm's length negotiation for a space/improvement of comparable size, age, condition and functionality, suitable for and limited to the Intended Use, and situated either in the Premises or other similar, reputable, established neighborhoods or districts in the San Francisco Bay Area sub-markets, taking into account typical concessions. Market Rent shall include the periodic rental increases, if any, that would be applicable to the portion of the Premises subject to a Sublease. As set forth in Section 6.3(d) above, in determining Market Rent, the "Intended Use" of a space/improvement to be subleased shall be the intended use of such space/improvement as determined by Tenant.

(b) Determination of Market Rent by Approved Appraisers. Tenant shall have the right, but not the obligation, to obtain, a Tenant's cost, an appraisal of the Market Rent of a space/improvement to be subleased from one of the City's pre-approved real estate appraisers or such other pre-approved real estate appraisers as Tenant and the City's Director of Real Estate may agree upon in writing from time to time (collectively, the "**Approved Appraisers**") it being understood that at all times during the Term there shall be no fewer than three Approved Appraisers, and in such event the determination of Market Rent set forth in an appraisal prepared by an Approved Appraiser and submitted to the City pursuant to Section 6.3(e) above shall be, in the absence of material error or misrepresentation, presumed to be a

valid determination of the Market Rent of such space/improvement at the time of appraisal, subject to the confirmation of the City's Director of Property, if and as required by Law. All such appraisals shall take into consideration the Intended Use and shall otherwise be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics, and the Standards of Professional Appraisal Practice of the MAI.

6.5 Reasonable Grounds for Withholding Consent.

Where a Transfer or an Agreement requires City's reasonable consent, it shall be reasonable (1) for City to withhold its consent if Tenant has not supplied sufficient information (including supplemental materials reasonably requested by City) to enable City to make a reasonable determination whether any applicable Transfer Condition or Agreement Condition has been satisfied, and (2) if Tenant is then in default of any of its obligations under this Lease, for City to condition its consent on the cure of such defaults as City may specify in its notice conditionally approving such Transfer or Agreement.

6.6 Non-Disturbance of Subtenants, Attornment, Relevant Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). All Non-Disturbance Agreements shall comply with the provisions of this Section 6.6(a) and of Section 6.6(b). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the Term of this Lease; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 45.2 [Non-Discrimination] and Section 45.5 [Tobacco Product Advertising Prohibition] (or, if the Sublease does not contain such provisions, then Subtenants agrees to comply with such provisions pursuant to the Non-Disturbance Agreement or other written agreement with City or Tenant); (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement); and (v) with respect to requests for Non-Disturbance Agreement after the Tenant and Subtenant have entered into a Sublease only, then Subtenant shall have delivered to City an executed estoppel certificate certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, and (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in such certificate. In addition, with respect to Subleases having an initial term of more than ten (10) years, City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of

the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is entered into; provided, however, that City acknowledges and agrees that the rental terms of Subleases that propose a Net Effective Rental Rate of at least ninety percent (90%) of Market Rent at the time of execution of the Sublease, with an adjustment of rent at or before the end of the initial ten (10) years to at least ninety (90%) of then-Market Rent, shall be deemed reasonable and acceptable for purposes of City's review under this Section 6.6(a). City shall in no event be required to enter into a Non-Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Nothing in this Section 6.6 shall preclude City in its sole and absolute discretion from granting non-disturbance to other Subtenants. Notwithstanding any provision to the contrary in this Section 6.6 or in this Lease, upon request, City shall provide Non-Disturbance Agreements for any Existing Subtenant (including for Subtenants with Existing Subleases that extend beyond the scheduled expiration of the Term).

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that in the event this Lease expires, terminates or is canceled during the term of the Sublease, (i) City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease, (ii) Subtenant agrees to attorn to City, and (iii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City; provided, however, that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid, shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

6.7 Temporary Rentals for Public or Private Events. Notwithstanding any provision of this Lease to the contrary, Tenant shall have the right to grant permits and licenses for the temporary use of portions of the Premises without City's consent for Public or Private Events pursuant to this Section 6.7; provided, however, that Tenant shall coordinate with the Manager (as defined in Section 7.2) regarding any actions contemplated within this Section in accordance with any applicable Management Agreement (as defined in Section 7.2), and further provided that such right shall subject to applicable Laws delegating authority related to the implementation of relevant provisions of the City's Park Code and any rules implemented or developed by the City thereunder for the operation and maintenance of the Premises. Notwithstanding the foregoing, the City and Tenant recognize that Tenant (to the extent acting as manager of the Premises), and any third-party entity may be acting as the Manager pursuant to the terms of this Agreement, will be subject to all applicable terms in this Agreement, including, but not limited to, this Section 6.7 and Section 7.2. The term "**Public or Private Events**" means (i) concerts and musical performances, (ii) theater performances, (iii) dance performances, (iv) public ceremonies, (iv) exhibitions of art, crafts and merchandise for sale, (v) trade shows and fairs, (vi) private and corporate events, (vii) film shoots, and (viii) any similar events, performances, ceremonies, shows and exhibitions that are consistent with the Permitted Uses. Tenant shall require as a condition of issuance of a permit or license for any

Public or Private Event that (i) such event be conducted in compliance with all applicable Laws, including, without limitation, obtaining any Regulatory Approvals from any governmental entity which may be necessary, (ii) the sponsor/organizer of the event provide reasonably adequate commercial general liability insurance naming the City as an additional insured, (iii) the sponsor/organizer be solely responsible for all costs of such event, including clean-up costs, and the costs of any damage to or destruction of the Premises, and (iv) that during the event, public access will be maintained through the areas of the Premises that are usually open to the public, but only to the extent reasonably feasible in light of the nature of the Public or Private Event (it being understood that Public or Private Events will at times, as determined by Tenant, result in the temporary closure of portions of the Premises that are usually open to the public, such as the gardens and cultural facilities located therein). All rents and fees that Tenant receives from Public or Private Events shall be deemed to be Gross Revenues hereunder, shall be deposited in the Accounts, and dedicated for and used for the management, operation, security, and capital improvement of the Premises and Retained Other Gardens Areas consistent with the allowable uses of Program Income. City and Tenant may, but shall not be obligated to, enter into a separate agreement that more fully sets forth rules and procedures for use of the Premises for Public or Private Events.

6.8 Naming Rights Agreements.

Tenant may enter into agreements with third parties for naming rights to real property within the Premises ("Naming Rights Agreements") subject to the terms of any applicable Subleases or Operating Agreements and subject to the City's approval, in its sole and absolute discretion. All proceeds from such Naming Rights Agreements shall be dedicated for the operation, maintenance, security, and capital improvement of Yerba Buena Gardens Properties and be consistent with the allowable uses of Program Income.

7. OPERATIONS AND MANAGEMENT

7.1 Operating Standards.

Tenant shall manage and operate, or cause the Manager (defined below) to manage and operate, the Premises in accordance with all Laws and in a commercially reasonably manner consistent with the practices of other prudently, well-managed civic and cultural places of assembly in the San Francisco Bay Area or other similar spaces in the United States of a like age and quality. In connection with managing and operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants and Operators, to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards, including, but not limited to, (a) routine and extraordinary repair and maintenance of the Improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and grounds keeping, (e) security services, (f) marketing the Premises, selection of Subtenants and Operators and negotiation of Agreements, (g) enforcement of reasonable rules and regulations for the conduct of Subtenants and Operators and others present on the Premises, (h) collection of rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants and Operators with the terms, covenants and conditions of their Agreements (i) placement of insurance and payment of premiums and securing certificates of insurance from Subtenants and Operators and persons

working on the Premises, and (j) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

7.2 Management.

(a) Manager; Management Agreement. Tenant, at its election, shall either manage and operate the Premises itself or shall engage one or more third-party entities to manage and operate the Premises (or any portion thereof that Tenant has elected not to manage itself); and provided that at all times during the term of this Lease the entire Premises (or any portion thereof) shall be under the management of Tenant or one or more third-party entities. Any contract for the operation or management or leasing of the Premises entered into by Tenant (a "**Management Agreement**") shall provide that such Management Agreement may be terminated by Tenant without penalty. Tenant shall manage the Premises, whether directly or indirectly, in a commercially reasonable manner consistent with comparable cultural and civic places of assembly within the United States and consistent with (a) best practices of facility management as defined by the International Facility Management Association (IFMA), and (b) best practices of transaction management as defined by Building Owners and Managers Association (BOMA). The managing employee or agent (the "**Manager**" or "**Managers**") must have a demonstrated ability to manage facilities of comparable size and quality to the Premises. No act or omission of the Manager pursuant to the Management Agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease. If City determines in its reasonable judgment that the Premises is not being operated, managed, or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management, or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the Premises. If requested by Tenant, in Tenant's sole discretion, City agrees to serve as the Manager for such portion of the Premises as may be determined by Tenant, subject to Tenant and City entering into a mutually acceptable Management Agreement with respect thereto.

(b) Preparation and Submittal of Reports and Annual Operating Budget and Capital Budget. Tenant shall prepare or cause to be prepared and submitted to City all budgets, including the annual operating budget ("**Annual Operating Budget**") and the annual capital budget ("**Annual Capital Budget**"), financial reports, inspection reports, and other materials required by this Lease, including, without limitation, the Inspection Report described in Section 14.1(b) below, together with quarterly reports of claims filed against Tenant, 30/60/90 day delinquency reports of Subtenants, and copies of default notices from Tenant to Subtenants. Tenant shall submit the Annual Operating Budget and the Annual Capital Budget for the next fiscal year to the City by no later than the end of each calendar year during the Term and the City shall reasonably approve the Annual Operating Budget and the Annual Capital Budget no later than ninety (90) days after receipt of the Annual Operating Budget and Annual Capital Budget. If the City has any questions or comments regarding the Annual Operating Budget and Annual Capital Budget, then City shall promptly notify Tenant, and City and Tenant shall diligently, reasonably, and in good faith work together to resolve and/or address the questions or comments so that the City can reasonably approve the Annual Operating Budget and Annual Capital Budget within the ninety (90) day period.

7.3 Financial Operations and Reporting

(a) Dedicated Funding. In order to fund the operation, maintenance, security, and capital improvement of the Premises and the performance of Tenant's obligations under this Lease, the Existing Account Funds (as defined in Section 7.3(a)(i) below), Gross Revenues (as defined in Section 7.3(a)(ii) below), GMOS Payments (as defined in Section 7.3(a)(iii) below), and Developer Exactions (as defined in Section 7.3(a)(iv) below) shall be dedicated for Tenant's use in accordance with the terms of this Lease, which terms include City's right to payment of the City Costs subject to Section 10.9 below and the right of Tenant to use the dedicated funding to pay for Tenant's operating and administrative costs. Additionally, Tenant's use and expenditure of Gross Revenues must be in accordance with (x) the requirements for priority of use as contained in the Metreon Lease, the CB-1 Retail Lease, and the CB-1 REA, which requirements are excerpted from each document and set forth in Exhibit J attached to this Lease, and (y) the requirements for priority of use set forth in Section 10.9(e). City acknowledges that the foregoing dedicated funding sources currently support the operation, maintenance, security, and capital improvement of the Premises (including the programming of Yerba Buena Gardens parks, public amenities, and cultural facilities), and City agrees that these funding sources shall continue to be fully dedicated for those purposes during the Term of this Lease. Furthermore, to the extent applicable to the Premises, all Supplemental Capital Funds (as defined in Section 7.3(a)(vi) below) shall also be dedicated during the Term of this Lease for capital repairs and capital improvements to the Premises and Retained Other Gardens Areas. For the purposes of any transfers of funds from City to Tenant contemplated in this Section 7.3 and elsewhere in this Lease, City shall make reasonable efforts to identify the sources of the funds being transferred, and proposed uses of the any funds being withheld as part of a net transfer made in accordance with the terms and conditions of this Lease. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be unreasonably withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(i) Existing Account Funds. On or as soon as practical after the Commencement Date, City shall transfer into the Accounts (as defined below), all of the capital accounts, operating accounts, and reserves that City maintains for the operation, maintenance, security, and capital improvement of the Premises (the "**Existing Account Funds**"). The Existing Account Funds for operations of the Premises as of the Commencement Date as well as reserves for future operating expenses, building repair and renovation needs, and long-range capital improvements are included in the Initial Approved Annual Budget. The Existing Account Funds shall be dedicated for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with any applicable Program Income requirements. To the best of City's knowledge, the Existing Account Funds are free and clear of any liens or other encumbrances.

(ii) Gross Revenue. During the Term of this Lease, all Gross Revenue shall be dedicated for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with the allowable uses of Program

Income. As used in this Lease, "**Gross Revenue**" means (A) all payments, revenues, income, rental receipts, common area maintenance (CAM) fees, gate receipts, parking charges, proceeds and amounts of any kind whatsoever, including all base rent, minimum rent, and percentage rent/participation rent payable under and actually received (1) by Tenant, including those received on behalf of City, pursuant to the terms of the Agreements, and those then transferred to City pursuant to the terms and conditions of this Lease, and (2) by City pursuant to the terms of the Retained Leases, and (B) all rent and fees and any other amounts payable and actually received by Tenant for Public or Private Events pursuant to Section 6.7. Tenant shall cause all Gross Revenue under the Subleases to timely be paid to City or deposited into an account designated by City. Along with City's receipt of any Gross Revenue from the Subleases, the City shall timely collect all Gross Revenue payable under the Retained Leases and deposit such Gross Revenue into the Accounts within thirty (30) days of receipt of the Gross Revenue by City, with each deposit identifying the source of such funds at the time of deposit (and proposed uses of the any funds being withheld as part of a net transfer made in accordance with the terms and conditions of this Lease), provided that City may reserve therefrom the City Costs in accordance with and subject to Section 10.9. If City elects not to or fails to properly identify the sources of funding, Tenant may request more detail of a specific transfer pursuant to Section 10.3. The Gross Revenue under the Existing Agreements and Retained Leases is included in the Initial Approved Annual Budget.

(iii) GMOS Payments. During the Term of the Lease, all Yerba Buena Gardens maintenance, operations, and security ("**GMOS**") payments required under the agreements listed on Exhibit K and any other existing or future agreements for which GMOS payments are required (the "**GMOS Payment Agreements**") to fund the annual maintenance, operations, and security costs of Yerba Buena Gardens, shall be deposited into the Accounts and dedicated for the operation, maintenance, and security of the Premises and Retained Other Gardens Areas in accordance with the terms of the GMOS Payment Agreements. The current available total GMOS amount is included in the Initial Approved Annual Budget. City shall be responsible for the enforcement and timely collection of GMOS Payments payable under any GMOS Payment Agreement that is not a Sublease or Operating Agreement, and City shall deposit such GMOS Payments into the Accounts within thirty (30) days of receipt of the GMOS Payments by City. Tenant shall be responsible for the enforcement and collection of GMOS Payments under any GMOS Payment Agreement that is a Sublease or Operating Agreement and Tenant, on behalf of City, shall deposit such GMOS Payments into an account designated by City and City shall deposit such GMOS Payments into the Accounts within thirty (30) days of receipt of the GMOS payments by City.

(iv) Developer Exactions. During the Term of the Lease, all exactions imposed pursuant to agreements listed on Exhibit L and any other existing or future agreements for which exactions are imposed to support the operation, maintenance, security, and capital improvement of the Premises (the "**Developer Exactions**") will be deposited in the Accounts and dedicated for the operation, maintenance, and security of the Premises and Retained Other Gardens Areas in accordance with the terms of such agreements. City shall be responsible for the enforcement and timely collection of Developer Exactions, and City shall deposit the Developer Exactions into the Accounts within thirty (30) days of receipt of the Developer Exactions by City.

(v) Additional Long Range Capital Funding. City, in its proprietary capacity as Landlord, shall support Tenant's efforts to seek additional long-range capital funding for the Premises and Retained Other Gardens Areas, which shall include, at a minimum, the following (collectively, the "**Supplemental Capital Funds**"):

(1) City, in its proprietary capacity as Landlord, shall support Tenant in its efforts to designate the Yerba Buena Gardens Properties as a project eligible to be funded by the Community Facilities Funding District that is planned for the City's pending Central SoMa Plan.

(2) City, in its proprietary capacity as Landlord, shall support Tenant in its efforts to establish a Public Financing Authority and an Enhanced Infrastructure Financing District ("**EIFD**") pursuant to Sections 53398.50–53398.88 of the California Government Code to fund capital repair and improvement of the Premises and Retained Other Gardens Areas. While the final boundaries of the EIFD would be established as part of the process of preparing an Infrastructure Financing Plan ("**IFP**"), City and Tenant envision that the boundaries of the EIFD should be the same as the about-to-be-updated Yerba Buena Community Benefit District boundaries and would include the Premises.

(3) If the EIFD is not created or if it is necessary to supplement revenues from the EIFD, City, in its proprietary capacity as Landlord, shall support Tenant's efforts to pursue other sources of revenues and funds to satisfy the long range-range capital funding of the Premises and Retained Other Gardens Areas, including developer exactions, property transfer payments, Community Facility Districts, Lighting and Landscaping Districts, and future revenue sources created through local, state, and federal legislation.

(vi) Crescent Pool Settlement Proceeds. If City has received or receives in the future any settlement proceeds (either directly or through an assignment from OCII) in connection with the damage to the crescent pool located in the Premises (the "**Crescent Pool Settlement Proceeds**"), City shall deposit all Crescent Pool Settlement Proceeds into the Accounts, and Crescent Pool Settlement Proceeds shall be dedicated and used for the operation, maintenance, security, and capital improvement of the Premises and Retained Other Gardens Areas as consistent with the allowable uses of Program Income.

(b) Establishment and Maintenance of Operating and Reserve Accounts.

(i) Generally. Tenant shall establish (with the dedicated sources of funding listed in Section 7.3(a) above as such dedicated sources shall be deposited by the City and Tenant) and maintain the bank accounts required to fulfill its obligations under this Section 7.3(b) (collectively, the "**Accounts**") with one or more depository institutions reasonably acceptable to City and approved by City in writing. The following depository institutions shall be deemed approved hereunder: (i) any institution approved by the Controller for deposit by City of City funds, (ii) any institution in which Tenant's deposits will be afforded full FDIC deposit insurance coverage for entire balance in the accounts held in such institution, and (iii) First Republic Bank. Other depository institutions and investment strategies proposed by Tenant for the Accounts shall be subject to the prior written approval of the City, which approval will not be unreasonably withheld, delayed, or conditioned. Tenant shall respect any limit on the size of the

funds held in any account(s) as shall be established from time to time by the Controller for City funds with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Any interest accruing on the funds in any Account shall be added to such Account. The dedicated funding set forth in Section 7.3(a) above and any other sources of funding that Tenant or City obtain for the operation, maintenance, security, and capital improvement of the Premises shall not be commingled with other funds. The Tenant shall cause each person who has authority to withdraw or transfer funds from any Account to be bonded or otherwise insured.

(ii) Intentionally Deleted.

(iii) Operating Account. City and Tenant, as applicable, shall deposit all Gross Revenues, GMOS Payments, and Developer Exactions promptly after receipt into a segregated depository account (the "**Operating Account**") established exclusively for the maintenance, operation, and security of the Premises and Retained Other Gardens Areas; provided, that Tenant shall transfer portions of such funds deposited in the Operating Account to the Reserve Accounts (or deposit such funds directly into the Reserve Accounts) as provided herein. City and Tenant agree and acknowledge that pursuant to the YBC Closeout Agreement attached hereto as Exhibit C, all Gross Revenues shall be segregated in a separate Account to be used only for eligible Program Income uses.

(iv) Operating Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Operating Reserve Account**") in an amount as set forth in Section 10.9 and in any event reasonably adequate to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums, or other expenses which are payable other than monthly, abnormally high vacancies, and other expenses that vary seasonally (collectively, "**Operating Expense Fluctuations**"). The funds in the Operating Reserve Account shall be used only for Operating Expense Fluctuations, and Tenant shall not be used for any other purpose unless Tenant obtains the prior written consent of City, which shall not be unreasonably withheld, conditioned, or delayed.

(v) Replacement Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Replacement Reserve Account**") in an amount as set forth in Section 10.9 and in any event reasonably adequate for the payment of all reasonably anticipated capital repairs and improvements which are reasonably required to preserve, repair, or replace capital improvements, fixtures, or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the Improvements on the Premises ("**Capital Repairs and Replacements**"). The funds in the Replacement Reserve Account shall be used only for Capital Repairs and Replacements, and Tenant shall not use the funds for any other purpose unless Tenant obtains the prior written consent of City, which shall not be unreasonably withheld, conditioned, or delayed. Tenant shall not enter into any agreement to address Capital Repairs and Replacements in an amount in excess of the Replacement Reserve Account balance without the prior written consent of the City.

(vi) Other Reserve Accounts. In addition to the Operating Reserve Account and the Replacement Reserve Account, Tenant may establish such other reserve accounts, as such other reserve accounts are included in the priority of use requirements in Section 10.9(e) below, as shall be advisable for the prudent operation of the Premises and Retained Other Gardens Areas in Tenant's good faith judgment. The Operating Reserve Account, the Replacement Reserve Account, and any other reserve account established in connection with the operation of the Premises is sometimes referred to herein as a "**Reserve Account**" or collectively as the "**Reserve Accounts**."

(vii) Purpose of Reserve Accounts: Funding Levels and Limits. Tenant shall fund each Reserve Account in accordance with Section 10.9 below and in any event in an amount reasonably adequate to pay for all reasonably anticipated costs to be paid from such account, consistent with the practices of other prudently, well-managed civic and cultural places of assembly in the San Francisco Bay Area or other similar spaces in the United States of a like age and quality, from the dedicated sources of funding set forth in Section 7.3(a) above. City's Controller may review the adequacy of deposits to the Reserve Accounts periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in any Reserve Account is insufficient, or unnecessarily conservative, to fund the cost of the likely expenditures which will be required to be made from such account, City may require an increase in the amount of monthly deposits into such Reserve Account (subject to the rights of Mortgagees) upon thirty (30) days prior written notice to Tenant, and Tenant shall thereupon make such adjustments. City's Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly deposits into such Reserve Accounts.

(c) Contract Standards; Contracts with Related Parties. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Premises, Tenant shall attempt to secure the best price reasonably obtainable. Tenant shall not enter into any agreement or arrangement for the furnishing to Tenant of goods or services with any person or entity related to or affiliated with Tenant, Manager or any Subtenant, unless such agreement or arrangement has been approved in advance by the City Administrator or Director of Property in writing after full disclosure of such relationship, which approval shall not be unreasonably withheld if Tenant demonstrates that the sums payable under the proposed contracts do not exceed the amounts normally payable for similar goods and services under similar circumstances and that the agreement is otherwise consistent with an arms-length transaction.

(d) Books and Records. Tenant shall keep accurate Books and Records in accordance with the standards of financial accounting of the Governmental Accounting Standards Board for at least four (4) years, or such longer time as may be required under applicable Law, after the creation of such Books and Records. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain its Books and Records as to separately account for expenses incurred and revenues generated. If Tenant operates all or any portion of the Premises through a

third-party Manager, Tenant shall cause such third-party Manager to adhere to the foregoing requirements regarding books, records, and accounting principles. Tenant shall maintain complete and accurate accounting records of all construction costs associated with the Improvements for a period of no less than four (4) years after, the date of the issuance of the last certificate of completion for any work on the Improvements. Promptly (but in no event exceeding thirty (30) days) following a written request from City, Tenant shall make requested Books and Records (or copies thereof) available for inspection and audit by City during customary business hours at a location within the City reasonably satisfactory to City; provided, that City may not request more than one inspection and audit per Lease Year so long as there is not an Event of Default at any time during the Term. Tenant shall cooperate with City during the course of any audit.

(e) Reports. Tenant shall deliver to City annually a statement from the depository institutions in which the Accounts are held, showing the then current balance in such Accounts and any activity on such Accounts which occurred during the immediately prior Lease Year. In the event that Tenant has withdrawn funds from any Reserve Account within the immediately prior Lease Year, Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City.

(f) Inspection and Audit. City shall have the right to inspect Tenant's Books and Records during normal business hours upon reasonable prior written notice to Tenant, and City shall have audit rights as described in Section 10.2.

(g) Security Interest. Tenant hereby grants to City a lien and security interest in the Accounts to secure the performance by Tenant of all of Tenant's obligations under this Lease. Tenant shall execute, deliver, file, and refile, and consents to City filing and refiling, at Tenant's expense, any instruments, financing statements, continuation statements, or security agreements that City may require from time to time to confirm the lien granted herein. Tenant hereby warrants and represents that the Accounts shall be free and clear of all other liens and encumbrances except only liens granted to a Mortgagee as permitted under Article 42. Tenant shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien granted hereby if requested by City, including, without limitation, a security agreement and a depository account control agreement. Subject to the rights of a Mortgagee of which City has been made aware in writing, upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City shall have the immediate right of possession of the funds in the Accounts. City hereby subordinates its interest in the Accounts to the interests of a Mortgagee of which City has been made aware in writing, which subordination is self-operative. The requirements set forth in this Section are the minimum requirements imposed on Tenant in connection with the Accounts and City acknowledges that a Mortgagee may impose the same or further requirements with respect thereto, and that sums deposited with or at the direction of a Mortgagee for the purposes for which a Reserve Account has been established shall be deemed deposited in such Reserve Account to avoid Tenant being required to maintain duplicative reserves.

(h) Joint Control Agreement. At any time upon the recommendation of the City Controller, and following a determination by the City that Tenant's management of the

Accounts (as defined in Section 7.3(b)(i)) is materially affecting (with adverse consequences) the use, operation, and programing of the Premises, City may require, by sixty (60) days advance written notice to Tenant, that Tenant cause the depositary bank, in which one or more Accounts are held, to enter into a "joint control agreement," on commercially reasonable terms and conditions, in which such depositary bank agrees that it will require the consent of City as related to certain activities in connection with one or more of the Accounts listed in Section 7.3(b).

(i) Transfer of Accounts at Lease Expiration or Termination. Upon the expiration or earlier termination of this Lease all funds in the Accounts shall be transferred to City or City's designee, subject to payment of all of Tenant's reasonable expenses incurred in performing its obligations under this Lease through the date of expiration or earlier termination of this Lease.

8. SURRENDER AND TRANSFER BY OCII

City and Tenant anticipate that by separate agreement, OCII will agree to the following upon transfer of OCII's interest in the Premises to City: (i) cooperate in good faith with City and Tenant to surrender possession of the Premises and facilitate Tenant's possession and commencement of operations under this Lease, (ii) transfer all of the Existing Account Funds to Tenant or to City, for transfer to Tenant, as the parties may agree, (iii) transfer all of its other personal and intangible property to Tenant, including but not limited to all equipment, supplies, files, books, and records, and assign (to the extent assignable) all maintenance, janitorial, security, and other services contracts that Tenant agrees to assume, and (iv) cooperate with Tenant to recover possession from Subtenants of the Premises who have not entered into Subleases (if required) on or before the Commencement Date hereof. If OCII reasonably incurs any additional expenses in connection with the existing ownership interest or in connection with OCII obligations under any such agreement following the transfer by OCII of all of its accounts and reserves, Tenant shall reimburse OCII for such reasonable expenses from the Existing Account Funds in accordance with the allowable uses of such funds.

9. INTENTIONALLY DELETED.

10. RENT AND ACCOUNTING

10.1 Base Rent.

Commencing on the Commencement Date and thereafter on every anniversary of the Commencement Date during the Term, Tenant shall pay annual Base Rent to City in the amount of One Dollar ($1.00) per year.

10.2 Accounting by Tenant. Upon request by the City, or if Tenant reasonably believes that that Gross Revenues collected or Operating Expenses incurred for the prior month will cause the approved Annual Operating Budget to be exceeded, Tenant shall deliver to City a statement certified as correct by Tenant and otherwise in form satisfactory to City, showing the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds that Tenant collected (or received from City) during the last preceding calendar month and an itemization of Operating Expenses for that calendar month (a "**Tenant Monthly Statement**"). In addition to this

ongoing, as-needed reporting requirement, on or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City a statement (the "**Tenant Annual Statement**"), certified as correct by Tenant, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Tenant Annual Statement shall set forth financial statements in accordance with Governmental Accounting Standards Board ("**GASB**") standards which will include a balance sheet, statement of activities, or income statement, statement of cash flows, and include applicable footnotes and disclosures for the Lease Year just concluded. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be unreasonably withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(a) Definitions. The following terms shall be defined as set forth below.

(i) "**Operating Expenses**" means expenses, fees and costs of any kind or nature whatsoever, incurred in connection with the operation, management, ownership, insurance, maintenance or repair of the Premises and Retained Other Gardens Areas paid for by Tenant with no reimbursement from any subtenant, licensee, other occupant of the Premises or from grantors, donors or any other entity or person. Operating Expenses shall include, without limitation (A) the cost of utilities (including any deposit); (B) the cost of security services; (C) the cost of janitorial services; (D) to the extent not paid out of retenanting reserves, the cost of marketing the Premises (including advertising, reletting, lease inducements, broker commissions and fees, lease buyouts, rent subsidies, moving expenses, tenant improvements, LEED or similar "green building" consultants engaged by Tenant to assist Subtenants and Operators in connection with tenant improvements, fees and other costs incurred in connection with any application, registration or certification of Subtenants' Sublease premises or the premises subject to an Operator's Operating Agreement with any green building rating organization (e.g., USGBC) and hazardous materials remediation or restoration, if applicable; (E) to the extent not paid out of insurance reserves, insurance premiums for all insurance policies carried by Tenant on the Premises or in connection with the use or occupancy thereof; (F) wages, salaries, payroll taxes and other labor costs and employee benefits; (G) management fees and common area maintenance (CAM) expenses; (H) accounting, consulting, and legal expenses; (I) Tenant's overhead and reimbursement of City Costs up to the greater of (1) the City Third Party Costs that City incurs during a fiscal year, or (2) the Estimated City Costs for that fiscal year; (J) deposits into the Operating Reserve Account, Replacement Reserve Account, and any other Reserve Account (subject to Section 10.9 below), reasonable retenanting reserves, and reasonable reserves for insurance premiums and property taxes; (K) required permits, certificates, and licenses; (L) to the extent not paid out of property tax reserves, any and all taxes, impositions and/or assessments levied against or charged to the Premises or Tenant's interest therein pursuant to this Lease or any covenants, conditions and restrictions, easements, or access and maintenance agreements now or hereafter of record; (M) refunds owed to Subtenants for excess repayment of operating expenses or common area maintenance (CAM) charges; and (N) Tenant's Organizational Expenses. The computation of Operating Expenses shall be made in

accordance with GAAP. Such expenses shall be reasonable and no higher than market rates, and all dealings with affiliates, board members and employees of Tenant shall be disclosed to the City in the Tenant Annual Statement.

(ii) "**Tenant's Organizational Expenses**" means the reasonable costs of operating the entity which is Tenant under this Lease. Tenant shall operate the entity in a manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient, cost effective and consistent with Tenant's mission, corporate purposes, applicable Laws, and this Lease, at all times avoiding lavish, extravagant, or excessive expenditures.

(b) Audit of Tenant Accounting. Tenant agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make its Books and Records available to City, or to any City auditor, or to any auditor or representative designated by City ("**City Representative**"), for the purpose of examining such Books and Records to determine the accuracy of Tenant's reporting of Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds and Operating Expenses pursuant to the terms of this Lease and for Tenant's compliance with the requirements of Section 7.3. Tenant shall cooperate with City Representative during the course of any audit. Such Books and Records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City Representative for the purpose of auditing or re-auditing these accounts. If an audit is made within such four-year period and City claims that errors or omissions have occurred, the Books and Records shall be retained and made available until those matters are resolved. If Tenant operates all or any part of the Premises through a third-party Manager, Tenant shall require each such third-party Manager to provide City with the foregoing audit right with respect to their respective Books and Records.

10.3 Accounting by City. Upon request by the Tenant, or if it appears that Gross Revenues collected or City Costs incurred for the prior month will cause the approved Annual Operating Budget to be exceeded, City shall deliver to Tenant a statement certified as correct by an officer of City and otherwise in form satisfactory to Tenant, showing the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds that City collected during the last preceding calendar month and itemized City Costs for that calendar month (a "**City Monthly Statement**"). In addition to this ongoing, as-needed reporting requirement, on or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, City shall deliver to Tenant a statement (the "**City Annual Statement**"), certified as correct by City, certified or audited by an independent certified public accountant, or otherwise in form satisfactory to Tenant. The City Annual Statement shall set forth financial statements in accordance with GASB standards regarding the Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds as well as the City Costs, for the Lease Year just concluded. Notwithstanding anything to the contrary in this Lease, City's Controller may request that City and Tenant amend this Lease from time to time to make reasonable modifications to the reporting and administrative requirements and obligations of this Section in order to comply with mandated audit requirements, and City and Tenant agree to in good faith consider and agree to such amendment, which agreement will not be unreasonably

withheld, delayed or conditioned. Any such changes or modifications to the reporting requirements will be memorialized as an administrative amendment to Exhibit O.

(a) Audit of City Accounting. City agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make records applicable to this Lease available to Tenant, or to Tenant's auditor, or to any auditor or representative designated by Tenant (collectively, "**Tenant Representative**"), for the purpose of examining such City's records to determine the accuracy of City's reporting of Gross Revenue, GMOS Payments, Developer Exactions, and Supplement Capital Funds as well as the City Costs. City shall cooperate with Tenant Representative during the course of any audit. City will keep such records for four (4) years and maintain and/or make them available in San Francisco to Tenant Representative for the purpose of auditing or re-auditing these accounts. If an audit is made within such four-year period and Tenant claims that errors or omissions have occurred, the City will maintain its records and make them available until those matters are resolved.

(b) Security Interest. City hereby grants to Tenant a lien and security interest in any separate account into which City deposits the Retained Lease revenues prior to transfer to the Tenant (such separate account, the "**Retained Lease Account**") to secure the performance by City of its obligations under this Lease. City shall execute, deliver, file, and refile, and consents to Tenant filing or refiling, at City's expense, any instruments, financing statements, continuation statements, or other security agreements that Tenant may require from time to time to confirm the lien granted herein. City hereby warrants and represents that the Retained Lease Account shall be free and clear of all other liens and encumbrances. City shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien granted hereby if requested by Tenant, including, without limitation, a security agreement and a depository account control agreement. Upon the occurrence of an event of default by City, City shall have the immediate right of possession of the funds in the Retained Lease Account.

10.4 CBDG Audits. City and Tenant shall cooperate to comply with annual CBDG audit requirements, including audits specifically pertaining to one party. Tenant shall pay for the cost of the CBDG audits not otherwise paid by City as City Costs.

10.5 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements, and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, including, subject to the terms and conditions of Section 10.9 below, any City Costs for which City has not previously reimbursed itself from Gross Revenues collected by City, shall be deemed Additional Rent. City shall have the same rights, powers, and remedies, whether provided by Law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent.

10.6 Payment of Rent. Tenant shall pay Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date

for payment is otherwise specified, or if payment is stated to be due "upon demand," "promptly following notice," "upon receipt of invoice," or the like, then such Rent shall be due thirty (30) days following the giving by City of such demand, notice, invoice, or the like to Tenant specifying that such sum is presently due and payable.

10.7 No Abatement or Setoff.

Except as otherwise set forth in this Lease, Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim.

10.8 Dedicated Funding. City acknowledges that Tenant is non-profit public benefit corporation that is incorporated for the primary purpose of performing the long term operation and management of the Premises and that as of the Effective Date, Tenant has no sources of revenue or funding and relies upon the dedicated sources of funding set forth in Section 7.3(a) hereto. Accordingly, City and Tenant agree that all Rent and any other payments that Tenant is obligated or becomes obligated to make to City or third parties pursuant to the terms of this Lease shall be paid from one or more of the dedicated sources of funding set forth in Section 7.3(a) as well as any additional funding actually received by Tenant, such as Supplemental Capital Funds, subject to and consistent with the terms and conditions of any such additional funding. Notwithstanding the foregoing, but subject to Section 24.2 below, the parties recognize that there are certain obligations under the Lease that must be met and City and Tenant recognize a mutual affirmative obligation to identify and apply for additional funding, from non-City sources, to meet such obligations.

10.9 City Costs Reimbursement; Reserves Funding.

(a) City Costs. Subject to the terms and conditions of this Section 10.9, City shall have the right to reimbursement of the actual, out-of-pocket costs incurred by City during the Term in connection with fulfilling its roles and responsibilities under this Lease, management of the City Retained Areas, management and enforcement of the Retained Leases and this Lease (in City's proprietary capacity and not as regulator), as determined on a time and materials basis (the "**City Costs**"). Subject to the terms and conditions of this Section 10.9, City shall reimburse itself for City Costs from the Gross Revenues that City collects under the Retained Leases and shall deposit the remaining Gross Revenues collected by City in the Accounts in accordance with this Lease.

(b) Estimated City Costs. As part of the annual budgeting process, City shall prepare and provide to Tenant for its review and approval a reasonable estimate of the total annual City Costs that the City anticipates incurring during the upcoming fiscal year, including estimates of the anticipated City Third Party Costs and anticipated City Staff Costs. Such estimated City Costs that are approved by Tenant and included within the following year's approved Annual Operating Budget are referred to herein as the "**Estimated City Costs.**" In the event that the City and Tenant cannot agree on the Estimated City Costs for an upcoming fiscal year, then the amount of the Estimated City Costs for such year shall be set at five percent (5%) of the average actual City Costs over the previous three (3) fiscal years (but exclusive of any extraordinary costs during such period); except that (i) for fiscal year 2018/2019, the Estimated City Costs shall be in the amount shown on the Initial Approved Annual Budget, (b) for fiscal year 2019/2020, the Estimated City Costs shall be the average of the final actual fiscal year

2018/2019 City Costs and an amount equal to 105% of the fiscal year 2018/2019 Estimated City Costs, and (c) for fiscal year 2019/2020, the Estimated City Costs shall be the average of the final actual fiscal year 2018/2019 City Costs, the final actual fiscal year 2019/2020 City Costs and an amount equal to 105% of the fiscal year 2019/2020 Estimated City Costs. City may elect to reserve the full amount of Estimated City Costs within a City account upon commencement of any applicable fiscal year; provided that any amounts so reserved in excess of final actual City Costs during such fiscal year shall be available for distribution at the end of the fiscal year or shall be credited toward the following fiscal year's reservation for Estimated City Costs.

(c) Reserve Funding. To ensure adequate operating and capital reserves, upon the transfer of the Existing Accounts to Tenant, (i) Tenant shall fund the Operating Reserve Account with the amount shown on the Initial Approved Annual Budget, and (ii) Tenant shall fund the Replacement Reserve Account with the amount shown on the Initial Approved Annual Budget. Thereafter, Tenant shall have the right but not the obligation to increase the amount of funds in the Operating Reserve Account and the Replacement Reserve Account, with the goal of annually restoring funds in the Operating Reserve Account to an amount equal to fifteen percent (15%) of the projected annual Operating Budget (the "**Operating Reserve Budget Target Amount**") and the goal of annually restoring funds in the Replacement Reserve Account to an amount equal to twenty-five percent (25%) of the average upcoming three fiscal years of projected capital budgets (the "**Replacement Reserve Budget Target Amount**"), subject to the terms and conditions of this Section 10.9. The funding for the Operating Reserve Account and the Replacement Reserve Account shall be an item in each Annual Operating Budget and Annual Capital Budget.

(d) Reimbursement Procedures. During each fiscal year during the Term, City shall have the right to be reimbursed for City Costs up to the greater of (i) the City Third Party Costs that City incurs during the fiscal year, or (ii) the Estimated City Costs for the fiscal year. Any City Costs that exceed the greater of (i) the City Third Party Costs that City incurs during the fiscal year, or (ii) the Estimated City Costs for the fiscal year shall be "**Deferred City Staff Costs**" and shall be reimbursed to City as set forth in this Section 10.9(d).

(i) City Third Party Costs. City Third Party Costs shall be reimbursed to City as incurred by the City during the fiscal year.

(ii) Deferred City Staff Costs.

(1) City shall have no right to reimbursement for the Deferred City Staff Costs until such time as (A) the Operating Reserve Account has been funded to an amount equal to the Operating Reserve Budget Target Amount, and (ii) the Replacement Reserve Account has been funded to an amount equal to the Replacement Reserve Budget Target Amount. Subject to the priority of use provisions of Section 10.9(e) below, if these conditions are met, then City may be reimbursed for the Deferred City Staff Costs provided that such reimbursement would not cause funds in the Operating Reserve Account to drop below the Operating Reserve Budget Target Amount and funds in the Replacement Reserve Account to drop below the Replacement Reserve Budget Target Amount.

(2) Deferred City Staff Costs shall always be paid in arrears (upon conclusion of the annual audit) in order to allow sufficient time to determine the amount of funds in the Operating Reserve Account and the Replacement Reserve Account.

(e) Priority of Use. In addition to the priority of use requirements as contained in the Metreon Lease, the CB-1 Retail Lease, and the CB-1 REA, which requirements are excerpted from each document and set forth in Exhibit J attached to this Lease, Tenant's use and expenditure of Gross Revenues must be in accordance with the following priority of use requirements: (i) payment of Operating Expenses (including Tenant's overhead and reimbursement of City Costs up to the greater of (A) the City Third Party Costs that City incurs during the fiscal year, or (B) the Estimated City Costs for the fiscal year), (ii) funding of the Operating Reserve Account to an amount equal to the Operating Reserve Budget Target Amount, (iii) funding of the Replacement Reserve Account to an amount equal to the Replacement Reserve Budget Target Amount, (iv) reimbursement of Deferred City Staff Costs that are at least three (3) years outstanding, (v) payment of Capital Repairs and Replacements, (vi) payment of Cultural Expenditures that are not separately paid as Operating Expenses, (vii) reimbursement of Deferred City Staff Costs that are less than three (3) years outstanding, and (viii) funding of the Operating Reserve Account and the Replacement Reserve Account in amounts that exceed the Operating Reserve Budget Target Amount and the Replacement Reserve Budget Target Amount or any other reserve account, as established consistent with Section 7.3 (b)(vi) of this Lease, and as determined by Tenant in its reasonable discretion.

(f) Cooperation. In the event that the actual City Costs exceed the Estimated City Costs or, if at any time City reasonably anticipates that the actual City Costs may end up exceeding the Estimated City Costs, as might be the case if City incurs extraordinary City Third Party Costs that were not anticipated by City and Tenant, City and Tenant shall meet and confer in good faith to determine how to address the City Costs in excess of the Estimated City Costs in a manner that allows Tenant to remain solvent and to continue to operate and maintain the Premises in accordance with this Lease.

(g) City Cost Reporting. If City elects to reimburse itself for City Costs for any expense not previously estimated as a part of Estimated City Costs, then within with thirty (30) days after each reimbursement, City shall provide Tenant with a notice stating that City has elected to reimburse itself for the City Costs along with an invoice documenting and itemizing such costs. The City Monthly Statement for the calendar month in which City reimbursed itself directly for the City Costs shall show that City was reimbursed for such costs, and that Tenant has no obligation to pay such costs as Additional Rent. Tenant shall have the right to dispute any portion of the invoice and to audit the City's books and records in accordance with Section 10.3(a) above. If Tenant in good faith disputes any portion of an invoice, then within sixty (60) calendar days after receipt of the invoice Tenant shall provide written notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to resolve the dispute as soon as practicable.

11. TAXES AND ASSESSMENTS

11.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. To the extent required by Law, Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property located on the Premises or Tenant's leasehold estate to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 11.1(c)). Subject to the provisions of Section 12 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest, or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability, or amount of any such taxes in accordance with Section 12.

(i) Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease and/or the Agreements may create a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor (but excluding any such taxes separately assessed, levied, or imposed on any Sublease). Tenant further acknowledges that any Agreement or assignment permitted under this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

(ii) Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may be reasonably requested by City to enable City to comply with such requirements.

(b) Other Impositions. Without limiting the provisions of Section 11.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 11.1(c)), which may be assessed, levied, confirmed, or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant or Operator whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or Operator or any other person or entity may have acquired pursuant to this Lease. Subject to the provisions of Section 12, Tenant shall pay or cause to be paid all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest, or cost as may be

assessed for nonpayment or delinquent payment of any Imposition, except to the extent such fine, penalty, interest, or cost relates to nonpayment or delinquency of taxes separately assessed, levied, or imposed on any Subtenant or Operator. "**Impositions**" means all taxes, assessments, liens, levies, charges, or expenses of every description, levied, assessed, confirmed, or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees, and other charges whether general or special, ordinary, or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation all community benefits district assessments imposed on the Premises. Notwithstanding the foregoing provisions to the contrary, Tenant shall not be responsible for paying any transfer taxes resulting from the City's lease of the Premises to Tenant or any business or gross rental taxes assessed to the City.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

11.2 City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 12, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, City, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, City shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which City intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify City that it is contesting such Imposition pursuant to Section 12, then City may thereafter pay such Imposition, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within ten (10) business days following demand.

12. CONTESTS

12.1 Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity, or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or any Operator, or other

person or entity to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to City. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability, or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties, or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in any instance where City's interest in the Premises may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body, or administrative agency conducting such proceedings. If City is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Premises, City, at the request of Tenant and at no cost to City, with counsel selected and engaged by Tenant, subject to City's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. City, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Premises. Except as provided in the preceding sentence, City shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 21, Tenant shall Indemnify City for any such fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, which City may be legally obligated to pay.

12.2 City's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, City may but in no event shall be obligated to contest the validity, applicability, or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require City to pay any Imposition as long as it contests the validity, applicability, or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. City shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. If City undertakes any such contest, and any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, City shall be responsible for complying with such condition as a condition to its right to contest. City shall be responsible for the payment of any interest, penalties, or other charges which may accrue as a result of any contest, and City shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Premises may be subjected to such lien or claim. City shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body, or administrative agency conducting such proceedings. If Tenant is a

necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of City and at no cost to Tenant, with counsel selected and engaged by City, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses, or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

13. COMPLIANCE WITH LAWS

13.1 Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to City, (i) with all applicable Laws (including Regulatory Approvals to the extent required or applicable), and (ii) with the requirements of all policies of insurance required to be maintained pursuant to Section 22 of this Lease. The foregoing sentence shall not be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 4.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses (if, and to the extent, not already obtained), including but not limited to, Building Permits, nor do such uses limit City's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to City, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Section 13.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 13.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Article 18 or 19, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction, or suspension of payment of Rent, except to the extent provided in Article 18 or 19, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

(c) Proof of Compliance. Tenant shall promptly upon request provide City with evidence of its compliance with any of the obligations required under this Section.

13.2 Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity as the holder of fee title to the Premises and not in its regulatory capacity. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations, or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where City will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires City's approval under Article 16, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of City, which approval will not be unreasonably withheld, conditioned, or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with City in Tenant's efforts to obtain such Regulatory Approval, and City shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that City shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than City, if City is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of City whether on or off the Premises, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. No such approval by City shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, where required City shall join in its proprietary capacity as landlord, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that City shall have no obligation to join in any such application or execute the permit if City does not approve the conditions imposed by any regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of City (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties, or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and City shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 21, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

14. REPAIR AND MAINTENANCE

14.1 Tenant's Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to City (except as set forth in Section 14.2 [Substructure] below), the Premises in condition and repair as is appropriate for a first class civic and cultural place of assembly in the San Francisco Bay Area and in compliance with all applicable Laws and the requirements of this Lease, subject to the approved Annual Operating Budget and Annual Capital Budget, the 5-Year Work Plan, and Section 24.2 below.

(b) Inspection Reports. Not less frequently than once every five (5) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises in good order and repair and to keep the Improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify Capital Repairs and Replacements as well as routine maintenance and repairs and establish a budget and schedule for the performance of such work. Tenant, in consultation with City, shall develop a budget and financing plan for the Replacements and other repair work identified in the Inspection Report and a schedule for the commencement and completion of such work (the "**5-Year Work Plan**"), which shall be subject to City's reasonable approval. Following the City's approval of the 5-Year Work Plan, Tenant shall commence and complete the work identified in the 5-Year Work Plan in accordance with the 5-Year Work Plan and this Lease. A new 5-Year Work Plan shall be prepared and approved in connection with each Inspection Report during the Term. If at any time City reasonably determines that repairs, improvements, or replacements which are not detailed on the Inspection Report are advisable to keep the Premises in good order and repair or to prevent deterioration ("**Additional Replacements**"), City may send Tenant written notice of the need for such Additional Replacements.

(c) Maintenance and Repair. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Replacements and Additional Replacements (except as otherwise provided in Article 18 or Article 19) in a timely manner and in compliance with all Laws and this Lease. Tenant shall make such repairs with materials, apparatus, and facilities at least equal in quality, design standards, public safety, and durability to the materials, apparatus, and facilities repaired, replaced, or maintained. Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

(d) No Obligation of City. Except as set forth in Section 14.2 [Substructure] below, as between City and Tenant, Tenant shall be solely responsible for the condition, repair, and maintenance of the Premises, including any and all Improvements, from and after the Commencement Date. Except as set forth in Section 14.2 [Substructure] below, City shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any existing

or future law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941, and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

(e) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than City) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Material Laws), asserting that the Premises or any portion thereof is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 22, asserting that the requirements of such insurance policy or policies are not being met.

14.2 City's Obligation to Maintain and Repair the Substructure.

(a) City's Duty to Maintain and Repair. City and Tenant agree that the substructure supporting the Premises (the "**Substructure**") is not part of the Premises. City shall be responsible, at its sole cost and expense, for Substructure maintenance, operations, repairs, replacements, and capital improvements; provided, however, to the extent Tenant damages the Substructure, then Tenant shall be responsible for the cost of repairing or replacing the damaged portions of the Substructure. City shall secure sufficient funding to perform the work required by this Section 14.2 and to maintain the Substructure in a first class condition over the term of the Lease.

(b) Substructure Inspection Reports. Not less frequently than once every five (5) years, City and Tenant shall conduct an inspection and physical needs assessment for the Substructure to identify replacements, and repairs required to maintain the Substructure in good order and repair and to keep the Substructure from deteriorating, and shall cause to be prepared a written report (the "**Substructure Inspection Report**") detailing the results of such inspection and assessment. The Substructure Inspection Report shall identify capital repairs and improvements which are reasonably required to preserve, repair, or replace capital improvements, fixtures or equipment located on or used in connection with the Substructure ("**Substructure Replacements**") as well as routine maintenance and repairs and establish a budget and schedule for the performance of such work. City, in consultation with Tenant, shall develop a budget and financing plan for the Substructure Replacements and other repair work identified in the Substructure Inspection Report and a schedule for the commencement and completion of such work (the "**5-Year Substructure Work Plan**"), which shall be subject to Tenant's reasonable approval. Following Tenant's approval of the 5-Year Substructure Work Plan, City shall commence and complete the work identified in the 5-Year Substructure Work Plan in accordance with the 5-Year Substructure Work Plan and this Lease. A new 5-Year Substructure Work Plan shall be prepared and approved in connection with each Substructure Inspection Report during the Term. If at any time Tenant reasonably determines that repairs, improvements, or replacements which are not detailed on the Substructure Inspection Report are advisable to keep the Substructure in good order and repair or to prevent deterioration

("**Additional Substructure Replacements**"), Tenant may send City written notice of the need for such Additional Substructure Replacements.

(c) Maintenance and Repair. City shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals, and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Substructure Replacements and Additional Substructure Replacements in a timely manner and in compliance with all Laws and this Lease. City shall make such repairs and replacements with materials, apparatus, and facilities at least equal in quality, design standards, public safety, and durability to the materials, apparatus, and facilities repaired, replaced, or maintained.

(d) Notice. City shall take all necessary and reasonable measures to ensure that all Substructure operations and work will not unreasonably impact Tenant's, Managers', or any Subtenant's or Operator's ability to use the Premises. Prior to performing any work on the Substructure, City shall provide prior written notice to Tenant and coordinate and consult with Tenant to minimize any potential impacts on Tenant, Managers, Subtenants, Operators, and the operation of the Premises, as set forth in Section 41.1 below.

15. PERSONAL PROPERTY

Trade fixtures and other personal property of Subtenants and Operators and will remain the property of such Subtenants and Operators according to the terms of their Agreements. Tenant shall have the right during the Term of this Lease, to remove trade fixtures and other Personal Property from the Premises in the ordinary course of business; provided that Tenant replaces the Personal Property with equal or better Personal Property and if the removal of Personal Property causes material damage to the Premises or Retained Other Gardens Areas, Tenant shall promptly cause the repair of such damage, at no cost to City, from the Accounts.

16. SUBSEQUENT CONSTRUCTION

16.1 City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Article 16, provided that Tenant shall not do any of the following, without City's prior written approval (which approval may be withheld by City in its reasonable discretion):

(i) Construct additional buildings or other additional structures (other than to replace or Restore those previously existing, the approval and construction of which shall be governed by a separate instrument entered into with City) or take any action that will materially affect the structural integrity of the Improvements; or

(ii) Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law) or take any action that materially affects or requires any work to the Substructure or any property or improvements not located on the Premises; or

(iii) Materially alter the Premises in a manner which would adversely affect the Gross Revenues generated.

(iv) Contract work that shall cause the approved Annual Capital Budget to be exceeded.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires City's approval under Section 16.1(a) above, Tenant shall notify City of such planned Subsequent Construction. City shall have the right to reasonably object to any such Subsequent Construction, to the extent that such Subsequent Construction requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Subsequent Construction within the thirty (30) day period described above, then Tenant may submit a second written notice to City that such objection was not received within the period provided by this Section 16.1(b) and requesting City's response within five (5) business days after Tenant's second notice. If the City fails to object to such planned Subsequent Construction within such five (5) business day period, then Tenant shall proceed with compliance with the procedures for approval and performance of the Subsequent Construction as set forth below.

(c) Permits. Tenant acknowledges that the provisions of this Section are subject to all applicable provisions of this Lease, including, but not limited to, Sections 13.1(a) and 16.7. In particular, Tenant acknowledges that City's approval of Subsequent Construction (or the fact that Tenant is not required to obtain City's approval) is approval in City's proprietary capacity as landlord and does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from City in its regulatory capacity.

16.2 Minor Alterations.

Unless otherwise required under Section 16.1(a), City's approval, in its proprietary capacity as landlord, shall not be required for (a) the installation, repair, or replacement of furnishings, fixtures, or equipment which do not materially affect the structural integrity of the Improvements, (b) the installation, repair, or replacement of landscaping and hardscaping, (c) repainting of the Premises and similar maintenance and upkeep, and (d) any other Subsequent Construction that does not require permits or approvals from the Planning Commission or Planning Department, the Zoning Administrator, the Department of Building Inspection or the Board of Supervisors) (collectively, "**Minor Alterations**").

16.3 Tenant Improvements.

Except as otherwise specifically provided hereunder, including under Section 16.1 of this Lease, City's approval hereunder, acting in its proprietary capacity as Landlord, shall not be required for the installation of tenant improvements and finishes to prepare any portion of the Premises or Improvements for occupancy or use by Subtenants or Operators, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a Building Permit from City, acting in its regulatory capacity.

16.4 Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review, and Approval of Construction Documents. With regard to any Subsequent Construction that requires City's approval under this Article 16, Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed schematic drawings, and following City's approval of such schematic drawings, Final Construction Documents that are consistent with the approved schematic drawings (collectively, schematic drawings and Final Construction Documents are referred to as "**Construction Documents**"). City may waive the submittal requirement of schematic drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall reasonably approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If City notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 16.5, City shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection, and City shall reasonably approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If City fails to approve, conditionally approve, or disapprove the Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 16.4, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved by City, provided (i) that Tenant first submits a second written notice to City stating that such approval or disapproval was not received within the period provided by this Section 16.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second written notice and further stating that Tenant intends to deem said Construction Documents so approved if City fails to respond within such ten (10) day period, (ii) that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED, and (iii) that the original request met the requirements of this Section. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of the Construction Documents, City and Tenant shall hold regular progress meetings to coordinate the preparation, review, and approval of the Construction Documents. City and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to City can receive prompt and speedy consideration.

16.5 Resubmittal of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's reasonable written objections. Tenant shall resubmit such revised portions to City, in its proprietary capacity as Landlord, as soon as possible after receipt of the notice of disapproval. City shall reasonably approve or disapprove such revised portions in the same manner as provided in Section 16.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to City. If Tenant desires to make any substantial change in the Final Construction Documents after City has approved them or was deemed to have approved them, then Tenant shall submit the proposed change to City for its reasonable approval. City shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to City. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period. If City fails to approve or disapprove the proposed change to the Final Construction Documents within such fifteen (15)-day period, the proposed change shall be deemed approved by City, provided (i) that Tenant first submits a second written notice to City stating that such approval or disapproval was not received within the period provided by this Section 16.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second written notice and further stating that Tenant intends to deem said Construction Documents so approved if City fails to respond within such ten (10) day period, (ii) that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words REVIEW/APPROVAL REQUEST FOR YERBA BUENA GARDENS CONSERVANCY. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED, and (iii) that the original request met the requirements of this Section. Notwithstanding the foregoing, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

16.6 Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to City written progress reports when and as reasonably requested by City.

16.7 Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City:

(i) City shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which City has an approval right under Section 16.1, if any); and

(ii) Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Article 13;

(iii) If Tenant in good faith estimates that total construction costs of the Subsequent Construction will exceed One Million Dollars ($1,000,000), Tenant shall have submitted to City a statement, reasonably satisfactory to City, describing the sources of funding that Tenant will use to pay such costs as and when due; provided, however, that the threshold amount set forth in this Section 16.7(iii) shall be increased annually by the same percentage as the increase, if any, in the Index, which is published most immediately preceding the most recent anniversary of the Commencement Date over the Index in effect on the Commencement Date.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently, and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption, or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Tenant shall use commercially reasonable efforts to control dust, noise, and other effects of such work using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, Tenant shall, to the extent reasonably necessary to minimize the risk of hazardous construction conditions, erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed.

(c) Costs of Construction. City shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior written notice during customary construction hours, subject to the rights of Subtenants and Operators and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. The City and its Agents shall conduct their activities in such a way as to minimize interference with operations of Tenant and its Subtenants and Operators to the extent reasonably practicable. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Subject to applicable Laws, Tenant agrees that any person performing labor in connection with Subsequent Construction (other than tenant improvement work or other work performed by Existing Subtenants under Existing Subleases or Existing Operators under Existing Operating Agreements that may not require compliance) shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, or cause to be included, 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 general prevailing rate of wages for the labor so performed and shall use reasonable and diligent efforts to enforce such contract provisions. Tenant further agrees that highest prevailing wage shall be determined in accordance with the applicable provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22 of the San Francisco Administrative Code that relate to payment of prevailing wages. At City's written request, Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements

(other than tenant improvements performed by Subtenants) to document compliance with this Section 16.7(e).

16.8 Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

16.9 As-Built Plans and Specifications.

With respect to any Subsequent Construction for a single project costing One Hundred Thousand and No/100 Dollars ($100,000.00) as Indexed, or more, for which City's approval was required under Article 16, Tenant shall furnish to City one set of as-built plans and specifications with respect to such Subsequent Construction (reproducible transparencies and CAD files) within one hundred twenty (120) days following completion, unless City notifies Tenant in writing that as-built plans and specifications are not required for such Subsequent Construction. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

17. UTILITY SERVICES

City, in its proprietary capacity as fee owner of the real property comprising the Premises and landlord under this Lease, shall be responsible for maintenance and repairs and pay all charges incurred for installation, maintenance, and replacement of all utilities beyond those utilities serving specific building footprints within the Premises, so long as said maintenance, installation, and repair items are consistent with utility related expenses that OCII incurred for such items as of the Effective Date. Tenant, Managers and its Subtenants and Operators shall be responsible for contracting with, and obtaining, all other necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put. Tenant and its Subtenants and Operators will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees, and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations, and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further,

Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

18. DAMAGE OR DESTRUCTION

18.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage or Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes of this Section 18, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction to all or a portion of the Premises or of the Improvements thereon or any part thereof, (i) that would materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) the repair of which would exceed twenty-five percent (25%) of the funds in the Replacement Reserve Account, or (iii) the repair of which would exceed the amount of any deductible for the applicable insurance policy maintained by Tenant (or maintained by a Subtenant under a Sublease or an Operator under an Operating Agreement with respect to the portion of the Improvements so damaged or destroyed), Tenant shall promptly, but not more than thirty (30) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

18.2 Intentionally Omitted.

18.3 Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 18.4, and such casualty arises from a risk required to be covered by insurance described in this Lease, then, provided that the funds in the Replacement Reserve Account immediately prior to the event of damage or destruction ("**Replacement Reserve Account Funds**"), together with the Property Related Insurance proceeds and the applicable deductible(s) payable in connection with such Property Related Insurance (Tenant shall apply funds from all Reserve Accounts to the extent necessary to pay such deductible(s))

(collectively, "**Tenant's Restoration Funds**") are sufficient for such purpose, as mutually determined by Tenant and City ("**Sufficient Restoration Funds**"), then subject to Section 18.4, Tenant shall, within a reasonable period of time, including such time as may be necessary or desirable for Tenant to obtain all Regulatory Approvals, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades). All Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 16 relating to Subsequent Construction and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

18.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs, or if a change in Laws has occurred which prohibits the Premises from being rebuilt for the Permitted Uses, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (i) electing to commence and complete Restoration of the Improvements substantially to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Laws (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 18.4(b)) as to all or a portion of the Premises. Tenant shall provide City with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand of repayment or acceleration of a Mortgage from any Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Article 16 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements substantially to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction. "**Uninsured Casualty**" means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds the Replacement Reserve Account Funds, and which is not insured (or required to be insured) under the policies of insurance that Tenant is required to carry under Article 22 hereof; or (2) an event of damage or destruction occurring at any time during the Term that is covered under any of Tenant's insurance policies required to be maintained pursuant to this Lease for which Sufficient Restoration Funds are not available.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 18.4(a) above, Tenant shall do all of the following:

(i) In Tenant's Casualty Notice electing to terminate described in Section 18.4(a), Tenant shall provide evidence of the estimated cost of Restoration, and the amount by which the cost of Restoration plus the amount of any applicable policy deductible and the Replacement Reserve Account Funds exceed any applicable insurance proceeds payable to Tenant; and

(ii) City may elect, to the extent of Tenant's Restoration Funds, to require that Tenant cause the Improvements to be repaired to the extent required to alleviate any condition caused by such event of damage or destruction that could cause an immediate threat to public safety, as reasonably determined by City ("**Safety Restoration Work**"). Any remaining balance of Tenant's Restoration Funds shall be payable as follows: (w) first, to City (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the Safety Restoration Work; (x) second, to the Mortgagee demanding payment thereof in accordance with its Mortgage and applicable Law (in order of lien and not pro rata), that portion of the remaining casualty proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Mortgagee and secured by the Mortgage under the loan documents therefor; (y) third, to City in the amount owed to City, if any, by Tenant on account of Tenant's obligations hereunder as of the date of the event of damage or destruction; and (z) fourth, the balance of the proceeds shall be divided pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest as defined in Section 19.3(b).

(c) City's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 18.4(a) and (b) as to all or a portion of the Premises, then City may, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises, or the portion thereof described in the Casualty Notice, in their then-existing condition, free of any existing Subleases and Operating Agreements (unless otherwise assumed by City), except for the Existing Subleases, which City shall assume, or (ii) continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed Tenant's Restoration Funds and require Tenant to Restore the Premises in accordance with Section 18.4(b); provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or, destruction, as determined by City in its reasonable judgment; or (iii) continue the Lease in effect and undertake the Restoration of the Premises itself, without contribution from Tenant, provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment. If City elects to continue the Lease in accordance with this Section 18.4(c), then Rent shall abate until the Premises (or the portion thereof damaged or destroyed by casualty) is delivered to Tenant with the Restoration substantially complete for resumption of operation of the Premises (or the portion thereof damaged or destroyed by casualty).

18.5 Effect of Termination.

Provided that there shall not have occurred any Event of Default under this Lease that has not been waived in writing by the City, if Tenant elects to terminate the Lease under Section 18.4 above (as to all or a portion of the Premises), and City elects not to continue the Lease in effect under Section 18.4(c) with respect to the portion of the Premises described in the Casualty Notice, then, on the date that Tenant has fully complied with all other provisions of Section 18.4(b) to the reasonable satisfaction of City, this Lease, and the Assignment of Agreements shall terminate to the extent provided in the Casualty Notice with respect to the portion of the Premises described in the Casualty Notice. Upon such termination, except otherwise set forth in

this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination with respect to the portion of the Premises for which the termination applies; provided, however, that the following provisions shall survive such termination: (i) all indemnification provisions contained in this Lease with respect to matters arising before the effective date of any such termination only, and (ii) any rights of the Parties or Mortgagee to receive insurance proceeds in accordance with this Lease. At City's request following any termination, Tenant shall promptly deliver to City a duly executed and acknowledged quitclaim deed with respect to all of Tenant's interests related to this Lease with respect to the portion of the Premises to which the termination applies, suitable for recordation and in form and content satisfactory to City. While a termination of this Lease with respect to only a portion of the Premises in accordance with this Section shall require no further action from the Parties to take effect, City and Tenant shall amend this Lease to remove the terminated portion from the definition of the "Premises" and to make other conforming changes as reasonably determined to be necessary by the parties.

18.6 Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by City and Tenant, subject to the rights of any Mortgagee, shall be paid to and retained by the party entitled thereto in accordance with this Lease.

18.7 Event of Default.

Subject to Article 42, if an Event of Default has occurred and is continuing under this Article 18 that has not been waived in writing by City, then City shall receive all Property Related Insurance proceeds to the extent required to satisfy Tenant's obligations under this Article 18.

18.8 Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all Property Related Insurance proceeds paid to City or Tenant by reason of damage to or destruction of any Improvements, if any, shall be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Article 18 or as otherwise approved by the City.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 18, and except as may otherwise be agreed upon by City and Tenant, if Tenant Restores the Improvements, any insurer paying compensation directly to Tenant in excess of Five Million Dollars ($5,000,000.00) as Indexed under any Property Related Insurance policy required to be carried hereunder, shall pay such proceeds to (i) a trustee (which shall be a bank or trust company, designated by City within thirty (30) days after written request by Tenant, having an office in San Francisco), or (ii) the Mortgagee that is the holder of any Mortgage which is a lien against the Improvements, or a trustee reasonably acceptable to the City designated by such Mortgagee, at the option of such Mortgagee. Such trustees or Mortgagee shall pay to Tenant, from time to time as the work of Restoration shall progress, in amounts designated by

certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such Restoration. If there is no Mortgage encumbering the Lease and a trustee is holding the proceeds, then City shall instruct the trustee to pay Tenant the cost of any emergency repairs and site protection necessitated by the event of damage or destruction in advance of the actual Restoration within thirty (30) days of such request. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon reasonable satisfaction that the amount necessary to provide for Restoration of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, are available for such purposes and that the application of such funds for such purposes is assured. Unless agreed otherwise by the Parties, and subject to the requirements of any Mortgagee, the insurer shall pay insurance proceeds of Five Million Dollars ($5,000,000) as Indexed, or less directly to Tenant for purposes of Restoration in accordance with this Lease.

Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank, or trust company for its services. If any proceeds are held by a trustee pursuant to this Section 18.8(b), the trustee or Mortgagee, as applicable, shall hold all insurance proceeds in an interest-bearing, federally insured account, and all interest thereon shall be added to the proceeds. Provided that no Event of Default that has not been waived by City exists on the date of such Restoration, the Improvements must be Restored in accordance with the provisions of this Section 18.8(b) and all sums due under this Lease must then be paid in full, and any excess money received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant to be deposited into the Replacement Reserve Account.

18.9 No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided in this Article 18.

19. CONDEMNATION

19.1 General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Article 19.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation, or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Article 19, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 19, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

19.2 Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to the payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that all indemnification provisions hereof shall survive any such termination with respect to matters arising before the effective date of such termination.

19.3 Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Article 19, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate, or of property located outside the Premises that substantially or materially eliminates access to the Premises where no alternative access can be constructed or made accessible, shall be a "**Substantial Condemnation**," and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to City) if Tenant reasonably determines that such Condemnation renders the Premises unsuitable, untenantable, and economically infeasible for its intended use as described in this Lease; provided, however, a Condemnation described above shall not be a Substantial Condemnation, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Premises unsuitable, untenantable, and economically infeasible for its intended use as described in this Lease, as the case may be, can be cured by the performance of Restoration, and (i) the cost of such Restoration does not exceed the portion of the Award fairly allocable to severance damages suffered by Tenant plus Tenant's Restoration Funds, as applicable, or (ii) City (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within ninety (90) days (subject to extension as provided below) after receipt of Tenant's termination notice that City agrees, at its cost and expense, to pay all amounts by which the cost of such Restoration exceeds the amount of the Tenant's severance damages and such Restoration can be completed within eighteen (18) months after the date of the Substantial Condemnation in City's reasonable judgment. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Article 16 and Section 19.4, within a reasonable time, subject to events of Force Majeure. City's right to exercise the option described in clause (ii) above shall be conditioned upon City and

Tenant reaching an agreement with respect to the schedule for performance of required work, the timing of payments of City's contribution to the costs of such work (to the extent not available from City's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, City shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 19.2 or Section 19.3(a) (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and in accordance with all applicable Laws, Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to City. Any Award in connection with a Partial Condemnation shall be payable to Tenant to be applied to the Restoration, with the balance of such Award payable pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest, as defined below. Any such Restoration shall be performed in accordance with the provisions of Article 16.

(c) Definitions. For purposes of this Lease: (1) "**City's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of City's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the applicable Improvements; and (2) "**Tenant's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of any Subtenant's or Operator's interest in the applicable Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements.

19.4 Awards.

Except as provided in Sections 19.3(b) and 19.5 and 19.6, Awards and other payments to either City or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between City and Tenant as follows:

(a) first, if this Lease is not terminated as a result of such Condemnation, to the costs of Restoration;

(b) second, to the extent of Tenant's Percentage Interest of the Net Award and Payment, to the Mortgagee pursuant to the Mortgage (or to the mortgagee(s) of Subtenant(s) that sublease the Premises pursuant to the Subtenant mortgages) for payment of all amounts outstanding thereunder, together with such Mortgagee's or Subtenant mortgagee's reasonable out of pocket expenses and charges in connection with collection of the Net Award and Payment,

including, but not limited to its reasonable Attorneys' Fees and Costs incurred in the Condemnation;

(c) third, City and Tenant shall each be allocated the value of their respective City's Percentage Interest and Tenant's Percentage Interest in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. The values of City's Percentage Interest and Tenant's Percentage Interest in the Premises shall be established by the same court of law that establishes the amount of the Award, taking into the account the provisions of Section 19.3(c), and the amounts distributed to the Mortgages pursuant to Section 19.4(b), shall be deducted from the value of Tenant's Percentage Interest in the Premises;

(d) fourth, to City from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to City under this Lease for periods prior to the Condemnation Date;

(e) fifth, to Tenant from the share otherwise allocated to City, in an amount equal to any sum which City has agreed to pay towards the cost of Restoration under clause (ii) of Section 19.3(a).

19.5 Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant solely for the purpose of and only to the extent to perform Restoration and Safety Restoration Work, and to comply with its obligations under Agreements in the event of a temporary Condemnation; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Condemnation.

19.6 Safety Restoration Work; Award for Personal Property, Goodwill, and Relocation.

(a) Safety Restoration Work. Notwithstanding any provision to the contrary in this Article 19, prior to any termination of this Lease in connection with a Substantial Condemnation or Partial Condemnation, Tenant shall conduct Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable.

(b) Award for Personal Property, Goodwill, and Relocation. Notwithstanding anything to the contrary contained in this Article, 19, Tenant shall not be entitled to any portion of any Net Awards and Payments or any separate Award in connection with any loss of business or loss of good will of Tenant, the unexpired value of the leasehold granted under this Lease, or relocation benefits or moving expenses of Tenant. City shall not be entitled to any portion of any Net Awards and Payments payable to Subtenants or Operators in connection with the Condemnation of the Personal Property of any Subtenants or Operators, any loss of business or

loss of good will of Subtenants or Operators, or relocation benefits or moving expenses of any Subtenants or Operators.

20. LIENS

20.1 Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises, Tenant's leasehold estate or the Accounts, other than the following (collectively, the "**Permitted Title Exceptions**"): (i) this Lease, the Subleases and any liens, encumbrances, or other exceptions to title existing as of the Effective Date, (ii) liens for non-delinquent Impositions (except for Impositions being contested by Tenant or Subtenants pursuant to Article 12), (iii) Mortgages under Article 42, (iv) Mortgages encumbering the subleasehold interests of Subtenants; and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 12. The provisions of this Section do not apply to liens created by Tenant on its Personal Property to the extent that such liens are permitted under Article 42 below.

20.2 Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of City, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration, or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by City or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or City's fee interest in the Premises for or on account of labor, services, or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow City from time to time to post a notice of non-responsibility on the Premises. Subject to Section 12.1 above, if Tenant does not, within sixty (60) days following receipt of notice of the Imposition of any such lien, cause the same to be released of record or post a bond or take such other action reasonably acceptable to City, City shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable expenses incurred by City in connection therewith shall be payable to City by Tenant within thirty (30) days following written demand by City. City shall include reasonable supporting documentation with any such demand.

21. INDEMNIFICATION

21.1 Indemnification.

Subject to Section 21.3 below, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Tenant's use or operation of the Premises, including without limitation, the occurrence or existence of any of the

following: (i) any accident, injury to, or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Tenant or any of Tenant's Agents, Invitees, Subtenants, or Operators; (iii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises, or any part thereof by Tenant or any of Tenant's Agents, Invitees, Subtenants or Operators; (iv) any use, non-use, possession, occupation, operation, maintenance, management, or condition of property near or around the Premises by Tenant or any of Tenant's Agents, Invitees, Subtenants, or Operators; (v) any design, construction or structural defect relating to any Subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, Subtenants, or Operators; (vi) any failure on the part of Tenant or its Agents, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees, Subtenants, or Operators; and (viii) any civil rights actions with respect to the Premises due to Tenant's operation of the Premises other than in accordance with this Lease. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to the Commencement Date, and to the extent not arising from the negligence or willful misconduct of Tenant or any of its Agents, Invitees, Subtenants, or Operators. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit, or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

21.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 21.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment or arbitration decision determining that all or a portion of the claim fell outside the scope of the indemnity, City shall reimburse Tenant for that portion of costs, fees, and expenses expended by Tenant hereunder that was determined to be outside the scope of this indemnity. Notwithstanding the foregoing, in the event of a final judgment or arbitration decision determining that no Indemnified Party is entitled to the indemnification provided in Section 21.1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Tenant is required to carry under the terms of this Lease (or would not have been provided but for Tenant's default in its obligations to maintain such insurance), then City shall reimburse Tenant for the

actual out-of-pocket expenses incurred by Tenant in connection with the defense of the Indemnified Party following Tenant's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

21.3 Limited by Insurance.

Tenant's indemnification obligations set forth in Section 21.1 above and all of Tenant's other indemnification obligations set forth in this Lease shall be limited to the amount of insurance proceeds that are available pursuant to the insurance coverage that Tenant is required to maintain pursuant to this Lease or available to Tenant under any of the Agreements.

21.4 Survival.

Tenant's indemnity obligations under this Lease shall survive the expiration or sooner termination of this Lease.

21.5 Other Obligations.

The agreement to Indemnify set forth in this Article 21 and elsewhere in this Lease is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City under this Lease.

21.6 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Tenant of an invoice therefor.

21.7 Release of Claims Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the City and any and all Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment, or business opportunities and by persons in, upon or about the Premises arising from the City's or any Indemnified Party's exercise of any of their rights or obligations in connection with this Lease, but excluding any claims to the extent arising from the gross negligence or willful misconduct of City or the Indemnified Parties.

22. INSURANCE

22.1 Property and Liability Coverage.

As used herein, terms such as "necessary," "require," "required," "specify," "acceptable," "satisfactory," "approval," "approved," and words of similar import are deemed to be qualified by the words "reasonable" or "reasonably," as the context may be. As used herein, "commercially reasonably available" means commercially reasonably available at a commercially reasonable cost.

(a) Tenant Insurance Requirements. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Commercial General Liability Insurance. Tenant shall, and shall require by written contract that Manager shall, maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 04 13, insuring against liability for bodily injury (including death), property damage, personal and advertising liability, and the products-completed operations hazard, and with "insured contract" coverage as to the indemnity in Section 21.1 and as to any other indemnity of City by Tenant, with respect to occurrences upon the Premises (including the Improvements), and, to the extent commercially reasonably available, operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence, affording coverage for the risks of independent contractors, explosion, collapse, underground (XCU), with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) general aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"); (C) if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Tenant's policies.

(ii) Workers' Compensation Insurance. During any period in which Tenant has employees as defined-in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation, and maintenance of the Premises and the Improvements.

(iii) Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than One Million Dollars ($1,000,000) each accident.

(iv) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or require by written contract that its remediation contractor or remediation consultant shall maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(v) Professional Liability. Tenant shall require by written contract that professionals it engages maintain professional liability (errors and omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with a deductible or self-insured retention reasonably approved by City (such approval not to be unreasonably withheld, conditioned, or delayed), with such insurance to be maintained during any period for which such professional services are being performed and for five (5) years following the completion of any such professional services.

(vi) Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and memorialized in a mutually-agreed amendment to this Lease, and as is customary for a comparable civic and cultural center in the San Francisco Bay area.

(b) City Insurance Requirements. City shall obtain, maintain and cause to be in effect at all times from the Commencement Date to the last day of the Term, the following types and amounts of insurance:

(i) Builders Risk Insurance. At all times during any period of Subsequent Construction, City shall maintain, on a form reasonably approved by Tenant, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction with no coinsurance penalty provision, including all materials and equipment incorporated into the Improvements, and in transit or storage off-site (subject to sublimits), against hazards. The Builder's Risk policy shall identify the City and Tenant as named insureds and the City as loss payee, with any deductible not to exceed Ten Thousand Dollars ($10,000) per occurrence if such deductible amount is commercially reasonably available.

(ii) Property Insurance. City shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 07 ("Causes of Loss - Special Form") in an amount not less than 100% of the then-current full

replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage) with any deductible not to exceed Ten Thousand Dollars ($10,000) per occurrence, if such deductible amount is commercially reasonably available. In addition to the foregoing, City shall insure the Personal Property leased to Tenant pursuant to this Lease in such amounts as City deems reasonably appropriate and Tenant shall have no interest in the proceeds of such Personal Property insurance; provided, however, that any such proceeds shall be dedicated by City for the operation, maintenance, security, and capital improvement of the Premises.

(iii) Boiler and Machinery Insurance. City shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air- conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement cost of such machinery and equipment.

(c) General Requirements. All insurance required under this Lease:

(i) As to property and boiler and machinery insurance, shall name City and Tenant as named insureds and City as loss payee as its interest may appear.

(ii) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." Tenant shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(iii) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(iv) Shall be evaluated by City and Tenant for adequacy not less frequently than every five (5) years. Following consultation with Tenant, City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its umbrella liability policies if in the reasonable judgment of the City's Risk Manager it would be commercially reasonable to do so, when compared with facilities similar to the Premises in the San Francisco Bay area, to maintain limits substantially greater than the amounts carried by Tenant with respect to risks associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of commercial practice in the San Francisco Bay area and the risks associated with use of the Premises, City shall notify Tenant of such determination, and Tenant shall have the right to decrease the umbrella liability insurance required under this Lease accordingly. In any such event, Tenant shall promptly deliver to City a certificate evidencing such new insurance limits and meeting all other requirements under this Lease with respect thereto.

(v) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified

hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(vi) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Sections 22.1(b)(i) and (ii);

(vii) Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Lease and shall not be unreasonably withheld, conditioned or delayed; and

(viii) Except for professional liability insurance which shall be maintained in accordance with Section 22.1(a)(v), if any of the insurance required hereunder is provided under a claims-made form of policy, City or Tenant, as applicable, shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease.

(ix) Shall for Property Related Insurance only, provide that all losses payable under all such policies shall be payable notwithstanding any act or negligence of City.

(d) Certificates of Insurance; Right of to Maintain Insurance.

(i) Tenant shall furnish City certificates with respect to the policies required under Section 22.1(a), together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Tenant shall provide City with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide City with notice of reduction in coverage limits within thirty (30) days of Tenant's knowledge of such event. If at any time Tenant fails to maintain the insurance required pursuant to Section 22.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Tenant and opportunity to cure, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within thirty (30) days following demand, Tenant shall reimburse City for all reasonable premiums so paid by City, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

(ii) City shall furnish Tenant certificates with respect to the policies required under Section 22.1(b), together with (if Tenant so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. City shall provide Tenant with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide Tenant with notice of reduction in coverage limits within thirty (30) days of City's knowledge of such event.

If at any time City fails to maintain the insurance required pursuant to Section 22.1(b), or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to City and opportunity to cure, Tenant may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to Tenant. Within thirty (30) days following demand, City shall reimburse Tenant for all reasonable premiums so paid by Tenant, together with all reasonable costs and expenses in connection therewith and interest thereon.

(e) Insurance of Others. Tenant shall require by written contract that general liability insurance policies that Tenant requires to be maintained by Subtenants, Operators, contractors, subcontractors, or others in connection with their use or occupancy of, or their activities on, the Premises, include Tenant and City (using the wording described in Section 22.1(b)(ii)) as additional insureds.

22.2 Tenant Entitled to Participate.

With respect to Property Related Insurance, Tenant shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim or suit for any loss in excess of Five Million Dollars ($5,000,000) covered by the insurance required to be carried hereunder; provided, however, that Tenant's consent shall not be unreasonably withheld, conditioned or delayed.

22.3 Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 22.1(a)(i), (ii) or (v) to the extent that such losses and damages are paid by an insurer.

23. HAZARDOUS MATERIALS

23.1 Hazardous Materials Compliance.

(a) Compliance with Hazardous Material Laws. Tenant shall comply and cause (i) all persons or entities under any Sublease or Operating Agreement, (ii) to the extent reasonably controllable by Tenant, all Invitees or other persons or entities entering upon the Premises, and (iii) the Premises and the Improvements, to comply with all Hazardous Material Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Premises. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials

are used in the construction of the Improvements, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable Laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all applicable Laws, and (E) pre-existing Hazardous Materials in, on or under the Premises-that are required by Law or prudent business practices to be Handled for Remediation purposes; provided that Tenant Handles such pre-existing Hazardous Materials in compliance with all applicable Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 23.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state, and local governments or agencies relating to Hazardous Material Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Article 23) and all communication with any person or entity relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Article 23).

(c) City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation, or Release of any Hazardous Materials on, under, or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld, conditioned, or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. City shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If City disapproves of any such Hazardous Materials Remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under, or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Laws, (y) to the reasonable satisfaction of City, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the Regional Water Quality Control Board and the San Francisco Department of Public Health.

(d) Pesticide Prohibition.

(i) Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use

of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

(ii) If Tenant or Tenant's contractor would apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application must be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

23.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 21.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage, or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other person or entity (other than City and its Agents and Invitees) directly or indirectly arising out of (A) the Handling, transportation, or Release of Hazardous Materials by Tenant, its Agents, Invitees, or any Subtenants or Operators or any person or entity on or about the Premises (other than City and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees, or Subtenants (other than City and its Agents and Invitees) to comply with Hazardous Material Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 23.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under, or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage. Tenant acknowledges and agrees that it has an immediate obligation to defend City as set forth in Section 21.2.

24. DELAY DUE TO FORCE MAJEURE OR LACK OF ADEQUATE FUNDING

24.1 Delay Due to Force Majeure.

The cure periods for either Party's failure to perform under this Lease shall be extended by a period of time equal to the duration of the Force Majeure event.

24.2 Delay Due to Lack of Adequate Funding.

Notwithstanding any other provision of this Lease to the contrary, in the event that the dedicated sources of funding for the operation, maintenance, security, and capital improvement of the Premises set forth in Section 7.3(a) above are insufficient to fund the performance of one or more of Tenant's obligations under this Lease (including but not limited to Tenant's obligations under Article 7, Article 10, Article 13, and Article 14 of the Lease), then Tenant's obligation to perform such obligations shall be suspended (and no breach of this Lease shall be deemed to have occurred with respect thereto) until such time as sufficient funding becomes available for the performance of such obligations, provided that (a) Tenant shall notify City of the inadequacy of the dedicated sources of funding and the inability of Tenant to perform one or more of its obligations under this Lease as a result thereof, and (b) City and Tenant thereafter consult in good faith regarding which of Tenant's obligation(s) to suspend until adequate funding becomes available. During the period of any such suspended performance, City and Tenant shall use good faith, diligent efforts to identify and obtain additional funding for the performance of such obligations and/or identify opportunities to reduce expenses as provided in Section 4.4 above. Notwithstanding the foregoing, no such suspension of obligations may result in a shutdown of daily operation, maintenance, and security of the Premises, and in the event of any such shutdown of daily operation, maintenance, and security of the Premises that continues beyond the applicable notice and cure period provided in Section 26.1 and therefore becomes and Event of Default, City shall have the remedies described in Section 27, including without limitation, termination of this Agreement.

25. CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

25.1 City May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by City, City may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, City first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of City constitutes a Condemnation or an impairment of Tenant's contract with City.

25.2 City May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any party other than City (other than any Imposition, with respect to which the provisions of Section 11.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from City for a period of thirty (30) days, subject to Force Majeure (or, if Section 22.1(d) is applicable, which failure continues for five (5) business days after written notice from City), and is not the subject of a contest under Article 12, then, City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

25.3 Tenant's Obligation to Reimburse City.

If pursuant to the terms of this Lease, (a) Tenant fails to pay any sum or perform any obligation required to be paid or performed by Tenant hereunder following written notice of such failure from City and the passage of any applicable cure period, and (b) City then pays such sum or performs such obligation required to be paid or performed by Tenant hereunder, then (i) Tenant shall reimburse City within thirty (30) days following demand (or by such earlier date specifically provided herein with respect to a particular cost or expense), as Additional Rent, the sum so paid, or the reasonable expense incurred by City in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of City's demand until payment is made, or (ii) at City's election, City may reimburse itself for such sums as a City Cost under Section 10.9 above. City's election under (b) of the previous sentence shall not limit City's rights or remedies for Tenant's failure to pay or perform as provided under this Lease. City's rights under this Article 25 shall be in addition to its rights under any other provision of this Lease or under applicable Laws or in equity.

26. EVENTS OF DEFAULT; TERMINATION

26.1 Events of Default.

Subject to the provisions of Section 26.2, the occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent to City when due, which failure continues for thirty (30) days following written notice from City;

(b) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(c) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee, or custodian is appointed to take custody of all or

any material part of the property of Tenant, which appointment is not dismissed within sixty (60) days;

(d) Tenant makes a general assignment for the benefit of its creditors;

(e) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, or otherwise abandons or ceases to use the Premises for the Permitted Uses which abandonment is not cured within ten (10) days after notice of belief of abandonment from City;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from City; or

(g) Tenant violates any provision of Article 7 or fails to perform any other obligation to be performed by Tenant under such Article at the time such performance is due, and such violation or failure continues without cure for more than sixty (60) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (60)-day period, if Tenant does not within such thirty (60)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from the City;

(h) Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, or enters into a Sublease or Operating Agreement for all or any portion of the Premises or Improvements in violation of this Lease and such violation continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within one hundred eighty (180) days after such written notice from City;

(i) Tenant engages in or allows any use not permitted hereunder or engages in any activity prohibited by Section 4.5(a), and such activity continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30) day period, if Tenant does not within such thirty (30) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion sixty (60) days after such written notice from City;

(j) Tenant fails to maintain its status as a tax exempt non-profit entity and such failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, and provided such failure is curable, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from City; provided, however, that if Tenant's failure to maintain its status as a tax

exempt non-profit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, such failure shall be an Event of Default only under the terms and conditions set forth in Section 44.1(c) below; or

(k) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease at the time such performance is due, and such violation or failure continues without cure for more than sixty (60) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (60) day period, if Tenant does not within such sixty (60) day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

Unless otherwise provided above, there shall be no cure period for a default on the part of Tenant.

26.2 Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

27. REMEDIES

27.1 City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of City following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by Law or the terms of this Lease), City shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies of City for any Event of Default by Tenant under the prevailing wage provisions (described in Section 16.7(e) above), the First Source Hiring Program (described in Section 45.10 below) shall be limited to the remedies provided in such programs. All of City's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

27.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, City has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event City elects this remedy, City shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of City's rights, including the right to collect Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant

abandons the Premises in violation of this Lease, City may (i) enter the Premises and relet the portions of the Premises that are not then subject to Subleases to third parties for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements that are not then subject to Subleases. Upon the occurrence of an Event of Default or abandonment of the Premises by Tenant and following the issuance of a notice of default for such abandonment, City shall have the right to be reimbursed from the Accounts for the reasonable costs City incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying, and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining, and preserving the Premises or the Improvements, or any portion thereof (collectively, the "**Lease Enforcement Costs**"). Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term unless such obligations are otherwise specified in this Lease to remain in effect after the termination or expiration of the Term.

(b) No Termination without Notice. No act by City allowed by this Section 27.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If City elects to relet the Premises as provided in Section 27.2(a), the rent that City receives from reletting shall be applied to the payment of:

(i) First, the Lease Enforcement Costs;

(ii) Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to City, in addition to or other than Rent due from Tenant;

(iii) Third, Rent, due and unpaid under this Lease;

(iv) After deducting the payments referred to in this Section 27.2(c), any sum remaining from the rent City receives from reletting shall be deposited into the Accounts in accordance with this Lease, and a portion thereof shall be reserved and applied to the annual installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by City. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any Lease Enforcement Costs, including those for maintenance which City incurred in reletting, remain after applying the rent received from the reletting as provided in Section 27.2(c)(i)-(iii), City shall have the right to seek reimbursement from the funds in the Accounts in the amount of such costs.

(d) Payment of Rent. Tenant shall pay to City the Rent due under this Lease on the dates the Rent is due, less the rent City has received from any reletting which exceeds all costs and expenses of City incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

27.3 Right to Terminate Lease.

(a) Damages. Subject to the rights of a Mortgagee pursuant to Article 42, City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination and termination of this Lease shall thereafter occur on the date set forth in such notice. Notwithstanding the foregoing, City may, rather than terminate the Lease outright, in its sole and absolute discretion, reclassify such portion of the Premises that is subject to the Event of Default any time after the occurrence (and during the continuation) of an Event of Default with respect to such portion of the Premises by giving at least thirty (30) days' advanced written notice of such election by the City to reclassify such portion of the Premises property that is applicable to the Event of Default. Any such reclassification will be in response to any outstanding Events of Default related to certain Subleases, Operating Agreements or management issues. Such reclassification action will constitute a cure of the relevant Event of Default provided that both parties execute the amendment to the Lease to be processed administratively by the City to include the reclassification of such portion the Premises. City electing to cure an Event of Default through such a reclassification and an associated administrative amendment to the Lease shall in no way eliminate the City's right to terminate this Lease in the event of another future Event of Default. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

(i) The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

(ii) The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

(iii) The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

(v) "The worth at the time of the award," as used in Section 27.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 27.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises pursuant to this Section 27.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding anything in Section 6, to the contrary, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without City's written consent, which may be given or withheld in City's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 42.

27.4 Continuation of Subleases and Other Agreements.

Following an Event of Default and termination of Tenant's interest in this Lease, and subject to the terms of any non-disturbance agreements entered into by City, City shall have the right, at its sole option, to assume any and all Subleases, Operating Agreements, and agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement. Notwithstanding the foregoing, with respect to the Subleases, following an Event of Default and termination of Tenant's interest in this Lease, City shall assume Tenant's obligations under such Subleases (and shall not disturb the Subtenants thereunder provided the Subtenants are not then in default under the Subleases following any applicable notice and cure periods). Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City, or cause to be executed, acknowledged and delivered to City, such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing Subleases, Operating Agreements, and other agreements then in force, as above specified.

28. EQUITABLE RELIEF

28.1 City's Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, City shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

28.2 Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

29. NO WAIVER

29.1 No Waiver by City or Tenant.

No failure by City or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of City or Tenant with respect to any other then existing or subsequent breach.

29.2 No Accord or Satisfaction.

No submission by Tenant or acceptance or reimbursement as a City Cost by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance, payment, or reimbursement and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

30. DEFAULT BY CITY; TENANT'S REMEDIES

30.1 Default by City; Tenant's Exclusive Remedies.

City shall be deemed to be in default hereunder only if City shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, City does not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced,

thereafter fails or neglects to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by City described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right to (a) seek damages for Losses incurred by Tenant as a direct result of City's default, provided that Tenant shall have no right to seek damages in excess of the dedicated funding for the Premises (i.e., up to the amount of Gross Revenues, GMOS Payments, Developer Exactions, and Supplemental Capital Funds that City is required to collect and that Tenant otherwise has a right to receive pursuant to this Lease), and (b) seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on City or its Agents; provided, however, (i) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedies for a default by City hereunder, and (ii) Tenant shall have no remedy of self-help.

31. NO RECOURSE AGAINST SPECIFIED PERSONS

31.1 No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that except as otherwise specified in this Section 31.1, Tenant will have no recourse with respect to, and City shall not be liable for, any obligation of City under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of City's fee interest in the Premises (as encumbered by this Lease). By Tenant's execution and delivery hereof and as part of the consideration for City's obligations hereunder, Tenant expressly waives such liability.

31.2 Tenant's Recourse Against City.

No commissioner, officer, director, or employee of City, or any other Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any default by City, and Tenant agrees that it will have no recourse with respect to any obligation or default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

31.3 City's Recourse Against Tenant.

No member, officer, director, shareholder, agent, or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

32. LIMITATIONS ON LIABILITY

32.1 Limitation on Tenant's Liability.

Notwithstanding any provision of this Lease to the contrary, Tenant's liability for damages to City for Losses in any way related to (a) the condition of the Premises on or prior to

the Effective Date, (b) the Substructure, or (c) Losses covered by the insurance that Tenant is required to maintain hereunder shall, in each case, not exceed the amount of insurance proceeds then available from the insurance that Tenant is required to maintain pursuant to this Lease (it being the parties' intent that Tenant's liability for damages to City hereunder for such matters shall be limited to the availability and amount of insurance proceeds payable).

32.2 Limitation on City's Liability Upon Transfer.

In the event of any transfer of City's interest in and to the Premises, City, subject to the provisions hereof (and in case of any subsequent transfers, the then transferor), will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of City, but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that such subsequent transferor assumes the covenants and obligations of City hereunder,

32.3 Mutual Release.

Tenant and City, as a material part of the consideration of this Lease, each hereby waives and releases any and all claims against each other and their respective Agents (and, with respect to the Tenant's waiver and release, also against the Indemnified Parties) for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) in connection with this Lease and the Premises, regardless of whether such party has been informed of the possibility of such damages or is negligent for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of such party. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the foregoing waiver and release.

33. ESTOPPEL CERTIFICATES BY TENANT

33.1 Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to City (or at City's request, to a prospective purchaser or mortgagee of City's interest in the Premises), within ten (10) business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by City. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct, and complete copy of this Lease, as

applicable, including all modifications thereto. Any such certificate may be relied upon by City, and any purchaser, prospective purchaser, mortgagee or prospective mortgagee of the Premises or any part of City's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c), and (d) above with respect to such Sublease.

34. ESTOPPEL CERTIFICATES BY CITY

34.1 Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease), within ten (10) business days after a request, a certificate stating to City's knowledge (limited to only that of the Director of Property) (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), (d) that no security deposit is being held by City under this Lease, and (e) any other matter actually known to City, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, City shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by City that, to its knowledge (limited to only that of the Director of Property), such attachment is a true, correct, and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease, and in the case of a prospective Mortgagee or prospective permitted transferee, shall be in substantially the form requested by such party if agreed upon by City.

35. APPROVALS BY CITY

35.1 Approvals by City as Landlord.

The City Administrator, or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the City Administrator, or his or her designee, determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The Director of Property's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by City of its consent or approval in its proprietary capacity as landlord, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City in its proprietary capacity as landlord, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable Law, including the City's Charter.

35.2 Fees for Review.

Within thirty (30) days after City's written request, Tenant shall pay City, as Additional Rent, City's costs, including, without limitation, Attorneys' Fees and Costs incurred in connection with the review, investigation, processing, documentation, and/or approval of any proposed assignment or Agreement, Mortgage, estoppel certificate, Non-Disturbance Agreement or Subsequent Construction. Tenant shall pay such costs from the dedicated sources of funding set forth in Section 7.3(a) above, consistent with the allowable uses of such funding sources, regardless of whether or not City consents to such proposal, except only in any instance where City has wrongfully withheld, delayed, or conditioned its consent in violation of this Lease.

36. NO MERGER OF TITLE

36.1 No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same party may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all parties having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

37. QUIET ENJOYMENT

37.1 Quiet Enjoyment.

Subject to the terms and conditions of this Lease and applicable Laws, City agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under City. Notwithstanding the foregoing, City shall have no liability to Tenant in the event any defect exists in the title of City as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant. Notwithstanding the foregoing, the City will cooperate in good faith with Tenant's attempts to resolve title matters which adversely affect the Premises, this Lease, or any Sublease.

38. SURRENDER OF PREMISES

38.1 Expiration or Termination.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to City the Premises in good order and in clean and operable condition, reasonable wear and tear excepted, to the extent the same is consistent with maintenance of the Premises in the condition required hereunder, and free of any liens or encumbrances except for any Permitted Title Exceptions and any other liens and

encumbrances as may be consented to by City. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions, and replacements thereto subject to Section 38.1(c) and Section 38.1(d) below. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination.

(b) Subleases and Agreements. Upon any termination of this Lease, City shall have the right to terminate all Agreements and any and all agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement, except for the Existing Subleases, and for those Subleases with respect to which City has entered into Non-Disturbance Agreements, and any and all agreements for the maintenance or operation of the Premises with respect to that City has agreed to assume pursuant to Section 27.4.

(c) Personal Property. Upon the expiration or termination of this Lease, title to the Personal Property shall vest in City without any further action by any Party, subject to the rights of a Mortgagee in such Personal Property that are superior to the rights of City pursuant to the terms of this Lease. Tenant shall remove, at no cost to City, any Personal Property belonging to solely to Tenant and not used in the operation, maintenance, or management of the Premises and not purchased with funds from the Accounts, unless City and Tenant agree otherwise. If the removal of such Personal Property causes damage to the Premises or the Retained Other Gardens Areas, Tenant shall promptly repair such damage, at no cost to City, from the Accounts.

(d) Safety Restoration Work. Upon the expiration or termination of this Lease resulting from an event of damage or destruction pursuant to Section 18.4, a Condemnation event under Section 19, or an Event of Default pursuant to Article 26, upon written instructions from City, Tenant shall, at Tenant's sole cost and expense, complete all Safety Restoration Work, and return the Premises to City in a clean condition. Such Safety Restoration Work shall be conducted in accordance with the provisions of this Lease relating to construction on the Premises, including without limitation, Article 16.

39. HOLD OVER

39.1 Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. If Tenant holds over in the Premises, at City's option, such holdover shall constitute (a) a tenancy at sufferance, or (b) a month-to-month tenancy, terminable on thirty (30) days' written notice by either party to the other, subject to all of the terms, covenants, and conditions of this Lease. Notwithstanding the foregoing, the expiration or earlier termination of this Lease shall not affect the rights of Subtenants under Subleases that are still in effect as of the date of expiration or termination of this Lease, and in each case, the rights of the Subtenants under those Subleases shall be as set forth in those Subleases and/or non-disturbance agreements.

40. NOTICES

40.1 Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given and effective (i) on the date of receipt or refusal if delivered by a reputable overnight delivery service, all fees for such delivery prepaid, or if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or (ii) if mailed, on the date that is three business days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Tenant:	Yerba Buena Gardens Conservancy 5 Third St, Suite 914 San Francisco, CA 94960 Attention: Executive Director Telephone: (415) 493-8755
with a copy to:	Cox, Castle & Nicholson LLP 50 California Street, Suite 3200 San Francisco, CA 94111 Attention: Gregory B. Caligari Email: gcaligari@coxcastle.com
To City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attention: Director of Property Email: andrico.penick@sfgov.org
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attention: Real Estate/Finance Team

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by email to the email address set forth above or such other address as may be provided from time to time by notice given in the manner required hereunder; however, no copies of notices sent by email will be deemed given or will be deemed official or binding notice.

40.2 Form and Effect of Notice.

Every notice given to a Party or other party under this Section must state (or shall be accompanied by a cover letter that states):

(a) the section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 40.2.

41. INSPECTION OF PREMISES BY CITY

41.1 Entry.

Subject to the rights of Subtenants under the Subleases and Operators under Operating Agreements, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing Substructure maintenance, repair, or capital improvement work pursuant to Section 14.2, (iii) performing any work that City may have a right to perform under Section 25, or (iv) inspecting, sampling, testing, and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of City to perform any work that Tenant is required to perform under any provision of this Lease, nor to place upon City any obligation or liability, for the care, supervision, or repair of the Premises, except as otherwise expressly set forth in this Lease. City agrees to use reasonable efforts to minimize interference, to the extent practicable, with the activities and tenancies of Tenant, Subtenants, Operators, and their respective Invitees. If City elects to perform work on the Premises pursuant to Section 25, then City shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies, and equipment into or through the Premises during the course thereof, provided City uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, Operators, and their respective Invitees.

41.2 Exhibit for Lease.

Subject to the rights of Subtenants and Operators, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer, or other conveyance of City's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

41.3 Notice, Right to Accompany.

City agrees to give Tenant reasonable prior notice of City's entering on the Premises for the purposes set forth in Sections 41.1 and 41.2, except in an emergency. Such notice shall be not less than forty-eight (48) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany City or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for City's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Sections 41.1 and 41.2.

41.4 Rights with Respect to Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant and Operator to include a provision similar to this Section 41 in its Agreement) to require each Subtenant and Operator to permit City to enter its premises for the purposes specified in this Section 41.

42. MORTGAGES

42.1 No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Article 42, Tenant shall not:

(i) engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises, the Accounts, or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 20.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in the Premises, or its right to receive Rent, to any Mortgagee of Tenant. Notwithstanding the foregoing, the City Administrator is in the best interest of the City, furthers the City's interest in the operation of the Premises, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance, or lien not permitted by this Article 42 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

42.2 Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to compliance with this Article 42, at any time and from time to time, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease by way of leasehold mortgages, deeds of trust, or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent under this Lease, and for the performance of all other obligations contained in this Lease. Notwithstanding anything to the contrary in this Lease, Tenant and each and every Subtenant shall have the right to assign, mortgage, or encumber and grant a security interest in and to its Personal Property located in the Premises to any lender, equipment lessor, or other financier, provided that such party provides written notice thereof to City within ten (10) business days of granting such security interest.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. The foregoing shall not limit any rights specifically granted to a Mortgagee in any non-disturbance agreement entered into among City, Tenant, and a Mortgagee pursuant to Section 42.2(e).

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time. If at any time there is more than one (1) Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Article 42 to the exclusion of the holder of any junior Mortgage; provided, however, that if the holder of the senior Mortgage fails to exercise the rights set forth in this Article 42, each holder of a junior Mortgage shall succeed to the rights set forth in this Article 42 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 42. No failure by the senior Mortgagee to exercise its rights under this Article 42 and no delay in the response of any Mortgagee to any notice by City shall extend any cure period or Tenant's or any Mortgagee's rights under this Article 42. For purposes of this Section 42.2(c), in the absence of an order from a court jurisdiction that is properly served on City, a title report prepared by a reputable title company licensed to do business in the State of California and having offices in the City, setting forth the order of priority of lien of the Mortgages, may be relied on by City as conclusive evidence of priority.

(d) No Invalidation of Lien of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including the use of any proceeds of any debt, the repayment of which is secured by a Mortgage, shall be deemed to invalidate, defeat, or subordinate the lien of a Mortgage. Notwithstanding anything to the

contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards expressed in Article 7 above.

(e) Agreements Regarding Personal Property. Upon the request of Tenant, or any Subtenant, City shall enter into any commercially reasonable written agreement acceptable to City with Tenant and its Mortgagee or other lessor and/or lender for Tenant's or such Subtenant's Personal Property, wherein City shall agree to subordinate any landlord lien rights it may have in and to such Personal Property to the interest of Mortgagee, lessors, and/or lenders therein and waive any claim that the same are part of the Premises by virtue of being affixed thereto but only to the extent that the provisions of this Lease authorize Tenant to remove such Personal Property upon the expiration or earlier termination of this Lease. Additionally, such agreement shall (a) contain a requirement that each such Mortgagee, lessor and/or lender give proper notice to City (i) of any such default by Tenant, and (ii) prior to any entry of the Premises to remove any Personal Property due to such default and City's approval of the timing thereof, (b) prohibit the sale of such Personal Property on the Premises, (c) contain an agreement by such Mortgagee, lessor, and/or lender to repair any damage to the Premises caused by such entry and removal and Indemnify City for Losses related to such entry and removal, and (d) provide that such agreement will terminate with respect to any of Personal Property that is not removed from the Premises within thirty (30) days after the expiration or any earlier termination of this Lease or the applicable Sublease, regardless of whether full payment or performance by Tenant or such Subtenant under its agreement with such Mortgagee, lessor and/or lender has then yet occurred.

42.3 Notice of Liens.

Tenant shall notify City promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements, the Premises, or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

42.4 Purpose of Mortgage.

(a) Purpose. A Mortgage shall be made only for the purposes of securing the financing of the construction of the Improvements and subsequent repairs, alterations, or improvements to the Premises and permanent take-out financing, or refinancing any of the foregoing, and for no other purpose except as may be approved in writing by the City Administrator, in consultation with the City Controller but otherwise at his or her sole discretion, and any Mortgage made for such other purpose shall be subject to such other conditions and restrictions as the City Controller deems reasonably prudent. No Mortgage shall be cross-collateralized with any other debt of the Tenant or any other party. Tenant shall not be permitted to create any structure that would directly or indirectly be an obligation or security of City.

(b) Statement. City agrees after request by Tenant to give to any Mortgagee or proposed Mortgagee a statement in recordable form as to whether a Mortgage is permitted hereunder, or if permitted subject to conditions, then listing all such conditions (a "**Mortgage**

Confirmation Statement"). In making a request for such Mortgage Confirmation Statement, Tenant shall furnish City true, accurate and complete copy of the promissory note evidencing the loan secured by the Mortgage and a copy of the Mortgage and any other documents or information as are required reasonably by City to permit City to make the determination whether such Mortgage is permitted hereby, together with a draft of the form and content of the Mortgage Confirmation Statement proposed by Tenant or such Mortgagee. If a Mortgage Confirmation Statement provided by City confirms (or confirms with conditions) that such Mortgage is permitted hereunder, such a statement shall conclusively establish that the Mortgage is permitted hereunder and shall stop City from asserting against Tenant or the Mortgagee anything to the contrary or from declaring an Event of Default by Tenant for entering into such Mortgage in compliance with any applicable conditions if the financing contemplated by the Mortgage is accomplished as was proposed, but other than the foregoing estoppel, such a statement shall create no liability for the City. City shall deliver to Tenant an executed Mortgage Confirmation Statement (in form and content approved by City, with such modifications or additions as such prospective Mortgagee may reasonably request and City shall reasonably approve) within thirty (30) days following receipt by City of the financing documents reasonably requested by City. If City does not provide the Mortgage Confirmation Statement by such date, Tenant may provide City with written notice of such failure, together with another copy of the draft of the Mortgage Confirmation Statement proposed by Tenant or the Mortgagee. If City fails to deliver a Mortgage Confirmation Statement within ten (10) business days after such notice, then Tenant may at Tenant's election provide a second written notice to City that Mortgage Confirmation Statement was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "MORTGAGE CONFIRMATION STATEMENT REQUEST FOR YERBA BUENA. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE STATEMENT BEING DEEMED APPROVED," if City does not provide a Mortgage Confirmation Statement within five (5) business days after such second written notice from Tenant, City shall be deemed to have approved the draft Mortgage Confirmation Statement provided by Tenant without conditions; provided, however that, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws. Tenant shall pay City's costs for all Attorneys' Fees and Costs and other costs, including staff time, incurred in connection with reviewing the financing documents and preparing the Mortgage Confirmation Statement within ten (10) days following demand, and notwithstanding any provision in this Section 42.4(b) to the contrary, if City demands such reimbursement prior to the deadline provided above for City's deemed approval of the proposed Mortgage Confirmation Statement, City may condition delivery and deemed approval of the Mortgage Confirmation Statement on receipt of such reimbursement.

42.5 Interest Covered by Mortgage.

A Mortgage may attach to any and all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises and Improvements created hereby, (ii) any Personal Property of Tenant, and (iii) products and proceeds of the foregoing, and (iv) any other property rights and interests of Tenant arising under this Lease, including, without limitation, Tenant's interests in all insurance policies carried by Tenant and all Awards and other payments on account of Condemnation, provided that the Mortgagee agrees in writing that, except to the extent provided in the following sentence, the proceeds from all property insurance covering the

Improvements and all Awards and other payments on account of Condemnation shall be used or paid over to Restore the Improvements or perform Safety Restoration Work as provided in this Lease. Notwithstanding the foregoing, the City Administrator may consent to provisions in the Mortgage permitting the application of insurance proceeds and Awards to the outstanding loan balance under circumstances in which the failure to so apply the proceeds and Awards would result in a material impairment to the Mortgagee's security interest, as demonstrated to the City Administrator's or a neutral third party's reasonable satisfaction, provided that the City Administrator determines that such conditions are necessary or desirable to facilitate transactions required to provide construction or other funding for the Premises, are commercially reasonable and are fair to Tenant and City. As provided in Section 42.1(b), Tenant may not in any manner encumber City's interest in or under this Lease or City's fee simple interest in the Property or City's personal and other property in, on, or around the Property.

42.6 Institutional Lender; Other Permitted Mortgagees.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, (ii) any Community Development Entity, as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended, or (iii) any other lender approved by City in its sole and absolute discretion. In any instances in which City's approval of a lender is required and City does not respond within thirty (30) days after Tenant's notice requesting approval, then Tenant may provide a second written notice to City requesting approval of the lender, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "LENDER APPROVAL REQUEST FOR YERBA BUENA. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE LENDER BEING DEEMED APPROVED," if City does not provide an approval or disapproval of the lender within thirty (30) days after such second written notice from Tenant, City shall be deemed to have approved the lender; provided, however that, no approval by City will be deemed under this paragraph to the extent it would violate applicable Laws.

42.7 Rights Subject to Lease.

(a) Subject to Lease. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions, and restrictions set forth in this Lease and to all rights of City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing.

(b) Construction and Restoration Obligations.

(i) Notwithstanding any provision of this Lease to the contrary, no Mortgagee, including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof (but excluding (A) any other party who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee, or (B) any other purchaser at a foreclosure sale) shall be obligated by the provisions of this Lease to construct any Improvements on the Premises or Restore the Improvements, subject to Section 42.10(c); provided, however, (1) except as provided in Section 42.7(b)(ii)

nothing in this Section or any other Section or provisions of this Lease shall be deemed or construed to permit or authorize any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized in this Lease, as hereafter amended or extended from time.to time, and (2) in the event that Mortgagee obtains title to the leasehold estate and chooses not to Restore the Improvements, it shall so notify City in writing of its election within sixty (60) days following its acquisition of the leasehold estate and shall use good faith efforts to sell its leasehold interest to a purchaser that shall be obligated, as applicable, to Restore the Improvements to the extent this Lease obligates Tenant to Restore, but in any event Mortgagee shall use good faith efforts to cause a sale to occur within one (1) year following written notice to City of its election not to Restore (the "**Sale Period**"). If Mortgagee fails to sell its leasehold estate using good faith efforts within the Sale Period, such failure shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to Restore the Improvements to the extent this Lease obligates Tenant to Restore. If Mortgagee agrees to Restore the Improvements, then all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations.

(ii) Notwithstanding the provisions of Section 42.7(b)(i), if Mortgagee proposes that the Premises be used for uses other than the Permitted Uses ("**Proposed Uses**"), then City may, but shall not be obligated to, extend the Sale Period to three (3) years (the. "**Extended Sale Period**"). If City so extends the Sale Period, then during the Extended Sale Period Mortgagee shall diligently pursue re-entitlement of the Premises for the Proposed Uses, including the pursuit of required Regulatory Approvals and/or the marketing of the Premises to a purchaser that would use the Premises for the Proposed Uses. If Mortgagee fails to diligently pursue re-entitlement of the Premises during the Extended Sale Period, and such failure shall continue for sixty (60) days after written notice from City, then, upon additional written notice from City, the Extended Sale Period shall be deemed to have expired and Mortgagee shall be obligated to Restore the Improvements, as applicable, to the extent this Lease obligates Tenant to so complete or Restore. Tenant acknowledges that any proposed amendments to this Lease to allow Proposed Uses shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion.

42.8 Required Provisions of any Mortgage.

Every Mortgage permitted under this Lease shall provide: (a) that the Mortgagee shall give written notice to City (in the same manner as provided in Article 40) of the occurrence of any event of default under the Mortgage at the same time that such Mortgagee notifies Tenant thereof; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

42.9 Notices to Mortgagee.

(a) Copies of Notices. City shall give a copy of each notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of City's consent to any Transfer to any Mortgagee that has given to City written notice substantially in

the form provided in Section 42.9(b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by City, addressed to such Mortgagee at the address last furnished to City. City's delay or failure to give such notice to a Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee for cure. Any such notices to Mortgagee shall be given in the, same manner as provided in Article 40.

(b) Notice from Mortgagee to City. Each Mortgagee shall be entitled to receive notices from time to time given to Tenant by City under this Lease in accordance with subsection (a) above, provided such Mortgagee has delivered a notice to City in substantially the following form:

> The undersigned certifies that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, acting through the Real Estate Division of the Office of Administrative Services, as landlord, and Yerba Buena Gardens Conservancy, a California nonprofit public benefit corporation, as tenant (the "Lease"), of Tenant's interest in the Lease, a legal description of which is attached hereto as Exhibit A-1 and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by City be sent to the undersigned at the following address: _____.

If Mortgagee desires to have City acknowledge receipt of Mortgagee's name and address delivered to City pursuant to his Section 42.9 then such request shall be made in such notice from Mortgagee in bold, underlined, and capitalized letters.

42.10 Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, mortgage this Lease in compliance with the provisions hereof, then, so long as any such Mortgage remains unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. The Mortgagee with rights as provided in 42.2(c), shall have the right, but not the obligation, at any time prior to termination of this Lease to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act required of Tenant hereunder and to do any act which may be necessary and proper to be done in the performance and observance of the agreements, covenants, and conditions hereof to prevent termination of this Lease; provided that all such acts shall be performed in compliance with the terms of this Lease. Except after the Mortgagee acquires Tenant's interest under this Lease, no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, the Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by the Mortgagee shall be as effective to comply with Tenant's obligations under the Lease, to cure a default by Tenant under the Lease or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any notice of default given by City to Tenant and/or Mortgagee in accordance with Section 42.9, the Mortgagee shall have the same

concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of Tenant's cure period, or (ii) the date that City has served such notice of default upon the Mortgagee. City shall accept such performance by or at the instance of the Mortgagee as if the same had been done by Tenant. If a non-monetary default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended at Mortgagee's request so long as Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with due diligence, subject to Force Majeure, or if such default cannot be reasonably cured or remedied by Mortgagee within such (30) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period shall be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than a monetary Event of Default or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within ninety (90) days after notice of such Event of Default is given to the Mortgagee, the Mortgagee shall have (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified City of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through a receiver) or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings and Force Majeure. A Mortgagee, upon acquiring Tenant's interest in this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this Section 42.10(b) are subject to the following: (A) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after an Event of Default is cured; (B) nothing herein contained shall preclude City, subject to the provisions of this Section 42.10(b), from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default during the pendency of any foreclosure proceedings; and (C) the Mortgagee shall agree with City in writing to comply during the foreclosure period with such of the terms, conditions, and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee, including the payment of all sums due and owing hereunder. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (C) of the preceding sentence, Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease (unless such Event of Default has been cured) and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of Section 42.10(c)–(k) below shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting

foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (x) have fully cured any monetary Event of Default, (y) continue to pay currently Rent as and when the same become due, and (z) perform all other obligations of Tenant under this Lease to the extent that such obligations are reasonably susceptible of being performed by Mortgagee, including at any time Mortgagee is in possession of the Premises (which Mortgagee shall be obligated to use reasonable efforts to obtain), the use restrictions set forth in Article 4 above, the operating covenants set forth in Article 7 above, and the maintenance and repair obligations set forth in Section 14.1 above. City acknowledges that the requirements of Section 44(c) are not reasonably susceptible of being complied with by a Mortgagee.

(c) Construction.

(i) Subject to Section 42.7(b), if an Event of Default occurs following any damage or destruction but prior to completion of the Restoration of the Improvements, to the extent this Lease obligates Tenant to so Restore, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless, such Mortgagee expressly assumes Tenant's obligations to Restore the Improvements by written agreement reasonably satisfactory to City and submits evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligation.

(ii) Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the construction or Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the City on account of an Event of Default or rejection of this Lease by a trustee of Tenant in bankruptcy by Tenant as a debtor in possession, except (i) by Condemnation, or (ii) as the result of damage or destruction as provided in Article 18 (subject to Section 18.5), City shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. Each Mortgagee shall thereupon have the option to obtain a new Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the most senior Mortgagee giving notice within such thirty (30) day period or its designee, subject to the provisions set forth in this Section and provided that such Mortgagee assumes Tenant's obligations as sublandlord under the any Sublease then in effect; and

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee thereunder, shall be subject to approval by the City's Board of Supervisors and the Mayor, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants, and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). The New Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease shall require Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of any Subsequent Improvements, which obligations shall be performed by Mortgagee, if applicable, in accordance with Section 42.10(c). Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution, and delivery of such New Lease. The provisions of this Section 42.10(d) shall survive any termination of this Lease (except as otherwise expressly set out in the first sentence of Section 42.10(d)), and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 42.10, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any New Lease executed pursuant to Subsection 42.10(d), any Agreement then in effect shall be assigned and transferred without recourse by City to Mortgagee. Between the date of termination of this Lease and commencement of the term of the New Lease, City shall not (1) enter into any new Agreements that would be binding upon Mortgagee if Mortgagee enters into a New Lease, (2) cancel or materially modify any of the existing Agreements for the maintenance of the Premises or the supplies therefor, or (3) accept any cancellation, termination, or surrender of any Agreement without the written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned, or delayed. Effective upon the commencement of the term of the New Lease, City shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property that City has in its possession and with respect to which City has the right to so transfer.

(g) Limited to Permitted Mortgagees. Notwithstanding anything to the contrary in this Lease, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages that are permitted under this Article.

(h) Consent of Mortgagee. No modification, termination, or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the proposed modification, termination, or cancellation has been delivered to such Mortgagee and such Mortgagee has

approved the modification, termination, or cancellation in writing, which approval shall not be unreasonably withheld, conditioned, or delayed. No voluntary surrender of the Lease shall be accepted by the City without the approval of Mortgagee. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation, or surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its permitted designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. If a Mortgagee becomes the owner of the leasehold estate under this Lease or under a New Lease, (i) except to the extent further limited by other provisions hereof, such Mortgagee shall be liable to City for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Mortgagee remains the owner of the leasehold estate, and (ii) in no event will Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and the City will have no recourse against Mortgagee's assets other than its interest herein or therein.

(j) Limitation on Obligation to Cure. Notwithstanding anything in the Lease to the contrary, a Mortgagee, and its permitted designee or nominee (other than Tenant), shall have no obligation to cure (i) any Event of Default under this Lease occurring pursuant to Section 26.1(b), (c), (d), (e), (i), (j), or (k) (but with respect to Section 26.1(e), (i), or (k) only if such covenant or obligation is not susceptible to being cured without possession of the Premises or is otherwise not reasonably susceptible of being cured), or (ii) any other Event of Default by Tenant under this Lease that is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default. All of the defaults listed in clause (i) of this Section 42.10(j) shall be deemed defaults not "reasonably susceptible of being complied with" or "not reasonably susceptible of being cured" for purposes of Section 42.10(b).

(k) Cooperation. City, through its City Administrator, and Tenant shall cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by any Mortgagee to implement the provisions and intent of Sections 42.7, 42.8, 42.9, and 42.10; provided that the City Administrator determines that the proposed amendment is in the best interest of the City and is necessary or desirable to effectuate the purpose and intent of such Sections, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

42.11 Assignment by Mortgagee.

Notwithstanding any provision of this Lease to the contrary, including, without limitation, Article 6, foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale, or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to Transfer this Lease or such New Lease shall be subject to the restrictions of Article 21. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease obtained pursuant to Section 42.10(d), and in connection with any such Transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 42 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

42.12 Transfer of Mortgage.

City hereby consents to a Transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such Transfer, the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

42.13 Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

43. NO JOINT VENTURE

43.1 No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other party, or cause City to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

44. REPRESENTATIONS AND WARRANTIES

44.1 Representations and Warranties of Tenant.

(a) Representations and Warranties. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

(i) Valid Existence; Non-Profit Status; Good Standing. Tenant is a nonprofit public benefit corporation duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

(ii) Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated by this Lease.

(iii) No Limitation on Ability to Perform. Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Tenant is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation, or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body, or any other party is required for the due execution, delivery, and performance by the Tenant of this Lease or any of the teams and covenants contained in this Lease, except for consents, authorizations, and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no pending or threatened suits or proceedings or undischarged judgments affecting Tenant before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant.

(iv) Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid, and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

(v) Defaults. The execution, delivery, and performance of this Lease (A) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (1) any agreement, document, or instrument to which Tenant is a party or by which Tenant's assets may be bound or negatively affected, (2) any Law applicable to the Tenant, its business or the Premises or (3) the articles of incorporation or the bylaws of the Tenant, and (B) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as set forth in this Lease.

(vi) Meeting Financial Obligations. No federal or state tax liens have been filed against Tenant; and Tenant is not in default and has not received notice asserting that it is in default under any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(b) Survival. The representations and warranties in this Section shall survive any termination of this Lease.

(c) Tenant to Maintain Tax-Exempt Status. Tenant shall maintain its status as a tax exempt non-profit entity throughout the Term of this Lease. If at any time Tenant becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity, Tenant shall promptly provide City with written notice of such failure, which notice shall indicate Tenant's proposed measures to regain such status, if practicable, and the estimated timeline for regaining such status (the "**Status Change Notice**"). If City becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity prior to the date City receives Tenant's Status Change Notice, City shall provide Tenant with written notice of such failure. If Tenant's failure to maintain its status as a tax exempt nonprofit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, or if Tenant's Status Change Notice indicates that Tenant does not expect to regain such status within twelve (12) months, then Tenant and City shall attempt in good faith to meet no fewer than two (2) times during the ninety (90) day period following Tenant's Status Change Notice or City's notice to City, as applicable (or within another mutually agreed period), to attempt to resolve any detrimental financial impact of Tenant's loss of status, which may include proposals for Tenant to form a successor entity that would qualify for tax exempt status and proposals for Tenant to transfer its interest in the Lease to a tax exempt entity capable of performing Tenant's obligations under this Lease and the Subleases, or proposed amendments to this Lease that allow the Permitted Uses to continue on the Premises. Tenant acknowledges that any proposed amendments to this Lease shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion. If Tenant does not regain its tax exempt status within twelve (12) months after Tenant's Status Change Notice or City's notice to Tenant, as applicable, then, at the election of City's Director of Property, in consultation with the City Controller but otherwise at his her sole discretion, upon written notice to Tenant such failure shall be an Event of Default under this Lease.

45. SPECIAL PROVISIONS

45.1 Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Lease shall have the meanings given to them in the cited ordinance. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Article 26 of this Lease, unless (i) such failure is otherwise

specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section. Tenant hereby agrees to comply with the applicable provisions of the following code sections as such sections may apply to the Premises.

45.2 Non-Discrimination.

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

(b) Subleases and Other Subcontracts. Tenant will include in all Subleases and other Agreements relating to the Premises a non-discrimination clause applicable to the Subtenant, Operator, or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant will incorporate by reference in all Agreements the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all Subtenants, Operators, and other subcontractors to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

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

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

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth in this Lease. Tenant

will comply fully with and be bound by all of the provisions that apply to this Lease under those Chapters of the Administrative Code, including but not limited to the remedies provided in those Chapters. Without limiting the foregoing, Tenant understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars ($50) for each person for each calendar day during which the person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

45.3 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. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

45.4 Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

45.5 Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

45.6 Sunshine Ordinance.

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

person or organization is awarded the contract, lease, agreement, or benefit. Information provided which is covered by this Section will be made available to the public upon request.

45.7 Waiver of Relocation Assistance Rights.

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Law, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Laws (including, but not limited to, California Government Code Section 7260 et seq. , or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq.).

45.8 Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's Subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

45.9 Conflicts of Interest.

Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the terms of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Lease.

45.10 First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Tenant shall enter into one or more agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements attached hereto as Exhibit M. Tenant shall comply with such First Source Hiring Agreements, with respect to the

operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

45.11 Public Access to Meetings and Records.

If Tenant receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. Tenant agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Lease, partially or in its entirety.

45.12 Resource-Efficient Building Ordinance; Energy Reporting.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises. Tenant consents to Tenant's utility service providers disclosing, and will obtain consent from all Subtenants and Operators for their utility providers (whether in a Sublease or Operating Agreement or otherwise) to disclose, energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

45.13 Drug Free Work Place.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents, or assigns shall be deemed a material breach of this Lease.

45.14 Preservative Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater

immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

45.15 Compliance with Disabled Access Laws; Accessibility Disclosures.

(a) Tenant acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Tenant or contractor, must be accessible to the disabled public. Tenant shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

(b) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Tenant is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

45.16 Graffiti.

Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant shall remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within two (2) business days of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The team "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without

the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Tenant to comply with this Section of this Lease shall constitute a default of this Lease.

45.17 Notification of Limitations in Contributions.

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

45.18 Food Service Waste Reduction.

Tenant will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules, and will include the provisions in where applicable in Agreements. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Tenant acknowledges that the Food Service and Packaging Waste Reduction Ordinance contains penalties for noncompliance of One Hundred Dollars ($100.00) for the first breach, Two Hundred Dollars ($200.00) for the second breach in the same year, and Five Hundred Dollars ($500.00) for

subsequent breaches in the same year and agrees that these sums are reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Lease was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Lease, at law, or in equity.

45.19 San Francisco Packaged Water Ordinance.

Tenant will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from the City's Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Lease and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

45.20 Vending Machines; Nutritional Standards.

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

45.21 All-Gender Toilet Facilities.

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

45.22 Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are

incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant must incorporate by reference the provisions of Chapter 12T in all Agreements for some or all of the Premises, and require all Subtenants and Operators to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and Subtenants and Operators may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and Subtenants and Operators may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and Subtenants and Operators may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and Subtenants and Operators will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or Subtenant or Operator at the Premises, that the Tenant or Subtenants or Operators will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and Subtenants and Operators will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and Subtenants and Operators understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including, but not limited to a, penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

45.23 Requiring Health Benefits for Covered Employees.

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. City will notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract (as defined in Chapter 12Q) entered into by Tenant must require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Fifty Thousand Dollars ($50,000), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

45.24 Public Transit Information.

At its sole expense, Tenant will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Building and encouraging use of them.

45.25 Taxes, Assessments, Licenses, Permit Fees, and Liens.

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and Tenant may be subject to the payment of property taxes levied on its possessory interest.

(b) Tenant will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Lease and to pay all other taxes, excises, licenses, permit charges, and assessments based on Tenant's use of the Premises and imposed on Tenant by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(c) Tenant will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Tenant, if it desires, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other

transfer of this Lease be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Tenant must provide a copy of this Lease to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Tenant to timely provide a copy of this Lease to the County Assessor will be a default under this Lease. Tenant will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

45.26 Restrictions on the Use of Pesticides.

(a) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Tenant may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term, (ii) describes the steps Tenant will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Tenant's primary IPM contact person with City. Tenant will comply, and will require all of Tenant's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

(b) If Tenant or Tenant's contractor would apply pesticides to outdoor areas at the Premises, Tenant will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

45.27 Prohibition of Alcoholic Beverage Advertising.

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

45.28 Tenant's Compliance with City Business and Tax and Regulations Code.

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

46. GENERAL

46.1 Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday, or City, state or federal holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease.

46.2 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as," or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term, or matter.

(d) No Presumption Against Drafter. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein," or "hereof' or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered article, section, or paragraph of this Lease or any specific subdivision thereof.

46.3 Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of City, Tenant, and any Mortgagee, subject to the terms and provisions of this Lease. Where the term "Tenant," "City", or "Mortgagee" is used in this Lease, it means and includes their respective permitted successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee.

46.4 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other party and shall not be deemed to have conferred any rights, express or implied, upon any other party, except as provided in Article 42 with regard to Mortgagees.

46.5 Real Estate Commissions. City is not liable for any real estate commissions, brokerage fees, or finder's fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, agent, or finder in connection with this transaction. In the event any broker, agent, or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

46.6 Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

46.7 Entire Agreement.

This Lease (including the Exhibits), for so long as such agreement is in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements between the Parties with respect to all or any

part of the terms and conditions mentioned herein or incidental hereto. No parole evidence of any prior of other agreement shall be permitted to contradict or vary the terms of this Lease.

46.8 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended, or modified except by a written instrument executed by the Parties.

46.9 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the City and County of San Francisco of the State of California, and Tenant consents to the jurisdiction of any such local, state, or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

46.10 Recordation.

On the Effective Date, City and Tenant shall execute the memorandum of lease in the form attached hereto as Exhibit N (the "**Memorandum of Lease**"), and Landlord shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Promptly upon City's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to City a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to City and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. City may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

46.11 Extensions by City.

Upon the request of Tenant, City in its sole discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant, or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant, or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

46.12 Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

46.13 Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then 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 on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

46.14 Effective Date.

This Lease shall become effective on the Effective Date.

46.15 Severability.

If any provision of this Lease, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other party or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

46.16 Reasonably Prompt Approval.

City and Tenant agree that unless otherwise set forth in this Lease, any approval or consent required to be given by either Party shall be given or denied reasonably promptly; provided that the Party required to give approval or consent receives reasonably complete information or documentation upon which such decision must be made.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT 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 OR ENACTED AN ORDINANCE APPROVING THIS LEASE, AND ANY AMENDMENTS THERETO, 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, AND ANY AMENDMENTS THERETO, SHALL BE NULL AND VOID UNLESS THE CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, AND ANY AMENDMENTS THERETO, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE, AND ANY AMENDMENTS THERETO, 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.

[No further text this page.]

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

TENANT: YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation

By:_____
Name:_____
Title:_____

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

EXHIBIT A

DESCRIPTION OF THE PREMISES

(Attached)

DESCRIPTION OF THE PREMISES

The Premises consists of that certain real property located in the City and County of San Francisco, State of California, more particularly described in the following exhibits[1]:

- Exhibit A-1 (Central Block 1 Hotel Parcel Perimeter)[2]
- Exhibit A-2 (Four Seasons Retail Parcel)
- Exhibit A-3 (Legal Description of Block 3)
- Exhibit A-4 (Central Block 2 Whole Block Perimeter)

Excepting therefrom the real property subject to those certain leases described in the following Exhibit A-5, which real property is not part of the Premises.

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[1] Note: The Premises under the Lease are the areas as depicted on Exhibit B-1. The intention of the Parties is that the attached legal descriptions will describe said Premises. The Parties will continue to review and confirm that the attached legal descriptions contained in this Exhibit A accurately describe said Premises and will update the legal descriptions if needed.

[2] Note: If no portion of the "Central Block 1 Hotel Parcel Perimeter" is part of the Premises, then the "Central Block 1 Hotel Parcel Perimeter" legal description should be deleted from Exhibit A.

Exhibit A-1
Legal Description
(Central Block 1 Hotel Parcel Perimeter)

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

CENTRAL BLOCK 1

PARCEL ONE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF MISSION STREET WITH THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET, 304.85 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 160.052 FEET TO THE SOUTHEASTERLY LINE OF JESSIE STREET, AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF FORMER JESSIE STREET 3.863 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 291.671 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 44.713 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 98.50 TO THE SOUTHEASTERLY LINE OF MARKET STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF MARKET STREET 113.889 TO A POINT DISTANT THEREON 150.111 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE FOURTH STREET; THENCE SOUTHEASTERLY AT A RIGHT ANGLE TO SAID LINE OF MARKET STREET 205 FEET TO THE SOUTHEASTERLY LINE OF STEVENSON STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF STEVENSON STREET, 150.111 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF FOURTH STREET, 345.223 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 362 AND PORTIONS OF STEVENSON STREET AND JESSIE STREETS, AS SAID STREETS EXISTED PRIOR TO THE VACATION THEREOF, BY ORDINANCE 40-85 APPROVED JANUARY 22, 1985, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED LAND:

ALL THAT REAL PROPERTY DESCRIBED AS GRANTED BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO TO CB-1 ENTERTAINMENT PARTNERS LP, A CALIFORNIA LIMITED PARTNERSHIP IN THAT CERTAIN INSTRUMENT ENTITLED, "GRANT DEED (CB-1 MARKET STREET PARCEL (PARCEL B))", RECORDED OCTOBER 28,1998 IN REEL H250, IMAGE 584, AS INSTRUMENT NO. 98-G458537-00, OFFICIAL RECORDS.

PARCEL TWO:

AN EASEMENT FOR LIGHT AND AIR AS GRANTED, CREATED AND SET FORTH IN THAT CERTAIN AGREEMENT BY AND BETWEEN HUMBOLDT SAVINGS BANK, A CORPORATION, FIRST PARTY AND THOMAS MAGEE, ET AL, SECOND PARTIES, DATED OCTOBER 20, 1905, AND RECORDED JUNE 19, 1908, IN BOOK 13 OF COVENANTS, AT PAGE 120, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

PARCEL THREE: (COREA)

EASEMENTS DESCRIBED IN, RESERVED BY, AND GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, A PUBLIC BODY AS SET FORTH IN AND PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF THAT CERTAIN INSTRUMENT ENTITLED, "AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT AND AGREEMENT CREATING LIENS" BY AND AMONG YBG ASSOCIATES LLC, A DELAWARE LIMITED LIABILITY COMPANY AND THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, A PUBLIC BODY, CORPORATE AND POLITIC, ORGANIZED UNDER THE COMMUNITY REDEVELOPMENT LAW OF THE STATE OF CALIFORNIA, RECORDED APRIL 7, 1998, IN REEL H106, IMAGE 579, OFFICIAL RECORDS, AS INSTRUMENT NO. G331392 AND AS AMENDED BY THAT CERTAIN INSTRUMENT ENTITLED, "FIRST AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT AND AGREEMENT CREATING LIENS", RECORDED OCTOBER 28, 1998, AS INSTRUMENT NO. G458534, IN REEL H250, IMAGE 581, OFFICIAL RECORDS.

AND AS AMENDED BY THAT CERTAIN INSTRUMENT ENTITLED, "SECOND AMENDED AND RESTATED CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT AND AGREEMENT CREATING LIENS", RECORDED MAY 24, 2016, AS INSTRUMENT NO. 2016-K250102 OFFICIAL RECORDS.

PARCEL FOUR: (CB1 MARKET STREET PARCEL (PARCEL B)

EASEMENTS AS SET FORTH IN AND RESERVED PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF THAT CERTAIN INSTRUMENT ENTITLED, "GRANT DEED (CB1 MARKET STREET PARCEL (PARCEL B))", RECORDED OCTOBER 28,1998 IN REEL H250, IMAGE 584, AS INSTRUMENT NO. G458537, OFFICIAL RECORDS

PARCEL FIVE: (CB1 MARKET STREET PLAZA)

EASEMENTS AS SET FORTH IN AND GRANTED PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF THAT CERTAIN INSTRUMENT ENTITLED,

"PEDESTRIAN AND LIGHT AND AIR EASEMENT AGREEMENT" RECORDED OCTOBER 28,1998 IN REEL H250, IMAGE 585, AS INSTRUMENT NO. G458538, OFFICIAL RECORDS

APN(s): Lots 096, 097, 098, 099, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 119, 120, 121, 122 and 124, Block 3706

Exhibit A-2
Legal Description
(Four Seasons Retail Parcel)

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

TRACT A (RETAIL UNIT):

PARCEL ONE:

Parcel 4 as shown on that certain Map entitled, "Map of The Millennium Market Street Center Commercial Condominium 747-767 Market Street, San Francisco, a Commercial Condominium Project" (the "Map").

Being a Subdivision of Lot Number 125, as shown and delineated upon that certain Map filed for record in the Office of the Recorder of the City and County of San Francisco, State of California on November 15, 2000, in Book 44 of Parcel Maps, at Pages 141 through 147 being a portion of Assessor's Block No. 3706, also being a portion of 100 Vara Block No. 362, filed August 10, 2001 in Book 69 of Condominium Maps, at Pages 84 through 108 inclusive and recorded August 10, 2001, as Instrument No. G-995273, in Reel H949, Image 195, Official Records and as further defined in The Millennium Market Street Center Declaration of Covenants, Conditions & Restrictions ("Center Declaration"), recorded December 5, 2000, Document No. 2000-G871825, Official Records of the City and County of San Francisco.

Excepting therefrom however, the following:

(a) Easements as set forth in the Residential Declaration, the Center Declaration and the Commercial Declaration, as said Declarations are described in Parcels Three, Four and Five through said unit, appurtenant of the residential common area, commercial common area and general common area and all other residential and commercial units for support and repair of the residential common area, commercial common area and general common area and all other residential and commercial units.

(b) Easements as set forth in the Residential Declaration, the Center Declaration and the Commercial Declaration, as said Declarations are described in Parcels Three, Four and Five appurtenant to the residential common area, commercial common area and general common area and residential and commercial units for encroachment upon the air spaces of the unit by those portions of the residential common area, commercial common area and general common area and residential and commercial units located within the unit.

SUBJECT TO the rights CB – 1 ENTERTAINMENT Partners LP, a California limited partnership, in and to the improvements located on Parcel One under that certain Central Block 1 Retail Lease dated as of March 31, 1998 by and between the Redevelopment Agency and the

City and County of San Francisco, as Landlord, and CB-1 Entertainment Partners, LP, as Tenant, and recorded on April 7, 1998, as Document No G331396 in the Official Records of the City and County of San Francisco and amended by that certain Amendment for Legal Description to Central Block 1 Retail Lease dated as of October 28, 1998 and recorded on October 28, 1998 as Document Number G458536 in the Official Records of the City and County of San Francisco as set forth in that certain Grant Deed recorded October 17, 2003, as Document N. 2003-H565582-00, in the Official Records of the City and County of San Francisco.

PARCEL TWO:

An undivided 8.3% interest as tenant-in-common in and to the commercial common area, as shown on the Map described above.

Excepting and reserving therefrom non-exclusive easements appurtenant to all units as defined in the Residential Declaration, the Center Declaration, and the Commercial Declaration, as said Declarations are described in Parcels Five, Six and Seven below.

PARCEL THREE:

Easements for the benefit of Parcel One as set forth in and pursuant to the terms, covenants and conditions of that certain instrument entitled, "The Millennium Market Street Center Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement ("Center Declaration") executed by CB-1 Entertainment Partners LP, a California limited partnership, recorded December 5, 2000, as Instrument No. 2000-G871825, in Reel H777, Image 400, Official Records.

PARCEL FOUR:

Easement for the benefit of Parcel One as set forth in and pursuant to the terms, covenants and conditions of that certain instrument entitled, "The 765 Market Street Residential Condominium Declaration of Covenants, Conditions and Restrictions" (The "Residential Declaration") executed by CB-1 Entertainment Partners LP, a California limited partnership recorded December 5, 2000, as Instrument No. 2000-G871827, in Reel H777, Image 402, Official Records.

PARCEL FIVE:

Easement for the benefit of Parcel One as set forth in and pursuant to the terms, covenants and conditions of that certain instrument entitled, "The Millennium Market Street Center Commercial Condominiums Declaration of Covenants, Conditions and Restrictions" (the "Commercial Declaration") executed by CB-1 Entertainment Partners LP, a California limited partnership recorded September 28, 2001, as Instrument No. 2001-H030012, in Reel H982, Image 342, and as amended November 14, 2001, as Instrument No. 2001-H055072, in Reel I014, Image 0293, Official Records.

PARCEL SIX:

Those certain non-exclusive easements described in and granted to CB-1 Entertainment Partners LP, a California limited partnership as contained in Articles 3.2 (1) (a) through (f), 3.3 (1) and 3.4 (1) (a) through (g), 3.4 (5) (c) and (d), 3.5B (1) (2), as set forth in and pursuant to the terms, covenants, and conditions of that certain instrument entitled, "Amended and Restated Construction, Operations and Reciprocal Easement Agreement and Agreement Creating Liens" by and between YBG Associates LLC, a Delaware Limited Liability Company and the Redevelopment Agency of the City and County of San Francisco, California, a Public Body Corporate and Politic, organized under the Community Redevelopment Law of the State of California, recorded April 7, 1998 in Reel H106, Image 579, Official Records, as Instrument No. G331392, and as amended by that certain Instrument entitled "First Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens", recorded October 28, 1998, as Instrument No. G458534, in Reel H250, Image 581, Official Records.

PARCEL SEVEN:

Those certain easements described in and granted to CB-1 Entertainment Partners LP, a California Limited Partnership as set forth in and pursuant to the terms, covenants, conditions of that certain Instrument entitled, "Grant of Easement" by and among Millennium Market Street LLC, a California Limited Liability Company and CB-1 Entertainment Partners LP, California Limited Partnership, recorded October 28, 1998, as Instrument No. G458539, in Reel H250, Image 586, Official Records.

Assessor's Parcel Number: Lot 272, Block 3706

TRACT TWO:

THOSE certain non-exclusive easements described in and granted to CB-1 Entertainment Partners LP, a California limited partnership as contained in Articles 3.2(1)(a) through (f), 3.3(1), 3.4(1)(a) through (g) 3.4(5)(c) and (d), 3.12(1)(a)(b) and 3.13(2)(a) through (g), as set forth in and pursuant to the terms, covenants and conditions of that certain instrument entitled "Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement creating Liens" by and among YBG Associates LLC, a Delaware Limited Liability Company and the Redevelopment Agency of the City and County of San Francisco, California, a Public body, corporate and politic, organized under the community redevelopment law of the State of California recorded April 07, 1998 in Book H106, Page 579, Instrument No. G331392, and amendment thereto recorded October 28, 1998 Instrument No. G458534, Official Records.

EXHIBIT A-3
Legal Description of Central Block 3

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

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF FOLSOM STREET AND THE SOUTHWESTERLY LINE OF THIRD STREET; AND THENCE RUNNING SOUTHWESTERLY ALONG SAID LINE OF FOLSOM STREET AS SAID STREET EXISTED PRIOR TO THE VACATION OF A PORTION THEREOF BY RESOLUTION NO. 106-75, ADOPTED FEBRUARY 3, 1975, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, 825.954 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG SAID LINE OF FOURTH STREET 550.320 FEET TO THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET 825.954 FEET TO SAID SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF THIRD STREET 550.320 FEET TO THE POINT OF BEGINNING.

BEING 100 VARA BLOCK NO. 364

APN: 3734-091

Exhibit A-4
Legal Description
(Central Block 2 Whole Block Perimeter)

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

NOTE 1: ALL ELEVATIONS HEREINAFTER MENTIONED REFER TO OLD CITY AND COUNTY OF SAN FRANCISCO DATUM.

NOTE 2: ALL STREETS AND STREET LINES HEREINAFTER MENTIONED ARE IN ACCORDANCE WITH THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY MAP OF YERBA CENTER CENTRAL BLOCKS", RECORDED FEBRUARY 19, 1975, IN BOOK "V" OF MAPS, AT PAGES 102 AND 103 IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND WITH THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY NO. 8258 BEING A SURVEY OF ASSESSORS BLOCKS 3723 AND 3734 ", RECORDED AUGUST 1, 2014, IN BOOK "FF" OF SURVEY MAPS, AT PAGES 2 THROUGH 7 IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA .

NOTE 3: "CONVENTION CENTER" AS USED HEREIN SHALL BE THE FACILITIES CONSTRUCTED BY THE CITY AND COUNTY OF SAN FRANCISCO AND DEFINED IN THE PROJECT LEASE, DATED AS OF APRIL 1, 1979, BY AND BETWEEN REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO AND THE CITY AND COUNTY OF SAN FRANCISCO, AND RECORDED MAY 3, 1979 IN OFFICIAL RECORDS, BOOK C771, PAGE 229, AS AMENDED BY THE FIRST AMENDMENT TO PROJECT LEASE RECORDED JANUARY 5, 1988 IN OFFICIAL RECORDS, REEL E503, IMAGE 522, THE SECOND AMENDMENT TO PROJECT LEASE RECORDED JULY 13, 1988 IN OFFICIAL RECORDS, REEL E635 IMAGE 6, THE AMENDED AND RESTATED PROJECT LEASE RECORDED APRIL 18, 1991 IN OFFICIAL RECORDS, REEL F357, IMAGE 0130, THE AMENDED AND RESTATED PROJECT LEASE RECORDED DECEMBER 20, 1994 IN OFFICIAL RECORDS, REEL G281, IMAGE 0053, AND THE AMENDED AND RESTATED PROJECT LEASE RECORDED JUNE 9, 2004 IN THE OFFICIAL RECORDS, REEL I655, IMAGE 0176 IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

PARCEL ONE:

RECORD OF SURVEY NO. 8258 TRACT ONE

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF MISSION STREET AND THE NORTHEASTERLY LINE OF FOURTH STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MISSION

STREET 825.954 FEET THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF THIRD STREET 550.250 FEET TO THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF HOWARD STREET 825.954 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY ALONG SAID NORTHEASTERLY LINE OF FOURTH STREET 550.250 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THOSE PORTIONS OF SAID LAND AS CONVEYED BY THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION IN THAT CERTAIN QUITCLAIM DEED RECORDED JUNE 12, 2015, AS INSTRUMENT NO. 2015-K075152-00 OF OFFICIAL RECORDS.

BEING A PORTION OF 100 VARA BLOCK NO. 363 AND PORTIONS OF MINNA STREET AND NATOMA STREET, VACATED BY RESOLUTION NO. 672-71 AND RESOLUTION NO. 106-75, ADOPTED NOVEMBER 29, 1971 AND FEBRUARY 3, 1975, RESPECTIVELY BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

PARCEL TWO: HOWARD STREET TUNNEL

RECORD OF SURVEY NO. 8258 TRACT TWO

ALL OF THAT SUBSURFACE SPACE BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION 10 FEET AND THE OTHER AT -100 (MINUS 100) FEET. THIS SPACE IS BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHEASTERLY LINE OF FOURTH STREET AND THE NORTHWESTERLY LINE OF HOWARD STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET, 30 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, PARALLEL TO SAID LINE OF FOURTH STREET, 70.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, PARALLEL TO SAID LINE OF HOWARD STREET, 30 FEET TO THE SOUTHEASTERLY PROLONGATION OF SAID LINE OF FOURTH STREET; THENCE SOUTHWESTERLY, SOUTHERLY AND SOUTHEASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 10 FEET, A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 15.708 FEET; THENCE NORTHWESTERLY, PARALLEL TO THE NORTHEASTERLY LINE OF FOURTH STREET, 80.50 FEET TO A POINT ON THE SOUTHWESTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, ALONG SAID PROLONGATION OF HOWARD STREET, 10 FEET TO THE POINT OF BEGINNING.

BEING A SUBSURFACE AREA OF FOURTH AND HOWARD STREETS VACATED BY ORDINANCE NO. 295-92 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND RECORDED SEPTEMBER 18, 1992, IN REEL F716, IMAGE 0726 OF OFFICIAL RECORDS.

PARCEL THREE: TUNNEL CONNECTOR

RECORD OF SURVEY NO. 8258 TRACT THREE

ALL OF THE SUBSURFACE REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION 10 FEET AND THE OTHER AT ELEVATION -100 (MINUS 100) FEET. THIS REAL PROPERTY IS BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF HOWARD STREET, DISTANT THEREON 30 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; RUNNING THENCE NORTHWESTERLY, PERPENDICULAR TO SAID LINE OF HOWARD STREET, 12 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTHWESTERLY, PARALLEL TO SAID LINE OF HOWARD STREET, 30 FEET TO THE NORTHWESTERLY PROLONGATION OF SAID LINE OF FOURTH STREET; THENCE SOUTHWESTERLY, SOUTHERLY AND SOUTHEASTERLY ALONG AN ARC OF A CURVE TO THE LEFT, TANGENT TO THE PRECEDING COURSE, WITH A RADIUS OF 10 FEET, A CENTRAL ANGLE OF 90° 00' 00", AN ARC DISTANCE OF 15.708 FEET; THENCE SOUTHEASTERLY, PARALLEL TO SAID LINE OF FOURTH STREET, A DISTANCE OF 2 FEET TO THE SOUTHWESTERLY PROLONGATION OF SAID LINE OF HOWARD STREET; THENCE NORTHEASTERLY ALONG SAID PROLONGATION; 2.475 FEET TO THE EXTERIOR SURFACE OF THE MOST SOUTHWESTERLY EXTERIOR WALL OF THE EXISTING CONVENTION CENTER; THENCE NORTHWESTERLY, ON AND ALONG SAID SOUTHWESTERLY WALL SURFACE,PARALLEL TO SAID LINE OF FOURTH STREET, A DISTANCE OF 1.715 FEET TO THE INTERSECTION OF SAID WALL SURFACE WITH, THE MOST WESTERLY EXTERIOR WALL SURFACE OF THE CONVENTION CENTER, SAID MOST WESTERLY EXTERIOR WALL SURFACE BEING DEFLECTED 45° TO THE RIGHT FROM THE PRECEDING COURSE; THENCE NORTHERLY ALONG SAID MOST WESTERLY EXTERIOR WALL SURFACE, NORTHERLY 12.798 FEET TO THE INTERSECTION OF SAID MOST WESTERLY EXTERIOR WALL SURFACE WITH THE EXISTING EXTERIOR SURFACE OF THE MOST NORTHWESTERLY EXTERIOR WALL OF THE CONVENTION CENTER, SAID EXISTING EXTERIOR SURFACE OF THE MOST NORTHWESTERLY EXTERIOR WALL BEING PARALLEL TO AND PERPENDICULARLY DISTANT 10.34 FEET NORTHWESTERLY FROM THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE NORTHEASTERLY ALONG SAID EXISTING EXTERIOR SURFACE OF THE MOST NORTHWESTERLY EXTERIOR WALL, PARALLEL TO SAID LINE OF HOWARD STREET, 28.9 FEET TO A LINE DRAWN PARALLEL TO THE NORTHEASTERLY LINE OF FOURTH STREET,

THROUGH SAID TRUE POINT OF BEGINNING; AND THENCE LEAVING LAST SAID EXISTING EXTERIOR SURFACE OF THE MOST NORTHWESTERLY EXTERIOR WALL AND RUNNING NORTHWESTERLY ALONG LAST SAID PARALLEL LINE, 1.66 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF THE SUBSURFACE AREA OF HOWARD AND FOURTH STREETS, VACATED BY RESOLUTION NO. 969-77 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND RECORDED JULY 13, 1978, IN BOOK C605, PAGE 204, OF OFFICIAL RECORDS.

PARCEL FOUR: MOSCONE EXIT RAMP

RECORD OF SURVEY NO. 8258 TRACT FOUR

EASEMENT FOR VEHICULAR EGRESS AS GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO BY THE CITY AND COUNTY OF SAN FRANCISCO IN THE SECOND AMENDMENT TO PROJECT LEASE RECORDED JULY 13, 1988 IN REEL E 635 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 6 AS INSTRUMENT NO. E 203996 AND AS RESERVED BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO IN THE QUITCLAIM DEED FROM REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION RECORDED NOVEMBER 17, 2011 IN REEL K 525 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 0007 AS INSTRUMENT NO. J301105 OVER AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

ALL OF THAT REAL PROPERTY BETWEEN THE UPPER CONCRETE SURFACE OF THE RAMP STRUCTURE (AS SAID RAMP STRUCTURE EXISTS ON APRIL 29, 1991) AND 16 FEET ABOVE SAID UPPER CONCRETE SURFACE, SAID UPPER CONCRETE SURFACE BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF HOWARD STREET, DISTANT THEREON 13.475 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, AND PARALLEL WITH SAID LINE OF FOURTH STREET, 49.99 FEET TO THE TRUE POINT OF BEGINNING, THE ELEVATION OF SAID CONCRETE SURFACE AT SAID TRUE POINT OF BEGINNING BEING -4.0 FEET; THENCE CONTINUING SOUTHEASTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 4.653 FEET TO A POINT OF GRADE BREAK IN SAID CONCRETE SURFACE, SAID POINT OF GRADE BREAK BEING AT ELEVATION -3.8 FEET; THENCE CONTINUING SOUTHEASTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 28 FEET TO A POINT OF GRADE BREAK IN SAID CONCRETE SURFACE,SAID POINT OF GRADE BREAK BEING AT ELEVATION -3.7 FEET; THENCE CONTINUING SOUTHEASTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 167.517 FEET TO A POINT OF GRADE BREAK IN

SAID CONCRETE SURFACE, SAID POINT OF GRADE BREAK BEING AT ELEVATION 13.1 FEET; THENCE CONTINUING SOUTHEASTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 70 FEET, AT WHICH POINT THE ELEVATION OF SAID CONCRETE SURFACE IS 11.5 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, 19 FEET, AT WHICH POINT THE ELEVATION OF SAID CONCRETE SURFACE IS 11.5 FEET;THENCE AT RIGHT ANGLE NORTHWESTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 70 FEET TO A POINT OF GRADE BREAK IN SAID CONCRETE SURFACE, SAID POINT OF GRADE BREAK BEING AT ELEVATION 13.3 FEET; THENCE CONTINUING NORTHWESTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 167.517 FEET TO A POINT OF GRADE BREAK IN SAID CONCRETE SURFACE, SAID POINT OF GRADE BREAK BEING AT ELEVATION -3.7 FEET; THENCE CONTINUING NORTHWESTERLY, PARALLEL WITH SAID LINE OF FOURTH STREET, 28 FEET TO POINT OF GRADE BREAK IN SAID CONCRETE SURFACE,SAID POINT OF GRADE BREAK BEING AT ELEVATION -3.8 FEET; THENCE CONTINUING NORTHWESTERLY, 58.158 FEET TO THE EXTERIOR SURFACE OF THE MOST WESTERLY EXTERIOR WALL OF THE EXISTING CONVENTION CENTER, SAID MOST WESTERLY EXTERIOR WALL SURFACE BEING DEFLECTED 45° TO THE RIGHT FROM THE PRECEDING COURSE, AT WHICH POINT THE ELEVATION OF SAID CONCRETE SURFACE IS -6.7 FEET; THENCE NORTHERLY ALONG SAID MOST WESTERLY EXTERIOR WALL SURFACE, 9.676 FEET TO THE INTERSECTION OF SAID MOST WESTERLY EXTERIOR WALL SURFACE WITH THE EXTERIOR WALL SURFACE OF THE EXISTING MOST NORTHWESTERLY EXTERIOR WALL SURFACE OF SAID CONVENTION CENTER, SAID MOST NORTHWESTERLY EXTERIOR WALL SURFACE BEING PARALLEL WITH AND PERPENDICULARLY DISTANT 10.357 FEET NORTHWESTERLY FROM THE SOUTHEASTERLY LINE OF HOWARD STREET, AT WHICH POINT THE ELEVATION OF SAID CONCRETE SURFACE IS -7.2 FEET; THENCE NORTHEASTERLY ALONG SAID MOST NORTHWESTERLY EXTERIOR WALL SURFACE, PARALLEL WITH SAID LINE OF HOWARD STREET, 20.9 FEET, AT WHICH POINT THE ELEVATION OF SAID CONCRETE SURFACE IS -8.0 FEET; THENCE DEFLECTING 98° 14' 33" TO THE RIGHT FROM THE PRECEDING COURSE, AND RUNNING SOUTHEASTERLY 60.977 FEET TO THE TRUE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 364 AND PORTIONS OF THE SURFACE AND SUBSURFACE AREA OF HOWARD AND FOURTH STREETS VACATED BY RESOLUTION NO. 969-77 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND RECORDED JULY 13, 1978, IN BOOK C605, PAGE 204, OF OFFICIAL RECORDS.

AND ALSO BEING A PORTION OF THE SUBSURFACE AND AIRSPACE AREA OF FOURTH STREET, SOUTHEASTERLY OF HOWARD STREET, VACATED BY RESOLUTION NO. 959-92 ADOPTED BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND RECORDED JANUARY 12, 1993, IN REEL F793, IMAGE 454, OF OFFICIAL RECORDS.

PARCEL FIVE: PERMANENT RAMP EASEMENT

RECORD OF SURVEY NO. 8258 TRACT FIVE

ALL THAT REAL PROPERTY BETWEEN TWO GENERALLY SLOPED PLANES, THE UPPER PLANE BEING 16 FEET ABOVE THE UPPER CONCRETE SURFACE OF THE EXISTING VEHICULAR DRIVEWAY, AS SAID CONCRETE SURFACE EXISTED ON OCTOBER 16, 1990, SAID CONCRETE SURFACE BEING AT ELEVATION 20 FEET AT ITS SOUTHEASTERLY LINE (AT HOWARD STREET), AND SAID CONCRETE SURFACE BEING AT ELEVATION 0 FEET AT ITS SOUTHWESTERLY LINE, THE LOWER PLANE BEING 4 FEET BELOW SAID CONCRETE SURFACE OF SAID EXISTING VEHICULAR DRIVEWAY, AS SAID CONCRETE SURFACE EXISTED ON OCTOBER 16, 1990. THE REAL PROPERTY IS BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID SLOPED PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 234 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF HOWARD STREET, 32.40 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 55.75 FEET; THENCE NORTHWESTERLY AND WESTERLY, 75.672 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 77° 46' 12"; THENCE SOUTHWESTERLY, TANGENT TO SAID CURVE, 22.777 FEET TO A POINT DISTANT 167.80 FEET, AT A RIGHT ANGLE FROM THE NORTHEASTERLY LINE OF FOURTH STREET AND DISTANT 91.71 FEET, AT A RIGHT ANGLE FROM THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE NORTHWESTERLY, PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET, 40.44 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 20.55 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 71.65 FEET; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY, 112.548 FEET, THROUGH A CENTRAL ANGLE OF 90° 00' 00", TO A POINT DISTANT 260 FEET, AT A RIGHT ANGLE FROM THE NORTHEASTERLY LINE OF FOURTH STREET, AND DISTANT 60.50 FEET, AT A RIGHT ANGLE FROM THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE SOUTHEASTERLY, PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET, 24 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 71.61 FEET; THENCE SOUTHEASTERLY AND EASTERLY, 38.30 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 30° 38' 39", TO THE NORTHWESTERLY LINE OF HOWARD STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF HOWARD STREET, 36.00 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 363.

EXCEPTING THEREFROM:

ALL THAT REAL PROPERTY BELOW A SLOPED PLANE WHOSE SOUTHEASTERLY LINE IS AT ELEVATION 18.50 FEET AND WHOSE NORTHWESTERLY LINE IS AT ELEVATION 16.60 FEET, SAID SLOPED PLANE BEING BOUNDED BY VERTICAL PLANES MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 234 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF HOWARD STREET, 1.50 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY, AT A RIGHT ANGLE TO SAID LINE OF HOWARD STREET, 11 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 26 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY, 11 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, 26 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL SIX: CB2 HOTEL EASEMENTS

EASEMENTS DESCRIBED AND RESERVED BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, BY ARTICLE 41.01 (A) (I)(II) (IV) AND (V) OF THAT CERTAIN LEASE PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF SAID LEASE, MADE BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, AS LESSOR, AND YBG ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, AS LESSEE, DATED AUGUST 26, 1986 AND RECORDED AUGUST 27, 1986, REEL E160, IMAGE 1132, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO;

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED "FIRST AMENDMENT TO LEASE", MADE BY AND BETWEEN SAID PARTIES, DATED AS OF MARCH 18, 1987 AND RECORDED APRIL 14, 1987, AS RECORDER'S SERIES NO. D973397, REEL E319, OFFICIAL RECORDS, IMAGE 1210, SAN FRANCISCO COUNTY RECORDS.

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED,"SECOND AMENDMENT TO LEASE", MADE BY AND BETWEEN SAID PARTIES, DATED AS OF MAY 8, 1991 AND RECORDED MAY 10, 1991, AS RECORDER'S SERIES NO. E903679, REEL F373, OFFICIAL RECORDS, IMAGE 0435, SAN FRANCISCO COUNTY RECORDS;

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED, "THIRD AMENDMENT TO LEASE", MADE BY AND BETWEEN SAID PARTIES, DATED AS OF MAY 17, 1991 AND RECORDED MAY 17, 1991, AS RECORDER'S SERIES NO. E907058, REEL F378, OFFICIAL RECORDS, IMAGE 0228, SAN FRANCISCO COUNTY RECORDS;

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED, "FOURTH AMENDMENT TO LEASE", MADE BY AND BETWEEN SAID PARTIES, DATED AS OF MAY 17, 1991 AND RECORDED MAY 17, 1991, AS RECORDER'S SERIES

NO. E907059, REEL F378, OFFICIAL RECORDS, IMAGE 0229, SAN FRANCISCO COUNTY RECORDS;

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED "YERBA BUENA GARDENS AMENDMENT TO LEGAL DESCRIPTION TO LEASE FOR THE YERBA BUENA GARDENS CENTER HOTEL", MADE BY AND BETWEEN SAID PARTIES, DATED AS OF OCTOBER 25, 1988 AND RECORDED OCTOBER 28, 1998 AS RECORDER'S SERIES NO. G458535, REEL H 250, OFFICIAL RECORDS, IMAGE 0582, SAN FRANCISCO COUNTY RECORDS;

AND AS AMENDED AND/OR MODIFIED BY THAT INSTRUMENT ENTITLED "AMENDED AND RESTATED (NUNC PRO TUNC)YERBA BUENA GARDENS AMENDMENT TO LEGAL DESCRIPTION TO LEASE FOR THE YERBA BUENA GARDENS CENTER HOTEL" , MADE BY AND BETWEEN SAID PARTIES, DATED AS OF OCTOBER 28, 1988 AND RECORDED DECEMBER 14, 2000, AS RECORDER'S SERIES NO. G 875561, REEL H 784, OFFICIAL RECORDS, IMAGE 0209, SAN FRANCISCO COUNTY RECORDS INSOFAR AS SUCH EASEMENTS RELATE TO AND ARE A BURDEN ON THE REAL PROPERTY DESCRIBED AS FOLLOWS:

CB2 HOTEL PARCEL 1:

ALL THAT REAL PROPERTY BELOW A HORIZONTAL PLANE AT ELEVATION 22.0 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY BELOW THE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF HOWARD STREET WITH THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET, 102.60 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 71.75 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 14.50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 11.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 84 FEET, THE TANGENT OF WHICH DEFLECTS 63° TO THE RIGHT FROM THE PREVIOUS COURSE; THENCE NORTHEASTERLY, 52.196 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 35° 36' 10" TO A POINT DISTANT 167.80 FEET, AT ARIGHT ANGLE FROM SAID NORTHEASTERLY LINE OF FOURTH STREET AND DISTANT 91.71 FEET, AT A RIGHT ANGLE FROM SAID NORTHWESTERLY LINE OF HOWARD STREET; THENCE NORTHWESTERLY PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET 50.54 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 47.20 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 29 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 45 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 379 FEET TO THE SOUTHEASTERLY LINE OF MISSION STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 260 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF FOURTH STREET 550.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 363, AND PORTIONS OF MINNA AND NATOMA STREETS, AS SAID STREETS EXISTED PRIOR TO THE VACATION THEREOF, BY RESOLUTION NO. 672-71 AND RESOLUTION NO. 106-75, ADOPTED NOVEMBER 29, 1971, AND FEBRUARY 3, 1975, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

ALL THAT REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION 18.92 FEET AND THE OTHER AT ELEVATION 22.0 FEET, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF HOWARD STREET WITH THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET, 102.60 FEET;THENCE AT A RIGHT ANGLE NORTHWESTERLY, 71.75 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 14.50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 11.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 84 FEET, THE TANGENT OF WHICH DEFLECTS 63° TO THE RIGHT FROM THE PREVIOUS COURSE;THENCE NORTHEASTERLY, 52.196 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 35° 36' 10" TO A POINT DISTANT 167.80 FEET, AT A RIGHT ANGLE FROM SAID NORTHEASTERLY LINE OF FOURTH STREET AND DISTANT 91.71 FEET, AT A RIGHT ANGLE FROM SAID NORTHWESTERLY LINE OF HOWARD STREET; THENCE NORTHWESTERLY, PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET, 50.54 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, 167.80 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE SOUTHEASTERLY ALONG SAID LINE OF FOURTH STREET, 142.25 FEET TO THE POINT OF BEGINNING.

PARCEL SEVEN: OFFSITE SLAB STRENGTHENING AND SUPPORT EASEMENT

EASEMENTS DESCRIBED AND GRANTED BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY,CORPORATE AND POLITIC BY SECTION 1.1(D) OF THAT CERTAIN LEASE PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF SAID LEASE MADE BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, AS LESSOR, AND YERBA BUENA ENTERTAINMENT CENTER LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY 9, 1997 AND RECORDED MAY 13, 1997, BOOK G881, PAGE 310, INSTRUMENT NO. 97-G159383, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL EIGHT: EXPANSION JOINT EASEMENT

EASEMENTS DESCRIBED AND RESERVED BY THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC BY SECTION 1.1(D) OF THE CERTAIN LEASE PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF SAID LEASE MADE BY AND BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, AS LESSOR, AND YERBA BUENA ENTERTAINMENT CENTER LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, AS LESSEE, DATED MAY 9, 1997 AND RECORDED MAY 13, 1997, BOOK G881, PAGE 310, INSTRUMENT NO. 97-G159383, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL NINE:

EASEMENTS DESCRIBED AND RESERVED BY AND BETWEEN YBG ASSOCIATES, LLC. A CALIFORNIA LIMITED, THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC AND YERBA BUENA ENTERTAINMENT CENTER, LLC. A CALIFORNIA LIMITED LIABILITY COMPANY PURSUANT TO THE TERMS, COVENANTS AND CONDITIONS OF THAT CERTAIN INSTRUMENT ENTITLED "EASEMENT AGREEMENT (FOOTING, COILING DOOR AND UTILITIES)" DATED MARCH 17, 2000 AND RECORDED DECEMBER 14, 2000, REEL H784, IMAGE 210, INSTRUMENT NO. G 875562, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, IN SO FAR AS SUCH EASEMENTS RELATE TO AND ARE A BURDEN ON THE REAL PROPERTY DESCRIBED AS FOLLOWS:

CB2 HOTEL PARCEL 1:

ALL THAT REAL PROPERTY BELOW A HORIZONTAL PLANE AT ELEVATION 22.0 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY BELOW THE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF HOWARD STREET WITH THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET, 102.60 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 71.75 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 14.50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 11.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 84 FEET, THE TANGENT OF WHICH DEFLECTS 63° TO THE RIGHT FROM THE PREVIOUS COURSE; THENCE NORTHEASTERLY, 52.196 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 35° 36' 10" TO A POINT DISTANT 167.80 FEET, AT A RIGHT ANGLE FROM SAID NORTHEASTERLY LINE OF FOURTH STREET AND DISTANT 91.71 FEET, AT A RIGHT ANGLE FROM SAID NORTHWESTERLY LINE OF HOWARD STREET; THENCE NORTHWESTERLY PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET 50.54 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 47.20 FEET; THENCE AT A RIGHT ANGLE

NORTHWESTERLY 29 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY 45 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 379 FEET TO THE SOUTHEASTERLY LINE OF MISSION STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 260 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY ALONG SAID LINE OF FOURTH STREET 550.25 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 363, AND PORTIONS OF MINNA AND NATOMA STREETS, AS SAID STREETS EXISTED PRIOR TO THE VACATION THEREOF, BY RESOLUTION NO. 672-71 AND RESOLUTION NO. 106-75, ADOPTED NOVEMBER 29, 1971, AND FEBRUARY 3, 1975, RESPECTIVELY, BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL:

ALL THAT REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION 18.92 FEET AND THE OTHER AT ELEVATION 22.0 FEET, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF HOWARD STREET WITH THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET, 102.60 FEET;THENCE AT A RIGHT ANGLE NORTHWESTERLY, 71.75 FEET; THENCE AT A RIGHT ANGLE NORTHEASTERLY, 14.50 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY, 11.75 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 84 FEET, THE TANGENT OF WHICH DEFLECTS 63° TO THE RIGHT FROM THE PREVIOUS COURSE;THENCE NORTHEASTERLY, 52.196 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 35° 36' 10" TO A POINT DISTANT 167.80 FEET, AT A RIGHT ANGLE FROM SAID NORTHEASTERLY LINE OF FOURTH STREET AND DISTANT 91.71 FEET, AT A RIGHT ANGLE FROM SAID NORTHWESTERLY LINE OF HOWARD STREET; THENCE NORTHWESTERLY, PARALLEL WITH SAID NORTHEASTERLY LINE OF FOURTH STREET, 50.54 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY, 167.80 FEET TO THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE SOUTHEASTERLY ALONG SAID LINE OF FOURTH STREET, 142.25 FEET TO THE POINT OF BEGINNING.

PARCEL TEN:

NON-EXCLUSIVE EASEMENTS UPON THE TERMS AND CONDITIONS CONTAINED THEREIN GRANTED TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, ITS SUCCESSORS AND ASSIGNS (INCLUDING OWNERS, LESSEES AND OCCUPANTS) AND THEIR AGENTS, EMPLOYEES, GUESTS AND INVITEES, IN THE "1988 RECIPROCAL EASEMENT AGREEMENT" DATED

MARCH 1, 1988 AND RECORDED JULY 13, 1988, REEL E635, IMAGE 153, INSTRUMENT NO. E204001 OF OFFICIAL RECORDS, AS AMENDED BY THAT CERTAIN AMENDMENT TO 1988 RECIPROCAL EASEMENT AGREEMENT AND RESTATEMENT OF CERTAIN PROVISIONS OF 1988 REA, AS AMENDED, AND FURTHER DEFINITION OF CERTAIN OTHER EXISTING EASEMENTS PERTAINING TO CENTRAL BLOCK THREE (CB-3) DATED AS OF JULY 1, 1996 AND RECORDED IN THE OFFICIAL RECORDS ON NOVEMBER 17, 2011, AS DOCUMENT NO. J301099 AT REEL K525, IMAGE 001.

PARCEL ELEVEN: (MARRIOTT TUNNEL)

RECORD OF SURVEY NO. 8258 TRACT NINETEEN

ALL THAT CERTAIN REAL PROPERTY AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED JULY 9 1985 IN REEL D 874 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 1188 AS INSTRUMENT NO. D 665164 AND AS ESTABLISHED AND QUIETED, BY JUDGMENT RECORDED JANUARY 15, 1986 IN REEL E 6 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO , STATE OF CALIFORNIA, AT IMAGE 1229 AS INSTRUMENT NO. D 742762, LYING BENEATH THE SURFACE BETWEEN HORIZONTAL PLANES AT ELEVATION 4.0 FEET AND ELEVATION 19.0 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHEASTERLY LINE OF MISSION STREET AT A POINT DISTANT THEREON 170 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF MISSION STREET 82.50 FEET TO THE NORTHWESTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 46 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 46 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF SUBSURFACE AREA BELOW MISSION STREET, VACATED BY ORDINANCE 40-85 APPROVED JANUARY 22, 1985 BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

PARCEL TWELVE: (PEDESTRIAN BRIDGE OVER MISSION STREET)

RECORD OF SURVEY NO. 8258 TRACT TWENTY

AN EASEMENT FOR THE CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, INSPECTION, MAINTENANCE, IMPROVEMENT AND ALTERATION OF A

PEDESTRIAN BRIDGE AND RELATED FACILITIES AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED JULY 9, 1985 IN REEL D 874 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 1188 AS INSTRUMENT NO. D 665164 AND AS ESTABLISHED AND QUIETED, BY JUDGMENT RECORDED JANUARY 15, 1986 IN REEL E 6 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO , STATE OF CALIFORNIA, AT IMAGE 1229 AS INSTRUMENT NO. D 742762 OVER AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

ALL THAT CERTAIN REAL PROPERTY LYING ABOVE THE SURFACE BETWEEN HORIZONTAL PLANES AT ELEVATION 37.0 FEET AND ELEVATION 63.0 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OR CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 230 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF MISSION STREET 30 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 82.50 FEET TO THE NORTHWESTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF MISSION STREET 30 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF AIR SPACE ABOVE MISSION STREET VACATED BY ORDINANCE 40-85 APPROVED JANUARY 22, 1985 BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL THIRTEEN : (PEDESTRIAN BRIDGE OVER HOWARD STREET)

RECORD OF SURVEY NO. 8258 TRACT TWENTY- ONE

AN EASEMENT FOR THE CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, INSPECTION, MAINTENANCE, REPAIR, IMPROVEMENT AND ALTERATION OF A PEDESTRIAN BRIDGE AND RELATED FACILITIES AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED JULY 9, 1985 IN REEL D 874 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 1188 AS INSTRUMENT NO. D 665164 AND AS ESTABLISHED AND QUIETED, BY JUDGMENT RECORDED JANUARY 15, 1986 IN REEL E 6 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AT IMAGE 1229 AS INSTRUMENT NO. D 742762 OVER AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

ALL THAT CERTAIN REAL PROPERTY LYING ABOVE THE SURFACE BETWEEN HORIZONTAL PLANES AT ELEVATION 34.5 FEET AND ELEVATION 58.5 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON, 200 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET, RUNNING THENCE NORTHEASTERLY ALONG SAID NORTHWESTERLY LINE OF HOWARD STREET 30 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE OF HOWARD STREET 30 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 82.50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF AIR SPACE ABOVE HOWARD STREET VACATED BY ORDINANCE 40-85 APPROVED JANUARY 22, 1985 BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL FOURTEEN: (PEDESTRIAN BRIDGE OVER HOWARD STREET)

RECORD OF SURVEY NO. 8258 TRACT TWENTY-TWO

AN EASEMENT FOR THE CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, INSPECTION, MAINTENANCE, REPAIR, IMPROVEMENT AND ALTERATION OF A PEDESTRIAN BRIDGE AND RELATED FACILITIES AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED JULY 9, 1985 IN REEL D 874 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 1188 AS INSTRUMENT NO. D 665164 AND AS ESTABLISHED AND QUIETED, BY JUDGMENT RECORDED JANUARY 15, 1986 IN REEL E 6 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AT IMAGE 1229 AS INSTRUMENT NO. D 742762 OVER AND ACROSS THE FOLLOWING DESCRIBED REAL PROPERTY:

ALL THAT CERTAIN REAL PROPERTY LYING ABOVE THE SURFACE BETWEEN HORIZONTAL PLANES AT ELEVATION 35.2 FEET AND ELEVATION 58.0 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 235 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; RUNNING THENCE SOUTHWESTERLY ALONG SAID NORTHWESTERLY LINE OF HOWARD STREET 30 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF HOWARD

STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE OF HOWARD STREET 30 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 82.50 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF AIR SPACE ABOVE HOWARD STREET VACATED BY ORDINANCE 40-85 APPROVED JANUARY 22, 1985 BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL FIFTEEN: (MARRIOTT TUNNEL)

RECORD OF SURVEY NO. 8258 TRACT TWENTY-THREE

ALL THAT CERTAIN REAL PROPERTY AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO RECORDED JULY 9, 1985 IN REEL E 216 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 1607 AS INSTRUMENT NO. D 900814 AND AS ESTABLISHED AND QUIETED, BY JUDGMENT RECORDED APRIL 17, 1987 IN REEL E322 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AT IMAGE 1224 AS INSTRUMENT NO. D 975401 BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION MINUS 16 FEET AND THE OTHER AT ELEVATION PLUS 4 FEET, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTHEASTERLY LINE OF MISSION STREET AT A POINT DISTANT THEREON 170 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF MISSION STREET 82.50 FEET TO THE NORTHWESTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 46 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID LINE OF MISSION STREET 46 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF THE SUBSURFACE AREA OF MISSION STREET AS SAID STREET EXISTED PRIOR TO THE VACATION THEREOF, BY ORDINANCE NO. 326-86 ADOPTED JULY 28, 1986 BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

EXCEPTING THEREFROM ALL THAT REAL PROPERTY BETWEEN TWO HORIZONTAL PLANES, ONE AT ELEVATION MINUS 16 AND THE OTHER AT ELEVATION PLUS 2 FEET, BOUNDED BY VERTICAL PLANES WHICH EXTEND BETWEEN THE AFORESAID HORIZONTAL PLANES, THE LIMITS OF SAID VERTICAL PLANES BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING ON THE SOUTHEASTERLY LINE OF MISSION STREET AT A POINT DISTANT THEREON 170 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE NORTHWESTERLY AT A RIGHT ANGLE TO SAID LINE OF MISSION STREET 38 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTHWESTERLY AT A RIGHT ANGLE TO THE SOUTHEASTERLY LINE OF MISSION STREET 44.50 FEET TO THE NORTHWESTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 46 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 44.50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL SIXTEEN:

EASEMENTS TO USE, MAINTAIN AND RECONSTRUCT THE CB-3 MOSCONE EXPANSION AND EASEMENT FOR SUPPORT, FOR STRUCTURAL CONNECTIONS, FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS FACILITIES AND FOR UTILITIES, COMMUNICATIONS AND SIMILAR SYSTEMS AS RESERVED BY QUITCLAIM DEED FROM REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO TO THE CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION RECORDED NOVEMBER 17, 2011 IN REEL K 525 OF OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AT IMAGE 0007 AS INSTRUMENT NO. J301105.

PARCEL SEVENTEEN:

RECORD OF SURVEY NO. 8258 TRACT TWENTY-FIVE

ALL THAT CERTAIN REAL PROPERTY AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, RECORDED FEBRUARY 19, 1975, AS INSTRUMENT NO. X-49338, REEL B-977, IMAGE 901 OF OFFICIAL RECORDS, THE FOLLOWING DESCRIBED REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

PARCEL 1:

ALL THE SPACE BETWEEN A HORIZONTAL PLANE AT ELEVATION 38 FEET AND A HORIZONTAL PLANE AT ELEVATION 60 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET, DISTANT THEREON 505.45 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 48 FEET TO A POINT DISTANT THEREON 272.504 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF MISSION STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE OF MISSION STREET 48 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 82.50 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

ALL OF THE SPACE BETWEEN A HORIZONTAL PLANE AT ELEVATION 19.50 FEET AND A HORIZONTAL PLANE AT ELEVATION 38 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

PARCEL 2A:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET, DISTANT THEREON 505.45 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 48 FEET TO A POINT DISTANT THEREON 272.504 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 3 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 48 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 3 FEET TO THE POINT OF BEGINNING.

PARCEL 2B:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 505.45 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 48 FEET TO A POINT DISTANT THEREON 272.504 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 3 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 48 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 3 FEET TO THE POINT OF BEGINNING.

PARCEL 3:

ALL OF THE SPACE BELOW A HORIZONTAL PLANE AT ELEVATION 19.50 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY BELOW THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

PARCEL 3A:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF MISSION STREET, DISTANT THEREON 505.45 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 48 FEET TO A POINT DISTANT THEREON 272.504 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 5 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 48 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 5 FEET TO THE POINT OF BEGINNING.

PARCEL 3B:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF MISSION STREET, DISTANT THEREON 505.45 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF MISSION STREET 48 FEET TO A POINT DISTANT THEREON 272.504 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 1 FOOT; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 48 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 1 FOOT TO THE POINT OF BEGINNING.

PARCEL 4:

ALL OF THE SPACE BETWEEN A HORIZONTAL PLANE AT ELEVATION 42.67 FEET AND A HORIZONTAL PLANE AT ELEVATION 90 FEET, BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET; DISTANT THEREON 303.50 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET 108 FEET TO A POINT DISTANT THEREON 414.454 FEET SOUTHWESTERLY FROM THE SOUTHWESTERLY LINE OF THIRD STREET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 82.50 FEET TO THE SOUTHEASTERLY LINE OF HOWARD STREET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LINE OF HOWARD STREET 108 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 82.50 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

ALL OF THE SPACE BETWEEN A HORIZONTAL PLANE AT ELEVATION 42.67 FEET AND A HORIZONTAL PLANE AT ELEVATION 27 FEET; BOUNDED BY PLANES PROJECTED VERTICALLY ABOVE THE SURFACE LIMITS OF CERTAIN LAND DESCRIBED AS FOLLOWS:

PARCEL 5A:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 303.50 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET 42 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 3 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 42 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 3 FEET TO THE POINT OF BEGINNING.

PARCEL 5B:

BEGINNING AT A POINT ON THE SOUTHEASTERLY LINE OF HOWARD STREET, DISTANT THEREON 303.50 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF FOURTH STREET; THENCE RUNNING NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET 42 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 3 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 42 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 3 FEET TO THE POINT OF BEGINNING.

PARCEL EIGHTEEN:

RECORD OF SURVEY NO. 8258 TRACT TWENTY-SIX

ALL THAT CERTAIN REAL PROPERTY AS GRANTED BY QUITCLAIM DEED FROM CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, A PUBLIC BODY, CORPORATE AND POLITIC, RECORDED FEBRUARY 24, 1975, AS INSTRUMENT NO. X-50282, REEL B-979, IMAGE 330 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

ALL OF PARCELS "P3B", "P3G", PAA", AND THOSE PORTIONS OF PARCELS "PBB" AND "PCC" BELOW A HORIZONTAL PLANE AT ELEVATION 27 FEET, AS SAID PARCELS ARE SHOWN AND DELINEATED ON THE MAP ENTITLED, "MAP OF VERBA BUENA CENTER CENTRAL BLOCKS", RECORDED FEBRUARY 24, 1975 IN MAP BOOK "W", PAGES 55 TO 60, INCLUSIVE, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

APNs: Lots 113, 114, 115 (por.), 116, 117, Block 3723, AND OTHER LANDS, NOT CURRENTLY ASSESSED FOR TAXES

Exhibit A-5

The real property excepted from the Premises and not a part of the Premises is the real property subject to the following leases:

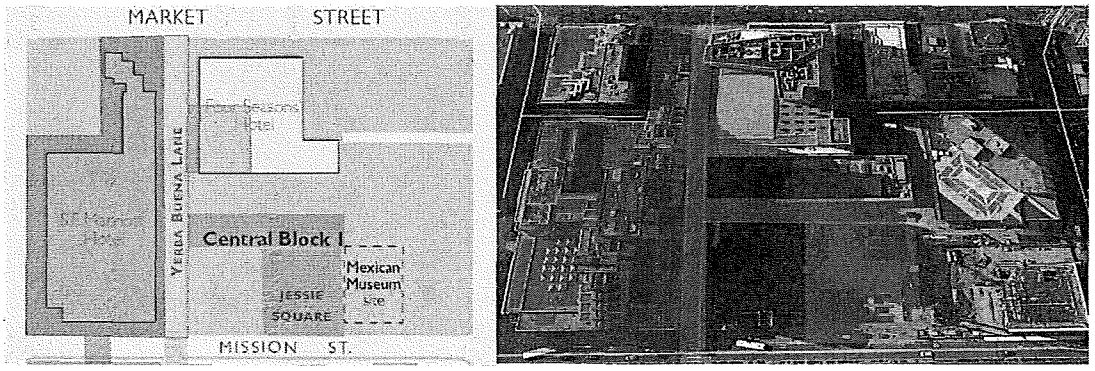
	Lease	**Recorded in the Official Records of the City and County of San Francisco**	**Assessor's Parcel Number**
1.	Lease for the Yerba Buena Gardens Center Hotel, dated August 26, 1986, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and YBG Associates, as tenant.	August 27, 1986 in Book E160, Page 1132, as Document #D855245.	3706-096, 110, 111 3723-113, 116, 117
	First Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated March 18, 1987.	April 14, 1987, in Book E319, Page 1210, as Document #D973397.	
	Second Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 8, 1991.	May 10, 1991, in Book F373, Page 435, as Document #E903679.	
	Third Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book F378, Page 228, as Document #E907058.	
	Fourth Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book 378, Page 229, as Document #E907059.	
	Letter Agreement dated April 18, 2013, regarding the definition of Fiscal Year.	Unrecorded	
	Amended and Restated (Nunc Pro Tunc) Yerba Buena Gardens Amendment to Legal Description to Lease for the Yerba Buena Gardens Center Hotel, dated October 28, 1998	October 28, 1998, in Reel H250, Image 582, as Document #G458535; December 14, 2000, in Reel H784, Image 209, as Document #G875561.	
2.	Central Block 2 Entertainment and Retail Lease, dated May 9, 1997, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Yerba Buena Entertainment Center, as tenant.	May 13, 1997, in Book G881, Page 310, as Document #97-G159383.	3723-114, 115
3.	Lease dated August 6, 1993, by and between the Redevelopment Agency of the City and County of San Francisco, as lessor, and Marriott Corporation, as lessee.	Unrecorded	

EXHIBIT B-1

DEPICTION OF THE PREMISES

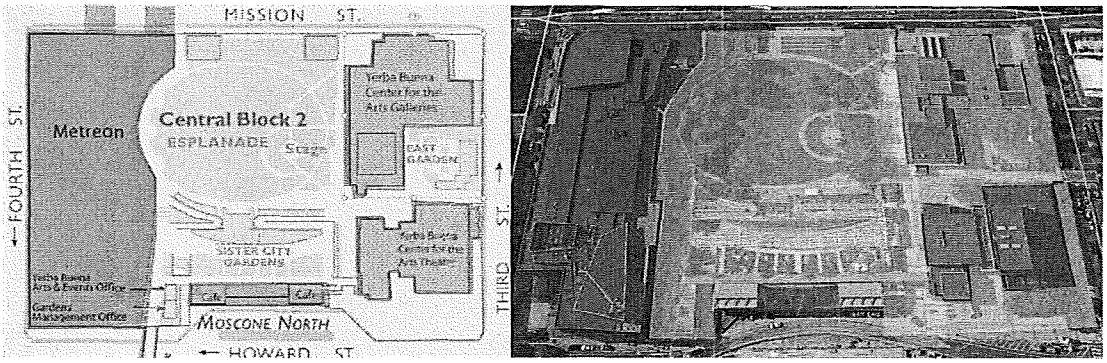
CB-1 Block

Premises (Blue)



CB-2 Block

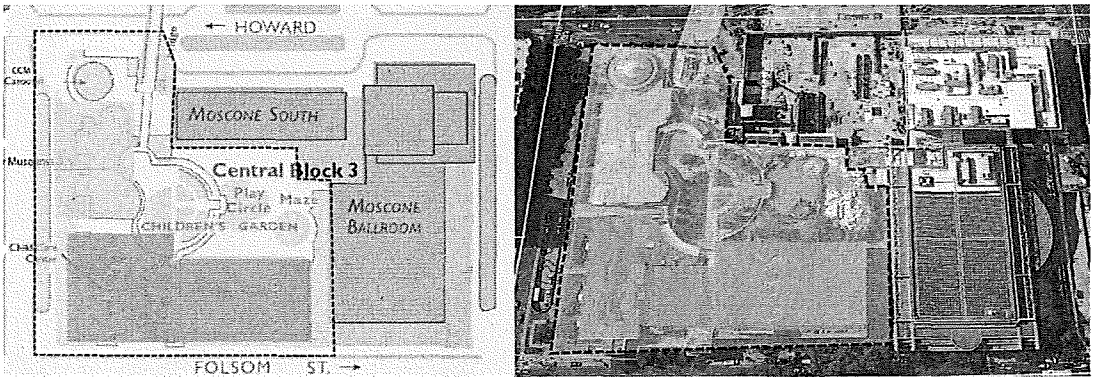
Premises (Blue and Yellow and Orange)



[Exhibit B-1 continues on the next page]

CB-3 Block

Premises (Blue and Yellow and Orange)



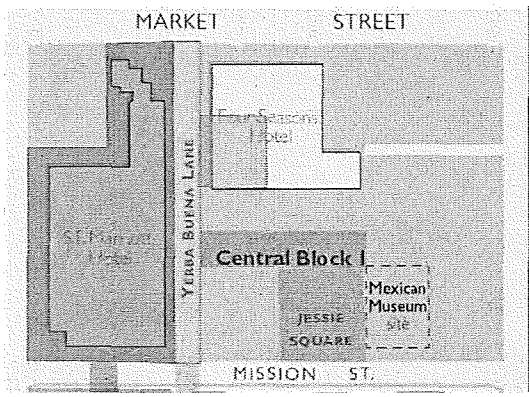
[Note: The CB-3 Block depiction of the Premises will be updated to include the new cafe space and new community room at the top of the paseo within Moscone and to exclude the stairwell between Moscone and the ice rink.]

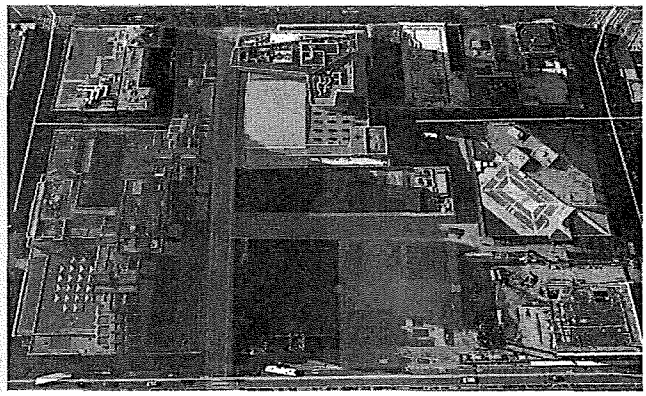
EXHIBIT B-2

DEPICTION OF THE RETAINED LEASE AREAS

CB-1 Block

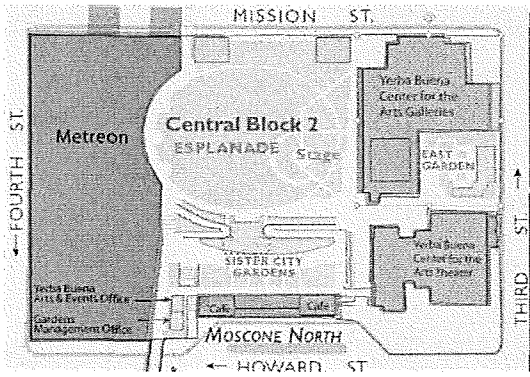
Retained Lease Areas (Red - Marriott)





CB-2 Block

Retained Lease Areas (Red - Metreon)



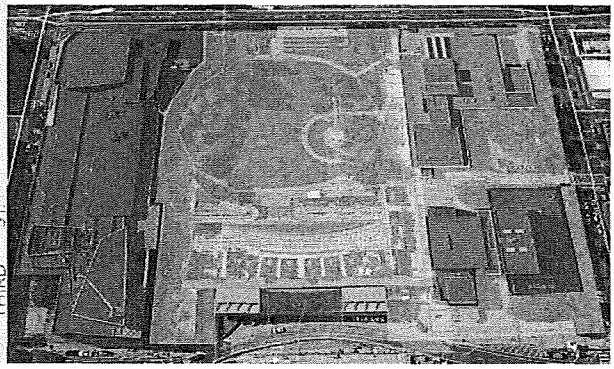
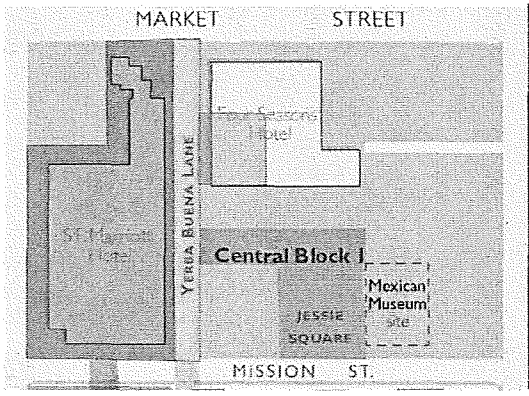


EXHIBIT B-3

DEPICTION OF THE RETAINED PUBLIC SPACE AREAS

CB-1 Block

Retained Public Space Areas (Green – Jessie Square + connector parcel)



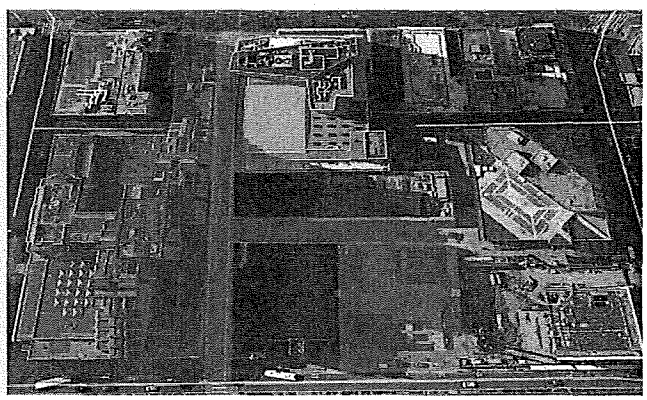


EXHIBIT B-4

DEPICTION OF THE RETAINED OTHER GARDENS AREAS

[To be attached, if any. None at the time of Lease execution.]

EXHIBIT C

YBC CLOSEOUT AGREEMENT

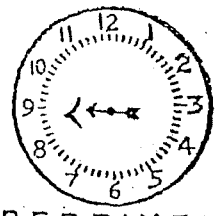
(Attached)

U.S. Department of Housing and Urban Development
San Francisco Area Office, Region IX
One Embarcadero Center, Suite 1600
San Francisco, California 94111

YBC Closeout Agreement

Office of the Area Manager

AUG 11 '83 AM



RECEIVED
INCOMING
SAN FRANCISCO
REDEVELOPMENT AGENCY

1-176483-128

AUG 10 1983

Mr. Wilbur W. Hamilton
Executive Director
San Francisco Redevelopment Agency
P. O. Box 646
San Francisco, CA 94101

Dear Mr. Hamilton:

SUBJECT: Project Closeout and Requisition for Final
Capital Grant Payment
Project No. Calif. R-59
Contract No. Calif. R-59 (LG)
Yerba Buena Center Project

We are pleased to inform you that the Area Office has approved the Redevelopment Agency's and the City's request to financially settle the Yerba Buena Center Project. Your requisition has been approved in the amount of $458,389. Your Agency will not receive a check pursuant to the approved final payment as this amount, together with the Agency's funds of $10,797,381, will be utilized for payment of your outstanding project notes and interest on August 11, 1983. A copy of the approved Certificate of Completion and of Gross and Net Project Cost is enclosed.

Enclosed also is a copy of the Closeout Agreement between the Redevelopment Agency and the City which has been concurred in by this Department.

As is the case with the other urban renewal projects which have been closed out under the provisions of Section 570.803 of the Community Development Block Grant Program Regulations, all future proceeds from the sale or lease of project land must be treated as program income under the CDBG program, and accounted for accordingly.

We are pleased to approve this payment and congratulate you on your achievement in bringing this project to a successful conclusion. Also, we wish to thank the Redevelopment Agency staff for the cooperation and courtesy shown to members of this Office during the administration of this program.

Sincerely,

Henry Dishroom

Henry Dishroom
Area Manager, 9.3S

Enclosures

cc: Honorable Dianne Feinstein
Mayor, City and County of San Francisco

Mr. James Johnson
Executive Director
Mayor's Office of Housing and
Community Development

San Francisco Area Office, Region IX
One Embarcadero Center, Suite 1600
San Francisco, California 94111
Office of the Area Manager

AUG 15 '83 AM

RECEIVED
SAN FRANCISCO
REDEVELOPMENT AGENCY
1-1779.83-128

Honorable Dianne Feinstein
Mayor, City and County of San Francisco
City Hall, Room 200
San Francisco, CA 94102

Dear Mayor Feinstein:

SUBJECT: Project No. Calif. R-59
Yerba Buena Center
Financial Settlement

This is to inform you that the Yerba Buena Center Urban Renewal Project has been financially settled. A copy of our letter to the Redevelopment Agency formally notifying it of the financial settlement, along with a copy of the executed Closeout Agreement, are enclosed for your information.

Please note that as is the case with the other urban renewal projects which have been closed out under the provisions of Section 570.803 of the Community Development Block Grant Program Regulations, all future proceeds from the sale or lease of Project land must be treated as program income under the CDBG program, and accounted for accordingly.

Sincerely,

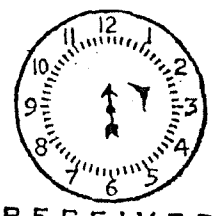
Henry Dishroom
Area Manager, 9.3S

Enclosures

cc: Mr. Wilbur W. Hamilton, Executive Director
San Francisco Redevelopment Agency

Mr. James Johnson, Executive Director
Mayor's Office of Housing and Community Development

AUG 15 '83 PM



RECEIVED
CONTROLLER
SAN FRANCISCO
REDEVELOPMENT AGENCY

YERBA BUENA CENTER REDEVELOPMENT PROJECT
CLOSEOUT AGREEMENT

THIS AGREEMENT, entered into by and between the Redevelopment Agency of the City and County of San Francisco (the local public agency carrying out the project, hereafter called the "Agency") and the City and County of San Francisco (the unit of general local government in which the project is located, hereafter called the "City"),

W I T N E S S E T H

WHEREAS, the Agency and the United States of America, acting by and through the Secretary of Housing and Urban Development "HUD") entered into Contract No. Calif. R-59 (City) dated December 2, 1966 ("HUD Contract") for the purpose of providing Federal financial assistance under Title I of the Housing Act of 1949, as amended, to carry out redevelopment activities in the Yerba Buena Center Project ("Project") in accordance with a duly adopted Redevelopment Plan ("Plan"), which HUD Contract, Project and Plan have been amended from time to time; and

WHEREAS, an environmental review of the early financial settlement of the Project has been completed in accordance with the provisions of 24 CFR 58.15(a) and the citizen participation requirements under 24 CFR 570.803(e)(2) have been complied with; and

WHEREAS, Community Development Block Grant regulations (24 CFR Part 570) permit financial settlement of urban renewal projects prior to completion, and such regulations require a closeout agreement executed by the Agency and the City pertaining to certain remaining obligations under the HUD Contract; and

WHEREAS, the Agency desires to use any grant earned under the HUD Contract, and any unearned grant as defined in Title 24 CFR Section 570.800(c) to repay the outstanding project temporary loan obligation for Calif. R-59 in the amount of $11,100,000 plus interest; and

WHEREAS, there are no surplus grant funds as defined in Title 24 CFR Section 570.800(d); and

WHEREAS, the City has a Community Development Block Grant entitlement of $22,104,722 for Fiscal year 1983 for which a Grant agreement has been executed; and

WHEREAS, a request for financial settlement of the Yerba Buena Center Redevelopment Project Calif. R-59 has been submitted to the Department of HUD by the Agency and City; and

WHEREAS, in Resolution No. 659-83, adopted on July 25, 1983, the Board of Supervisors of the City and County of San Francisco has approved this Close Out Agreement and has authorized the Mayor to make application for financial settlement of the said Yerba Buena Center Redevelopment Project to HUD;

NOW THEREFORE, in consideration of the mutual covenants, promises and representations contained herein, the parties hereto agree as follows:

Section 1. Project Property

(a) The Project Property is composed of the parcels (some with structures thereon) described in the Project Property Inventory, attached hereto as Exhibit "A", and made a part hereof.

(b) The Project Property shall be retained for disposition by the Agency. The requirement for disposition at fair use value under Section 110(c)(4) of Title I of the Housing Act of 1949, as amended, is not applicable to the disposition of any such Project Property.

(c) Subject to applicable federal and other law and regulation, the proceeds received from the sale and/or lease of Project Property may be used to complete the Redevelopment Project and for necessary and/or appropriate economic development activities in the Project and may also be used to repay any loan (or loans) obtained by the Agency for the purpose of repayment of its Temporary Loan obligation to HUD and any loan (or loans) obtained by the Agency for the purpose of land acquisition necessary for the completion of the Project.

(d) A description of the proposed Project Completion and Economic Development Activities is shown on Exhibit B attached hereto, and made a part hereof.

Section 2. Displacement

On displacement from any above listed occupied property, the displacees shall be provided all benefits to which they may be entitled under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

No displacement of any person from occupied residential properties listed above is involved.

Section 3. Low- and Moderate-Income Housing

The low- and moderate-income housing required to be provided due to the demolition or removal of residential

structures with Project funds, pursuant to Section 105(h) of Title I of the Housing Act of 1949, as amended, have been satisfied and provided.

Section 4. Unearned Grants

Any and all unearned grants made available as a result of the financial settlement will be applied to repayment of the outstanding Project temporary loan.

Section 5. Repayment of Project Temporary Loan

The project temporary loan of $11,100,000 due August 9, 1983 will be repaid from a portion of the proceeds of the public sale of Agency bonds, in an amount not to exceed $29,000,000 (authorized by Board of Supervisors Resolution No. 429-83), less any unearned grant as described in Section 4. Bonds are expected to be sold not later than July 28, 1983.

Section 6. Claims

Any costs or obligations incurred in connection with the Yerba Buena Center Redevelopment Project with respect to claims which are disputed, contingent, unliquidated, or unidentified, and for the payment of which insufficient project funds have been reserved under financial settlement shall be borne by the City. Such additional expenses may be paid from Community Development Block Grant funds made available under 24 CFR 570.

Section 7. Program Management

The obligations under this Closeout Agreement are subject to the applicable Program Management requirements of 24 CFR Part 570, Subpart O.

Section 8. Special Provisions of Contract

(a) The GSA property located at 49 Fourth Street, San Francisco, California is not covered by the HUD contract but is part of the Agency and City approved Yerba Buena Center Redevelopment Project and is subject to the Agency and City approved Yerba Buena Center Redevelopment Plan as amended. Accordingly, as between the Agency and the City, the Project and the Project Property shall for purposes of Section 1, and the attached Exhibits A and B to this Agreement, include the acquisition of the GSA property by the Agency, and its disposition.

(b) Pursuant to the provisions of 24 CFR Part 58, City agrees to assume all duties of HUD under the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470 et.seq.), Executive Order 11593, and the regulations

issued pursuant thereto. Such duties are those specified in that Memorandum of Agreement of May 7, 1983, between the Advisory Council on Historic Preservation, the California State Historic Preservation Office and HUD, and in any supplemental Memorandum of Agreement or supplementary or amendatory stipulations respecting the Jessie Hotel and the Williams Building that the City, the Agency, the California State Historic Preservation Office and the Advisory Council on Historic Preservation agree to.

ATTEST:

ACTING Clerk

CITY AND COUNTY OF SAN FRANCISCO

Mayor

ATTEST:

Secretary

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

Executive Director

Concurred in:
United States of America
Secretary of Housing and Urban Development

San Francisco Area Office

EXHIBIT A

PROJECT PROPERTY INVENTORY

PARCEL #	Area (Sq. Ft.)
3706-1	136,000
3750-A	130,873
3706-P	80,720
3723-A	226,875
3723-B	226,875
3751-B	36,720
3751-P	16,876
3751-Q	48,514
3751-S	18,022
3751-V	6,480
3751-H	36,720
3763-A	25,200
3707-A	31,840
3707-B	963
3722-A	32,960
3722-B	81,525

EXHIBIT B

Description of Proposed Project

Completion and Economic Development Activities

1. The CENTRAL BLOCKS 1, 2, and 3 (Between Market, Folsom, Third and Fourth Streets). (Presently under negotiation by the Agency.)

(a) On Central Block 1, the development. operation, maintenance, and security of an office building, hotel, retail and housing and related parking integrated with the development, operation, maintenance and security of open space developed with plazas, walkways and landscaping and cultural facilities;

(b) On Central Blocks 2 and 3, the development, operation, maintenance and security of retail, ARE (Amusement, Recreation, Entertainment) and parking integrated with the existing Moscone Convention Center and the development, operation, maintenance and security of open space developed with plazas, walkways, landscaping, parks, gardens, and fountains and cultural facilities on Central Block 2. The estimated commencement of the Central Blocks 1, 2, and 3 development is within 1 year with an estimated completion within 5 years thereafter.

2. East Block 2 (on Third Street south of Mission and on Mission east of Third). (Presently under negotiation by the Agency.)

The development, operation, maintenance and security of an office building, housing and related parking and retail. The estimated completion of the development is no later than three years after the completion of Central Blocks 1, 2, and 3.

3. Remaining Project Land (areas other than described in 1 and 2 above.)

This land will be disposed of as quickly as possible consistent with development of Central Blocks 1, 2, 3, East Block 2, and appropriate economic absorption standards.

4. Housing Assistance

It is anticipated that assistance to low and moderate income housing adjacent to (south and west of) the Project Area may be made available before completion of the Central Blocks 1, 2, and 3 development. An objective of such assistance will be to stabilize and thus keep available such existing low and moderate income housing.

5. Jobs and Minorities

It is estimated that the Project Completion and Economic Development Activities on Central Blocks 1, 2, 3, and East Block 2 will result in hundreds of construction jobs and 8,000 permanent jobs, of which 5,700 will be new jobs, many benefiting low and moderate income persons. Minority and women entrepreneurship in construction and post-construction will be provided for.

EXHIBIT D

FORM ASSIGNMENT OF AGREEMENTS

(Attached)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

The undersigned hereby declare this instrument to be exempt from recording fees per Government Code §27383 and §27388.1

Space Above for Recorder's Use

APNs: _____

ASSIGNMENT AND ASSUMPTION AGREEMENT

(Yerba Buena Gardens Leases and Contracts)

This Assignment and Assumption Agreement ("**Assignment**") is executed as of this _____ day of _____, 2019 (the "**Assignment Effective Date**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Department of Real Estate ("**Assignor**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation ("**Assignee**").

RECITALS

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted as the "Premises" on Exhibit B attached hereto (the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3" and includes the Yerba Buena Gardens ("**YBG**"). Notwithstanding the foregoing, the Premises shall exclude the Substructure (as defined in the Lease, which is in turn defined in Recital C below).

B. City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted as the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas" on Exhibit B attached hereto (collectively, the "**City Retained Areas**"), which City Retained Areas are composed of the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas," as each of those terms is defined in the Lease (as defined in Recital C below). The City Retained Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The City Retained Areas are not included in the Premises; however, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and Retained Public Space Areas, including over certain leases, subleases,

licenses, concessions or other agreements for the use or occupancy of the Retained Lease Areas or the Retained Public Space Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

C. Concurrently herewith, Assignor and Assignee are entering into that certain Lease (the "**Lease**") pursuant to which Assignor, as landlord, is leasing to Assignee, as tenant, the Premises, and pursuant to which Assignor is granting to Assignee certain rights with respect to certain other portions of the YBG Properties, all as more particularly described in the Lease.

D. This Assignment transfers Assignor's rights, titles, and interests in and to the those certain leases more particularly described in Attachment 1 attached hereto and incorporated herein (the "**Existing Subleases**") and those agreements described in Attachment 2 attached hereto and incorporated herein (the "**Existing Operating Agreements**" and together with the Existing Subleases, collectively the "**Existing Subleases and Agreements**") to Assignee for the Term (defined below), and Assignee has agreed to accept and assume Assignor's obligations under the Existing Subleases and Agreements for the Term, subject to the terms and conditions of the Lease.

NOW THEREFORE, for good and valuable consideration received, Assignor and Assignee agree as follows:

1. Assignor hereby grants, conveys, assigns and transfers to Assignee for the Term (as defined below) all of Assignor's rights, titles, and interests in and to the Existing Subleases and Agreements.

2. Assignee hereby accepts assignment of Assignor's rights, titles and interests in the Existing Subleases and Agreements from Assignor for the Term and assumes Assignor's obligations under the Existing Subleases and Agreements, including all covenants and conditions therein, arising from and after the Assignment Effective Date for the Term, including, but not limited to, the YBC Closeout Agreement requirements for treating all future proceeds from the sale or lease of the YBG Properties as Program Income, and the funding restrictions for expenditure of the revenues under the Existing Operating Agreements.

3. Assignor shall give notice, in accordance with requirements set forth in the Existing Subleases, to the tenants under the Existing Subleases that Assignor has assigned, and Assignee has assumed, the landlord's interests in the Existing Subleases. Assignor shall also give notice, in accordance with requirements set forth in the Existing Operating Agreements, to the parties to the Existing Operating Agreements that Assignor has assigned, and Assignee has assumed, all of Assignor's rights, titles, and interest in the Existing Operating Agreements.

4. The term of this Assignment (the "**Term**") shall be coterminous with the term of the Lease. Upon the expiration or earlier termination of the Lease, this Assignment shall automatically terminate and Assignee's interests in the Existing Subleases and Agreements shall automatically vest back in Assignor.

5. Assignor represents to Assignee, to its knowledge: (1) Assignor has delivered true and correct copies of the Existing Subleases and Agreements to Assignee; (2) Assignor is not

aware of any defaults under the Existing Subleases and Agreements; and (3) there is no known litigation pending or threatened against the Assignor that might detrimentally affect the use or operation of the YBG Properties as intended.

6. This Assignment shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

7. The parties hereby agree to execute such other documents and perform such other acts as may be necessary or desirable to carry out the purposes of this Assignment.

8. This Assignment may be executed, in one or more counterparts, each of which so executed shall be deemed an original, regardless of its date and\ or delivery, and said counterparts, taken together, shall constitute one document.

9. This Assignment shall be enforced and interpreted according to the laws of the State of California as applied to contracts that are executed and performed entirely in the State of California, without regard to, or giving effect to any choice of laws doctrine.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement as of the Assignment Effective Date.

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

ASSIGNEE: YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A TO ASSIGNMENT AND ASSUMPTION AGREEMENT

LEGAL DESCRIPTION OF PREMISES

[To Be Attached]

EXHIBIT B TO ASSIGNMENT AND ASSUMPTION AGREEMENT

DIAGRAM OF PREMISES AND CITY RETAINED AREAS

[To Be Attached]

ATTACHMENT 1 TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Existing Subleases

	Lease	Recorded in the Official Records of the City and County of San Francisco	Assessor's Parcel Number
1.	Operating Lease for the Ice Rink/Bowling Center at Yerba Buena Gardens, dated May 19, 1998.	Unrecorded	3734-091
2.	Commercial Retail Lease (West Café), dated October 18, 2005.	Unrecorded	3723-115
	First Amendment, dated September 14, 2015.	Unrecorded	
3.	Commercial Retail Lease (East Café), dated January 17, 2006.	Unrecorded	3723-115
	First Amendment, dated September 14, 2015.	Unrecorded	
4.	Yerba Buena Gardens Central Block 3 Agency Rooftop Surface Lease, dated July 1, 1996 (the "Agency Rooftop Surface Lease")**	November 17, 2011, in Reel K525, Image 0002, as Document #J301100-001.	3734-091

**The assignment of the Agency Rooftop Surface Lease includes an assignment of both the City's rights and obligations as landlord (referred to as the "City") under the Agency Rooftop Surface Lease and the City's rights and obligations as tenant (referred to as the "Agency") under the Agency Rooftop Surface Lease; provided, however, that to the extent the Agency Rooftop Surface Lease imposes greater obligations on Assignee with respect to a particular subject matter than the Lease imposes on Assignee, then Assignee shall only be required to perform under the Agency Rooftop Surface Lease to the extent of its obligations as Tenant under the Lease (e.g., Assignee's maintenance and repair obligations shall be no greater than under the Lease). Furthermore, and without limiting the foregoing, to the extent of any inconsistency between the Agency Rooftop Surface Lease and the Lease, the terms of the Lease shall control as to Assignee's rights and obligations.

ATTACHMENT 2 TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Existing Operating Agreements

	Agreement	Recorded in the Official Records of the City and County of San Francisco	Assessor's Parcel Number
1.	Agreement for Working Capital Funding and Operation of a Child Care Center, dated August 19, 1997..	Unrecorded	3734-091
	Authorization of an Extended Term Under the Agreement for Working Capital Funding and Operation of a Child Care Center, dated August 1, 2017.	Unrecorded	
2.	Operating Agreement Youth Arts and Education Center Yerba Buena Gardens, dated July 1, 1997.	Unrecorded	3734-091
3.	Amended and Restated Agreement for Operation of Cultural Facilities, dated June 15, 2004.	Unrecorded	3723-115
4.	Yerba Buena Gardens Programming Agreement, dated July 11, 2000.	Unrecorded	3706-097, 098, 119-124, 301 3723-115 3734-091
	First Amendment, dated June 4, 2013.	Unrecorded	
	Second Amendment, dated May 5, 2015.	Unrecorded	
	Third Amendment, dated March 20, 2018.	Unrecorded	
5.	Personal Services Contract (Property Management Services — Yerba Buena Gardens), dated July 1, 2009.	Unrecorded	3723-115 3734-091
	First Amendment, dated August 3, 2010.	Unrecorded	
	Second Amendment, dated May 5, 2015.	Unrecorded	
	Third Amendment, dated March 20, 2018.	Unrecorded	
6.	Permit to Enter (Bike Share Station), dated October 4, 2016.	Unrecorded	3723-115
7.	Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens, dated March 31, 1998 ("CB-1 REA").*	April 7, 1998 in Reel H106, Image 579, as Document #G331392.	3723-115 3734-091
	First Amendment, dated October 28, 1998.	October 28, 1998 in Reel H250, Image 581, as Document #G458534	
	Second Amendment, dated May 24, 2016.	May 24, 2016 as Document #K250102.	

8.	1988 Reciprocal Easement Agreement, dated March 1, 1988 ("CB-3 REA").**	July 13, 1988 in Reel E635, Image 1153 as Document E204001.	3723-115 3734-091
	Amendment to 1988 Reciprocal Easement Agreement and Restatement of Certain Provisions of the 1988 REA dated July 1, 1996.	November 11, 2011 in Reel K525, Image 0001 as Document #J301099.	

*To the extent of Assignor's rights as a "Party" under the CB-1 REA, Assignor authorizes Assignee to operate as its agent during the Term of the Lease in exercising Assignor's rights on behalf of Assignor under the CB-1 REA, including Assignor's authority to manage the programming of the outdoor City Retained Areas on "Central Block 1", specifically, the Retained Public Space Areas.

**To the extent of the Assignor's rights as a "Party" under the CB-3 REA, Assignor authorizes Assignee to operate as its agent during the Term of the Lease in exercising Assignor's rights on behalf of the Assignor under the CB-3 REA.

To the extent the CB-1 REA or the CB-3 REA impose greater obligations on Assignee with respect to a particular subject matter than the Lease imposes on Assignee, then Assignee shall only be required to perform under the CB-1 REA or the CB-3 REA to the extent of Assignee's obligations as Tenant under the Lease (e.g., Assignee's maintenance and repair obligations shall be no greater than under the Lease). Furthermore, and without limiting the foregoing, to the extent of any inconsistency between the CB-1 REA and/or the CB-3 REA and the Lease, the terms of the Lease shall control as to Assignee's rights and obligations.

EXHIBIT E

INITIAL APPROVED ANNUAL BUDGET

(Attached)

The Yerba Buena Gardens Conservancy
Budget and Financial Projections

YBGC Mulit Year Budget and Financial Projections	Year 1 FY 2019/20 Projected Budget
REVENUE	
Lease Revenue - Premises (Samovar, B Rest, VSC Sports, CB1) (Conservancy Managed)	1,160,241
Lease Revenue-City Retained Areas (Marriott, Metreon) (City Managed)	8,503,492
Other Premises Revenue (St Regis, 706 Mission GMOS, 5M, Insurance Settlement, Central SOMA)	274,838
Contributed Revenue	75,000
Other Revenue (Interest, Event Revenue)	135,000
YBCBD Loan	
TOTAL REVENUE	10,148,571
EXPENSE	
Yerba Gardens Operations	4,515,004
Cultural Entity Support (CCM, YBAE, YBCA)	4,005,000
City Dept of Real Estate Overhead Costs	50,470
YB Community Benefit District Assessment	91,402
Professional Fees (Legal, Accounting, Audit, IT, Other)	134,500
Insurance (Property, D&O, General Liability...)	111,411
Staffing Costs (Salaries, Taxes and Benefits)(two FTE)	386,035
Office Expenses (Rent, Postage, Telephone, Office Supplies, License, Fees, Permits, Software, Bank Fees, Web Hosting...)	71,835
Contingency	50,000
Loan Payment for Startup Legal Expenses	300,000
TOTAL OPERATING EXPENSE	**9,715,656**
OPERATING REVENUE LESS EXPENSE	**432,915**
CAPITAL EXPENSE	
Capital Expenses (total)	**4,086,298**
TOTAL ORGANIZATIONAL REVENUE LESS EXPENSE W/CAPITAL	**(3,653,383)**
RESERVES	
Operating Reserve - Initial Funding base 1 Million, target goal 15% of Annual Operating Budget	1,457,348
Capital Replacement Reserve - Initial Funding base 1 Million, target 25% of upcoming three year avg	1,000,000
Total Reserve Goal	**2,457,348**
CASH AVAILABLE FOR OPERATIONS AND CAPITAL	
Projected FY Start Cash Balance (Total Cash)	8,845,438
Total Organization Net Income (Operating Revenue, Less Operating Expenses, Less Capital)	(3,653,383)
Operating and Capital Reserve Holdback	2,457,348
Projected FY End Cash Balance Available for Operations (After Funding Reserves)	2,734,707
Projected Total End Cash Balance (Incl reserve)	**5,192,055**

EXHIBIT F

RETAINED LEASES

	Lease	Recorded in the Official Records of the City and County of San Francisco	Assessor's Parcel Number
1.	Lease for the Yerba Buena Gardens Center Hotel, dated August 26, 1986, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and YBG Associates, as tenant.	August 27, 1986 in Book E160, Page 1132, as Document #D855245.	3706-096, 110, 111 3723-113, 116, 117
	First Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated March 18, 1987.	April 14, 1987, in Book E319, Page 1210, as Document #D973397.	
	Second Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 8, 1991.	May 10, 1991, in Book F373, Page 435, as Document #E903679.	
	Third Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book F378, Page 228, as Document #E907058.	
	Fourth Amendment to Lease for the Yerba Buena Gardens Center Hotel, dated May 17, 1991.	May 17, 1991, in Book 378, Page 229, as Document #E907059.	
	Letter Agreement dated April 18, 2013, regarding the definition of Fiscal Year.	Unrecorded	
	Amended and Restated (Nunc Pro Tunc) Yerba Buena Gardens Amendment to Legal Description to Lease for the Yerba Buena Gardens Center Hotel, dated October 28, 1998	October 28, 1998, in Reel H250, Image 582, as Document #G458535; December 14, 2000, in Reel H784, Image 209, as Document #G875561.	
2.	Central Block 2 Entertainment and Retail Lease, dated May 9, 1997, by and between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Yerba Buena Entertainment Center, as tenant.	May 13, 1997, in Book G881, Page 310, as Document #97-G159383.	3723-114, 115
3.	Lease dated August 6, 1993, by and between the Redevelopment Agency of the City and County of San Francisco, as lessor, and Marriott Corporation, as lessee.	Unrecorded	

EXHIBIT G

BILL OF SALE

(Attached)

YBG Personal Property

Count	Item	Description
1	Harmsco BKP portable stainless steel filter	
2	"Z" racks with wheels	
1	Hako Power Sweeper # 800	
1	Gum Wizard	
4	Utility Cart	
1	19'-21' Scissor Lift	
1	30'-33' Boom Lift	
1	Aerator	
1	Ice Resurfacer - Zamboni - Model 552	
8	Tilt Carts	
5	Tilt Carts	
1	Maxisweep Fountain & Pool Vacuum	Maxi-Sweep
1	Ride on scrubber	
1	Platform with Steps	
1	ADA/Wheelchair lift for Stage	
7	Folding Tables	
80	Lumber - Masonite	4'x8'x3/16" Masonite Sheets
38	Lumber - Plywood	4'x8'x1-1/8" Plywood Sheets
8	Portable Stage - Seca	
2	StageRight Stairs	36" x 48"
79	StageRight Poles	Silver (Diagonal)
76	StageRight Poles	Green (Straight)
6	StageRight Poles	Custom 8'
6	StageRight Poles	#6
2	StageRight Poles	#7
1	StageRight Poles	#15
1	StageRight Poles	#16
14	StageRight H Section	Custom 14" Tall (non-adjustable)
6	StageRight H Section	Custom 14" Tall (adjustable)
66	StageRight H Section	Custom
2	StageRight L Stands	Custom
20	StageRight ME Locator	Single
56	StageRight ME Locator	Double
57	StageRight ME Locator	Quad
13	StageRight ME Locator	Custom Double (sleeve dual)
20	StageRight ME Locator	Custom Double (sleeve quad)
10	StageRight Railing	8' long

Count	Item	Description
7	StageRight Railing	4' long
4	StageRight Railing	2' long
1	StageRight Railing	6' long
42	StageRight Softscape Protector	Foot Pads
9	StageRight Canvas Skirting	Green 8' long
1	StageRight Ramp	4' x 4' Aluminum
1	StageRight Ramp	Custom stand with single pole (H section and Ramp labled)
1	StageRight Ramp	Custom stand 48" x 24"
8	StageRight Railing	65" long (Stairs)
4	StageRight Stairs	36" x 72"
200	Stacking Chairs	
1	Computer Laptop - HVAC	
2	Computers	Dell Optiplex / Dell Dimension
1	Digital Video Recorder (DVR)	Pelco 8100 Series DVR 750 GB
1	PENCO storage cabinets 6233V	
1	20-locker individual storage	
10	Chairs	
5	Desk Chairs	
5	Office desks	
1	File Cabinets - 2 drawer	
6	File Cabinets - 3 drawer	
1	Conference table	
4	Overhead cabinets	
1	Storage cabinet	w/ bottom two-drawer file
2	Benches - 36"	
10	Benches - 72"	
19	Steel Tables – Green	
37	Steel Chairs – Green	
12	Barricades - Plastic	
57	Barricades - Metal	
103	Garbage Cans Powder Coated	
24	Black Pots	
1	Laser Level	Johnson level & tool Acculine Pro Mod # 40-6680
1	Speed Rooter 90	
1	Jetter - Gas	
1	Welder	
1	Drill & Drill Stand	
1	Foot Valve	Ridgid FV-1 3000 PSI

Count	Item	Description
1	Drain Snake	General speed rooter 92
1	Jetter Hose	Ridgid 3/8" I.D.
2	Face Shields	Blue plastic with clear lense
1	33" Gimlet Leader	Ridgid
1	Jetter Hose	Ridgid 1/8" I.D.
1	SS Wet Vac	Dayton model 6AKY1
1	50' Extension Cord	Yellow
1	Electric Jetter	Ridgid KJ-1750
1	Hose Reel	General CR-300
2	Toilet Auger	Ridgid
1	Urinal Auger	Ridgid
10	1.5" Fire Hose	Various Lengths with ends cut
4	2" Fire Hose	Blue 50' Length
1	Submersible sump pump	Zoeller
1	Drain Snake	General speed rooter 90
1	Drain Snake	General mini rooter
1	Jetter (gas)	Ridgid KJ-3100
3	Water Hoses	150' 3/4" Dia. With quick coupler
1	Window Washer	Qually telescoping poles
1	Air Compressor	Speedaire 4MUIZ
1	Electric Cart	Vestil DC carry truck OROAD-400
1	Air Compressor	Westward 4UP72-1
1	Air Mover	MyTee Products Inc.
4	Furniture Dolly	No make or model
1	Generator	Generac 01470
1	Pallet Jack	Mitsubishi 2270 KG
2	Wet/Dry Vacuum	Dayton 2RPD8A
1	Portable AC Unit	Movincool Classic Plus 14
5	Utility Cart	Rubbermaid
2	Hand Truck	No make or model
1	Pipe Vise	Ridgid
2	Panel Cart	No make or model
2	Pump Sprayer	Hudson
1	Flat Bed Cart	No make or model
1	Green Cabinet	
1	Yellow Cabinet	
1	Thermometer	Fluke (infrared)
1	Measuring Wheel	Rolatape RT204
1	Computer - Engineer's	Dell Optiplex 3040
1	Computer - Engineer's	Dell Optiplex 3020

Count	Item	Description
1	Computer - CB3 HVAC -	Dell Optiplex 3020
1	Computer - CB2 HVAC - Metasys System	Dell
1	Printer	HP J4580 all in one
1	Printer	Brother HL4040CBN
2	Bull Horn	MG Electronics (PGM-15PD)
1	Electric Cart	Taylor & Dunne SS5-36
1	4 Piece Ladder	Window Washing Equipment
1	Table Saw	Delta
1	Band Saw	Delta
1	24' Extension Ladder	Werner 300 Lb. Rating
1	12' Ladder	Werner 300 Lb. Rating
1	10" Ladder	Werner 300 Lb. Rating
1	8' Double Sided Ladder	Louisville FM1508
1	8' Ladder	Louisville FM1508
2	8' Ladder	Werner 250 Lb. Rating
1	8' Ladder	Werner 300 Lb. Rating
1	6' Double Sided Ladder	Werner 300 Lb. Rating
1	6' Double Sided Ladder	Little Giant Type 1A
1	6' Platform Ladder	Louisville
1	Pressure Washer #17	Hydrotek SS30005VH
1	Pressure Washer #16	Hydrotek SS40004VC
1	Pressure Washer #7	Hydrotek CP35005VH
1	Pressure Washer	Pressure Pro 3000
1	Floor Buffer	Minute Man BP-2248
1	Floor Scrubber	Saber
1	Floor Scrubber	Hako Minute Man
1	10' Scaffold	Werner Scaffold System
1	8' Scaffold	Upright Scaffold System
2	Fuel Cabinet	
1	Metal Brake	Jet BP-2248
1	Radio	Motorolla (Radius CP200)
1	Radio	Motorolla (Radius CP200)
1	Radio	Motorolla (Radius CP200)
1	Radio	Motorolla (Radius CP200)
1	Radio	Motorolla (Radius CP200)
1	Revac regulator	No make or model
1	Radnor regulator	Model # 350-15-510-06
1	Radnor regulator	Model # 350-125-540
1	Cutting Torch	Model # CA35

Count	Item	Description
1	Welding Torch	Model # WH36FC
1	Torch heads	Victor Model # 5KH89
1	Torch Hoses	No make or model
1	Oxygen cylinder	125 Lb.
1	Aceteyln cylinder	75 Lb.
1	Argon cylinder	150 Lb.
1	Torch Cart	No make or model
3	Torch Strikers	No make or model
1	Slag Hammer	No make or model
1	Air Hose & Reel	Dayton
1	Large Welder	Miller DV1-2 Milleratic
1	50' 220 Volt pigtail	No make or model
1	2' 220 Volt pigtail	No make or model
2	Stainless Steel HVAC vacuum	Dayton Model # 4TB90
1	Welding Gloves	No make or model
1	Welding Gloves	No make or model
1	Electrical Gloves & Mat	No make or model
1	6' Level	Irwin 6'
1	6' Level	Irwin 6'
1	Wonder Bar	6' long wheeled pry bar
2	Come-A-Long	Ratcheting cable tensioner
1	Fountain Cleaning Tools	Box of various parts
2	L.E.D. work lights	Luma Pro
3	Plastic Bins	No make or model
1	Black Nylon Rope	No make or model
1	HVAC air balancing meter	
1	Measuring Wheel	Tru-Meter
1	Rubber Cement Float	No make or model
4	Short Handle Scrapers	No make or model
5	Plastic Flash Lights	No make or model
5	Metal Flash Lights	Mag-Lite
1	4" Grinder	Milwaukee Model # 6153-20
1	4" Grinder	Bosch Model # 1710
1	4" Grinder	Milwaukee Model # 6140-30
1	6" Grinder	Milwaukee Model # 6088-20
1	Metal Shear	Milwaukee Model # 6850
1	Sawzall	Milwaukee Model # 6519-30
1	18 Volt Vacuum	Dewalt
1	Makita DA3000R	Makita DA3000R
1	Heat Gun	Milwaukee

Count	Item	Description
1	Palm Sander	Dewalt
2	Flash Light	Dewalt
1	Impact Gun	Dewalt
1	Impact Gun	Dewalt
1	Band Saw	Milwaukee #6230
1	Hammer Drill	Bosch (082)
1	Skilsaw	Mod # HD77
1	Hammer Drill	Milwaukee Mod # 5378-20
1	Chop Saw	Dewalt Mod # DW872
1	Circuit breaker finder	Greenlee CS-2072K
1	Circuit breaker finder	Greenlee CS-2072K
2	Engraving tools	Dremmel Mod # 290
1	Phone line testing kit	Premier Mod # PY-311
1	Dial indicator	Mitutoyo Mod # 99MAG014MZ
1	Electrical circuit tester	Progressive Elecronics (Tempo) Mod # 77HP
1	Circuit breaker finder	GB Instruments Mod # GET-1200
1	Strap Binder	TW Mod # M1900
40	Stainless steel sign brackets	Strap Binder ST-021
1	Stainless steel strapping 3/4"	Strap Binder (approx 390') .020
1	Sound level meter	Radioshack Mod # 33-2055
1	Amp meter	Amprobe
1	4" Grinder	Makita Mod # 9523NBH
1	18 Volt cordless grinder	Dewalt Mod # DC411
1	18 Volt cordless grinder	Dewalt Mod # DC410
1	18 Volt cordless grinder	Dewalt Mod # DC410
1	Right angle drill	Milwaukee Mod # 0375-1
1	Insulation tester / Megohmeter	Extech Instruments Mod # 380260
1	Jig Saw	Dewalt Mod # DW317
1	Reciprocating saw 18V	Dewalt Mod # DW938
1	Hammer drill 18V	Dewalt Mod # DW999
1	Halogen leak detector	TIF XP-1
2	Thermometer	Fluke 52 K/J
1	Magnahelic	Dwer Instruments
1	Shipping Scale	Palouza Mod # P2505
1	Refrigerant recovery unit	Amprobe promax RG5410 HP
1	Vacuum pump	JB Industries Mod # DV-200W
1	Drill Doctor	no model number listed
1	Hex Key Set (standard)	Eklind 9" T Handle
1	Hex Key Set (metric)	Eklind 9" T Handle

Count	Item	Description
1	Drill Press / Mill	Dayton Model # 2LKP8
1	Milling Vise	Dayton Model # 3W765J
1	10 File Set	Partsmaster
1	Bolt Cutters (large)	36"
1	Bolt Cutters (medium)	24"
1	Bolt Cutters (medium)	24"
1	Bolt Cutters (small)	14"
1	Bolt Cutters (small)	18"
4	Hacksaw	Stanley
4	Handsaw	Stanley
1	Coping Saw	no brand listed
3	Caulking Guns	no brand listed
4	Pipe Wrench (smooth jaw)	Ridgid
1	Pipe Wrench (24" Aluminum)	Ridgid
1	Pipe Wrench (18" Aluminum)	Ridgid
1	Rat Tail Broom	no brand listed
1	Strap Wrench	no brand listed
1	Pipe Wrench (24" Aluminum)	Westward
1	Pipe Wrench (14" cast steel)	no brand listed
2	Clam Shell (gear puller small)	no brand listed
1	6" Bearing Puller	Westward
1	8" Gear Puller	Westward
1	3" Bearing Puller	Westward
1	Wrench Set	Westward
6	4" C-Clamps	no brand listed
4	6" C-Clamps	no brand listed
1	20 Volt combo kit	Dewalt Drill Model # DCD771
1	20 Volt combo kit	Dewalt Impact Gun Model # DCF885
1	20 Volt combo kit	Dewalt Flashlight Model # DCL040
5	18 Volt battery and charger	Dewalt
1	18 Volt Drill	Dewalt Model # DC759
1	18 Volt Drill	Dewalt Model # DC987
1	18 Volt Drill	Dewalt Model # DC920
1	18 Volt Drill	Dewalt Model # DCD940
1	18 Volt Drill	Dewalt Model # DW988
1	18 Volt Drill	Dewalt Model # DC720
1	Step Drill Bits	Milwaukee Set # 48-89-9221
4	Drill Index	Westward
1	Electric Hoist	Dayton Model # 4GU72
4	Grease Guns	Westward

Count	Item	Description
3	Pipe Cutter	Ridgid Model # 15
1	Pipe Bender	Central Hydraulics
7	Wood Clamps	no brand listed
3	4' Level	Stanley
1	Welding Magnet	no brand listed
3	Chisel Set (3 piece)	no brand listed
1	Pipe Threader	Ridgid
1	Wrench Set (17 piece roll)	Westward
1	Step Stool	Cosco
1	Wrenches (standard)	Craftsman
1	Dual Wrenches (standard)	Craftsman
1	Ratchet Wrench (standard)	Craftsman
1	Dual Wrenches (standard)	Craftsman
1	Ratchet Wrench (metric)	Craftsman
1	Dual Wrenches (metric)	Craftsman
1	Wrenches (metric)	Craftsman
1	Nut Driver set (standard)	Klein Tools
1	Nut Driver set (metric)	Klein Tools
1	3/8" drive sockets (metric)	Craftsman
1	Mallet (medium)	Craftsman
1	Hammer (rubber / plastic)	Craftsman
1	2 lb. Sledge Hammer	General 10"
1	Hammer (Ball Pien)	Rocket
2	Cat Paw	nail puller
1	Torque Wrench (plumbing 60 lb.)	Pasco
1	3/8" Ratchet Set	Craftsman 3/4" - 5/16"
1	Torque Wrench (adjustable)	Craftsman
1	Basin Wrench	Ridgid
1	Crescent Wrench 12"	Craftsman
1	Spanner Wrench 10"	no brand listed
1	Spanner Wrench 6"	no brand listed
1	PVC pipe cutter (ratcheting)	no brand listed
1	Pipe Cutter	Ridgid Model # 103
1	Pipe Cutter (cast iron)	Wheeler-Rex
1	Tap & Die Set	Vermont American
1	Hole Saw Kit	Westward
1	Hole Saw Kit	Ridgid
1	Swage & Flare Kit	Yellow Jacket
2	1 3/4" Hole Saw	Morse
1	Knock Out Punch Set	Greenlee "slug buster" 1/2"- 2"

Count	Item	Description
2	Pop Rivet Gun	Marson HP-2
1	Phillips Screw Driver Set	Craftsman 5 Pc.
1	Safety Bit Set	no brand listed
1	Impact Tool Set	Lesley 1/2'
1	Tape Measure	Stanley 30'
1	Tape Measure	Stanley 25'
1	Snap Line	Irwin
4	Razorblade Scraper	no brand listed
1	Jab Saw	Stanley
1	Metal Scissors (large)	no brand listed
1	Metal Scissors (small)	no brand listed
3	Tin Snips (yellow)	no brand listed
2	Tin Snips (red and green)	no brand listed
1	Electrical Driver / Plier Set	Pro's Kit (11 Pc.)
1	Socket Set 1/4" Drive (standard)	Craftsman (17 Pc.)
1	Socket Set 1/2" Drive (standard)	Craftsman (17 Pc.)
1	Nut Driver Set	Husky (7 Pc.)
1	Vise Grip Pliers	China
2	Cable Cutters	China
1	Bullnose Pliers	Channel Lock
2	Lineman Pliers	China
3	Snapring Pliers	China
2	Large Adjustable Pliers	Channel Lock
3	Hex Key Set (standard)	Craftsman / Eklind
1	Hex Key Set (metric)	Craftsman / Eklind
1	Hex Key Sockets (standard)	Craftsman 5/8" - 3/16"
1	Hex Key Sockets (metric)	Craftsman 17mm - 4mm
2	Ball Pein hammer	Stanely (graphite)
2	Hex Key Set	Westward (standard)
2	Hex Key Set	Westward (metric)
1	Adjustable Wrench	Channel Lock
1	Assorted Pliers Kit	Channel Lock
1	Computer	Surface Pro i5
15	StageRight ME Locator	4x8 deck - reverisible with Black Tech Stage (molded Assy)
4	StageRight ME Locator	Faspin C10-30R (5/8 Dia 3.0 RR)
2	StageRight ME Locator	3-4 Blk Glass .095
8	StageRight ME Locator	Stub Leg
1	StageRight ME Locator	Guardrails / Siderails

Count	Item	Description
11	StageRight ME Locator	Guardrail 2x24 / Gripper style with Balusters
1	Electric Heater	Electric Heater, Phoenix Compact
1	Dehumidifier	Dehumidifier, Phoenix 250 Max LGR

EXHIBIT H

CITY INDEMNITY REQUIREMENTS FOR NEW AGREEMENTS

INDEMNIFICATION

1. Indemnification.

Subject to Section 4 below, Subtenant/Operator shall indemnify, defend, and hold harmless ("**Indemnify**") the City and County of San Francisco ("**City**"), including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City (collectively, the "**Indemnified Parties**") from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Subtenant/Operator's use of or operation on the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to, or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to, or death of persons or loss of or damage to property occurring immediately adjacent to the Premises which is caused directly or indirectly by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (iii) any use, non-use, possession, occupation, operation, maintenance, management, or condition of the Premises, or any part thereof by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (iv) any use, non-use, possession, occupation, operation, maintenance, management, or condition of property near or around the Premises by Subtenant/Operator or any of Subtenant/Operator's Agents or Invitees; (v) any design, construction or structural defect relating to any improvements constructed by or on behalf of Subtenant/Operator, and any other matters relating to the condition of the Premises caused by Subtenant/Operator or any of its Agents or Invitees; (vi) any failure on the part of Subtenant/Operator or its Agents, as applicable, to perform or comply with any of the terms of this Agreement or with applicable Laws; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Subtenant/Operator or any of its Agents or Invitees; and (viii) any civil rights actions with respect to the Premises due to Subtenant/Operator's operation of the Premises other than in accordance with this Agreement. Notwithstanding the foregoing, however, Subtenant/Operator shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to the effective date of the Agreement, and to the extent not arising from the negligence or willful misconduct of Subtenant/Operator or any of its Agents or Invitees. If any action, suit, or proceeding is brought against any Indemnified Party by reason of any occurrence for which Subtenant/Operator is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Subtenant/Operator of such action, suit, or proceeding. Subtenant/Operator may, and upon the request of such Indemnified Party will, at Subtenant/Operator's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel

designated by Subtenant/Operator and reasonably approved by such Indemnified Party in writing.

2. **Immediate Obligation to Defend**.

Subtenant/Operator specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 1, even if such allegation is or may be groundless, fraudulent, or false, and such obligation arises at the time such claim is tendered to Subtenant/Operator by an Indemnified Party and continues at all times thereafter; provided, however, that in the event of a final judgment or arbitration decision determining that all or a portion of the claim fell outside the scope of the indemnity, City shall reimburse Subtenant/Operator for that portion of costs, fees, and expenses expended by Subtenant/Operator hereunder that was determined to be outside the scope of this indemnity. Notwithstanding the foregoing, in the event of a final judgment or arbitration decision determining that no Indemnified Party is entitled to the indemnification provided in Section 1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Subtenant/Operator is required to carry under the terms of this Agreement (or would not have been provided but for Subtenant/Operator's default in its obligations to maintain such insurance), then City shall reimburse Subtenant/Operator for the actual out-of-pocket expenses incurred by Subtenant/Operator in connection with the defense of the Indemnified Party following Subtenant/Operator's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

3. **Defense**.

Subtenant/Operator shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Subtenant/Operator's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Subtenant/Operator shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Subtenant/Operator's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Subtenant/Operator of an invoice therefor.

4. **Not Limited by Insurance**.

None of the other provisions of this Agreement shall limit the Subtenant/Operator indemnity obligations under this Agreement.

5. **Survival**.

Subtenant/Operator's indemnity obligations under this Agreement shall survive the expiration or sooner termination of this Agreement.

6. Definitions.

As used herein, the term **"Loss"** or **"Losses"** means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards, and costs and expenses, (including, without limitation, attorneys' fees and costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential, or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits, or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Agreement, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

As used herein, the term **"Invitees"** means the customers, patrons, invitees, guests, permittees, contractors, and subcontractors of Subtenant/Operator.

As used herein, the term "**Agents**" means the members, officers, directors, commissioners, employees, agents and contractors of Subtenant/Operator or other person or entity, and their respective heirs, legal representatives, successors and assigns.

EXHIBIT I

AGREEMENT CONDITIONS (I.E., NEW AGREEMENT AND AMENDMENT TO EXISTING AGREEMENT CONDITIONS)

The Agreement Conditions contained in this Exhibit I reflect City subleasing, contracting, and related insurance requirements in force as of the reference date of this Lease. The Agreement Conditions will be updated and changed from time to time to comply with Laws and City requirements. Tenant should periodically request from City updated Agreement Conditions in order to ensure Tenant is complying with the Lease.

INSURANCE

Property and Liability Coverage.

As used herein, terms such as "necessary," "require," "required," "specify," "acceptable," "satisfactory," "approval," "approved," and words of similar import are deemed to be qualified by the words "reasonable" or "reasonably," as the context may be. As used herein, "commercially reasonably available" means commercially reasonably available at a commercially reasonable cost.

(a) Subtenant/Operator Insurance Requirements. Subtenant/Operator shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Subtenant/Operator (A) is in possession of the Premises or (B) has the right of possession of the Premises, the following types and amounts of insurance:

(i) Commercial General Liability Insurance. Subtenant/Operator shall maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 04 13, insuring against liability for bodily injury (including death), property damage, personal and advertising liability, and the products-completed operations hazard, and with "insured contract" coverage as to the indemnity in Section 21.1 and as to any other indemnity of City by Subtenant/Operator, with respect to occurrences upon the Premises (including the Improvements), and, to the extent commercially reasonably available, operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence, affording coverage for the risks of independent contractors, explosion, collapse, underground (XCU), with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) general aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"); (C) if Subtenant/Operator has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D)

Subtenant/Operator shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to the above limits on Subtenant/Operator's policies.

(ii) Workers' Compensation Insurance. During any period in which Subtenant/Operator has employees as defined-in the California Labor Code, Subtenant/Operator shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Subtenant/Operator in connection with the use, operation, and maintenance of the Premises and the Improvements.

(iii) Business Automobile Insurance. Subtenant/Operator shall maintain policies of business automobile liability insurance covering all owned, non-owned, or hired motor vehicles to be used in connection with Subtenant/Operator's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage with limits of not less than One Million Dollars ($1,000,000) each accident.

(iv) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Subtenant/Operator shall maintain, or require by written contract that its remediation contractor or remediation consultant shall maintain, environmental pollution liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence for Bodily Injury, Property Damage, and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(v) Professional Liability. Subtenant/Operator shall require by written contract that professionals it engages maintain professional liability (errors and omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Subtenant/Operator's activities under this Agreement, with a deductible or self-insured retention reasonably approved by City (such approval not to be unreasonably withheld, conditioned, or delayed), with such insurance to be maintained during any period for which such professional services are being performed and for five (5) years following the completion of any such professional services.

(vi) Other Insurance. Subtenant/Operator shall obtain such other insurance as is reasonably requested by City's Risk Manager and memorialized in a mutually-agreed amendment to this Agreement and as is customary for a comparable civic and cultural center in the San Francisco Bay area.

(b) General Requirements. All insurance required under this Agreement:

(i) As to liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS AND THE YERBA BUENA GARDENS CONSERVANCY AND ITS DIRECTORS, EMPLOYEES AND AGENTS." Subtenant/Operator shall use commercially reasonable efforts to cause such additional insured endorsements to be issued on Forms CG 2037 04 13 and CG 2010 04 13.

(ii) Shall be carried under a valid and enforceable policy or policies issued by insurers that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to issue such insurance within the State of California including, but not limited to, non-admitted insurers;

(iii) Shall be evaluated by City for adequacy not less frequently than every five (5) years. Following consultation with Subtenant/Operator, City may, upon not less than ninety (90) days prior written notice, require Subtenant/Operator to increase the insurance limits for all or any of its umbrella liability policies if in the reasonable judgment of the City's Risk Manager it would be commercially reasonable to do so, when compared with facilities similar to the Premises in the San Francisco Bay area, to maintain limits substantially greater than the amounts carried by Subtenant/Operator with respect to risks associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of commercial practice in the San Francisco Bay area and the risks associated with use of the Premises, City shall notify Subtenant/Operator of such determination, and Subtenant/Operator shall have the right to decrease the umbrella liability insurance required under this Agreement accordingly. In any such event, Subtenant/Operator shall promptly deliver to City a certificate evidencing such new insurance limits and meeting all other requirements under this Agreement with respect thereto.

(iv) As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that except with respect to policy limits, the insurance applies separately to each insured against whom suit is brought (separation of insureds);

(v) Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages paid by the policies required by Sections 22.1(b)(i) and (ii);

(vi) Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Agreement and shall not be unreasonably withheld, conditioned or delayed; and

(vii) Except for professional liability insurance which shall be maintained in accordance with Section 22.1(a)(v), if any of the insurance required hereunder is provided under a claims-made form of policy, Subtenant/Operator shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this

Agreement, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Agreement.

(c) Certificates of Insurance; Right of to Maintain Insurance. Subtenant/Operator shall furnish City certificates with respect to the policies required under Section 22.1(a), together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy, to the extent commercially reasonably available. Subtenant/Operator shall provide City with thirty (30) days' prior written notice of cancellation for any reason or intended non-renewal, and shall provide City with notice of reduction in coverage limits within thirty (30) days of Subtenant/Operator's knowledge of such event. If at any time Subtenant/Operator fails to maintain the insurance required pursuant to Section 22.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon thirty (30) days' written notice to Subtenant/Operator and opportunity to cure, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within thirty (30) days following demand, Subtenant/Operator shall reimburse City for all reasonable premiums so paid by City, together with all reasonable costs and expenses in connection therewith and interest thereon at the Default Rate.

Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 22.1(a)(i), (ii) or (v) to the extent that such losses and damages are paid by an insurer.

SPECIAL PROVISIONS

Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Agreement are incorporated by reference as though fully set forth in this Agreement. The descriptions below are not comprehensive but are provided for notice purposes only; Subtenant/Operator is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Agreement shall have the meanings given to them in the cited ordinance. Failure of Subtenant/Operator to comply with any provision of this Agreement relating to any such code provision shall be governed by Article 26 of this Agreement, unless (i) such failure is otherwise specifically addressed in this Agreement or (ii) such failure is specifically addressed by the applicable code section. Subtenant/Operator hereby agrees to comply with the applicable provisions of the following code sections as such sections may apply to the Premises.

Non-Discrimination.

(d) Covenant Not to Discriminate. In the performance of this Agreement, Subtenant/Operator will not to discriminate against any employee, any City employee working with Subtenant/Operator, or applicant for employment with Subtenant/Operator, or against any

person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of protected classes, or in retaliation for opposition to discrimination against protected classes.

(e) Subleases and Other Subcontracts. Subtenant/Operator will include in all Subleases and other Agreements relating to the Premises a non-discrimination clause applicable to the Subtenant, Operator, or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant/Operator will incorporate by reference in all Agreements the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and require all Subtenants, Operators, and other subcontractors to comply with those provisions. Subtenant/Operator's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

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

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

(h) 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 City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth in this Agreement. Subtenant/Operator will comply fully with and be bound by all of the provisions that apply to this Agreement under those Chapters of the Administrative Code, including but not limited to the remedies provided in those Chapters. Without limiting the foregoing, Subtenant/Operator understands that under Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars ($50) for each person for each calendar day during which the person was discriminated against in violation of the provisions of this Agreement may be assessed against Subtenant/Operator and/or deducted from any payments due Subtenant/Operator.

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. Subtenant/Operator acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Subtenant/Operator shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Subtenant/Operator fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Subtenant/Operator shall be liable for liquidated damages for each violation in any amount equal to Subtenant/Operator's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

Tobacco Product Advertising Prohibition.

Subtenant/Operator acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Premises. The foregoing prohibition shall include the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local, or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sunshine Ordinance.

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

Waiver of Relocation Assistance Rights.

Subtenant/Operator acknowledges that it will not be a displaced person at the time this Agreement is terminated or expires by its own terms, and Subtenant/Operator fully RELEASES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors, and employees, and all persons acting by, through or under each of them, under any Law, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance Laws (including, but not limited to, California Government Code Section 7260 et seq. , or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq.).

Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Subtenant/Operator acknowledges and agrees that Subtenant/Operator shall comply, and it shall cause Subtenant/Operator's Subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

Conflicts of Interest.

Subtenant/Operator states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Subtenant/Operator becomes aware of any such fact during the terms of this Agreement Subtenant/Operator shall immediately notify the City. Subtenant/Operator further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Subtenant/Operator believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant/Operator to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Agreement.

First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Subtenant/Operator shall enter into one or more agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements. Subtenant/Operator shall comply with such First Source Hiring Agreements, with

respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

Public Access to Meetings and Records.

If Subtenant/Operator receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Subtenant/Operator shall comply with and be bound by all the applicable provisions of that Chapter. Subtenant/Operator agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Subtenant/Operator acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Subtenant/Operator further acknowledges that such material breach of the Agreement shall be grounds for City to terminate and/or not renew this Agreement, partially or in its entirety.

Resource-Efficient Building Ordinance; Energy Reporting.

Subtenant/Operator acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Subtenant/Operator hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises. Subtenant/Operator consents to Subtenant/Operator's utility service providers disclosing, and will obtain consent from all Subtenants and Operators for their utility providers to disclose, energy use data for the Premises to City for use under California Public Resources Code Section 25402.10, as implemented under California Code of Regulations Sections 1680–1685, and San Francisco Environment Code Chapter 20, as they may be amended from time to time ("**Energy Consumption Reporting Laws**"), and for such data to be publicly disclosed under the Energy Consumption Reporting Laws.

Drug Free Work Place.

Subtenant/Operator acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession, or use of a controlled substance is prohibited on City premises. Subtenant/Operator agrees that any violation of this prohibition by Subtenant/Operator, its Agents, or assigns shall be deemed a material breach of this Agreement.

Preservative Treated Wood Containing Arsenic.

Subtenant/Operator may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Subtenant/Operator may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the

Environment. This provision does not preclude Subtenant/Operator from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

Compliance with Disabled Access Laws; Accessibility Disclosures.

(i) Subtenant/Operator acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Subtenant/Operator or contractor, must be accessible to the disabled public. Subtenant/Operator shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

(j) California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Subtenant/Operator is advised that the Premises have not been inspected by a CASp. A CASp can inspect the Premises and determine if they comply with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Subtenant/Operator from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Subtenant/Operator if requested by Subtenant/Operator. City and Subtenant/Operator will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

Graffiti.

Graffiti is detrimental to the health, safety, and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Subtenant/Operator shall remove all graffiti from the Premises and any real property owned or leased by Subtenant/Operator in the City and County of San Francisco within two (2) business days of the earlier of Subtenant/Operator's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Subtenant/Operator to breach any lease or other agreement that it may have concerning its use of the real property. The team "**graffiti**" means any inscription, word, figure,

marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Subtenant/Operator to comply with this Section of this Agreement shall constitute a default of this Agreement.

Notification of Limitations in Contributions.

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

Food Service Waste Reduction.

Subtenant/Operator will comply with and is bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules, and will include the provisions in where applicable in Agreements. The provisions of Chapter 16 are

incorporated into this Agreement by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Subtenant/Operator acknowledges that the Food Service and Packaging Waste Reduction Ordinance contains penalties for noncompliance of One Hundred Dollars ($100.00) for the first breach, Two Hundred Dollars ($200.00) for the second breach in the same year, and Five Hundred Dollars ($500.00) for subsequent breaches in the same year and agrees that these sums are reasonable estimate of the damage that City may incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. These amounts will not be considered a penalty, and do not limit City's other rights and remedies available under this Agreement, at law, or in equity.

San Francisco Packaged Water Ordinance.

Subtenant/Operator will comply with San Francisco Environment Code Chapter 24 ("Chapter 24"). Subtenant/Operator may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Subtenant/Operator obtains a waiver from the City's Department of the Environment. If Subtenant/Operator violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

Vending Machines; Nutritional Standards.

Subtenant/Operator may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine must comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Subtenant/Operator will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section will be a material breach of this Agreement. Without limiting Landlord's other rights and remedies under this Agreement, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code section 4.9-1(e), as may be amended.

All-Gender Toilet Facilities.

If applicable, Subtenant/Operator will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by this section. If Subtenant/Operator has any

question about applicability or compliance, Subtenant/Operator should contact the Director of Property for guidance.

Criminal History in Hiring and Employment Decisions.

(c) Unless exempt, Subtenant/Operator will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Agreement as if fully set forth, with respect to applicants and employees of Subtenant/Operator who would be or are performing work at the Premises.

(d) Subtenant/Operator must incorporate by reference the provisions of Chapter 12T in all Agreements for some or all of the Premises, and require all Subtenants and Operators to comply with those provisions. Subtenant/Operator's failure to comply with the obligations in this subsection will constitute a material breach of this Agreement.

(e) Subtenant/Operator and Subtenants and Operators may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(f) Subtenant/Operator and Subtenants and Operators may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Subtenant/Operator and Subtenants and Operators may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(g) Subtenant/Operator and Subtenants and Operators will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Subtenant/Operator or Subtenant or Operator at the Premises, that the Subtenant/Operator or Subtenants or Operators will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(h) Subtenant/Operator and Subtenants and Operators will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice must be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(i) Subtenant/Operator and Subtenants and Operators understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City will have the right to pursue any rights or remedies available under Chapter 12T or this Agreement, including, but not limited to a, penalty of $50 for a second violation and $100 for a subsequent violation for

each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Agreement in whole or in part.

(j) If Subtenant/Operator has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

Requiring Health Benefits for Covered Employees.

(k) Unless exempt, Subtenant/Operator will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Agreement have the meanings assigned to those terms in Chapter 12Q.

(l) For each Covered Employee, Subtenant/Operator will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Subtenant/Operator chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(m) Notwithstanding the above, if the Subtenant/Operator is a small business as defined in Section 12Q.3(d) of the HCAO, it will have no obligation to comply with subsection (a) above.

(n) Subtenant/Operator's failure to comply with the HCAO will constitute a material breach of this Agreement. City will notify Subtenant/Operator if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Subtenant/Operator fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Subtenant/Operator fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(o) Any Subcontract (as defined in Chapter 12Q) entered into by Subtenant/Operator must require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Subtenant/Operator will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Subtenant/Operator will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Subtenant/Operator based on the

Subcontractor's failure to comply, provided that City has first provided Subtenant/Operator with notice and an opportunity to cure the violation.

(p) Subtenant/Operator may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Subtenant/Operator's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(q) Subtenant/Operator represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(r) Subtenant/Operator will keep itself informed of the current requirements of the HCAO.

(s) Subtenant/Operator will provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(t) Subtenant/Operator will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(u) City may conduct random audits of Subtenant/Operator to ascertain its compliance with HCAO. Subtenant/Operator will cooperate with City when it conducts the audits.

(v) If Subtenant/Operator is exempt from the HCAO when this Agreement is executed because its amount is less than Fifty Thousand Dollars ($50,000), but Subtenant/Operator later enters into an agreement or agreements that cause Subtenant/Operator's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Subtenant/Operator and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

Public Transit Information

At its sole expense, Subtenant/Operator will establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant/Operator employed on the Premises, including the distribution of written materials to personnel explaining the convenience and availability of public transportation facilities adjacent or near the Building and encouraging use of them.

Taxes, Assessments, Licenses, Permit Fees, and Liens

(k) Subtenant/Operator recognizes and understands that this Agreement may create a possessory interest subject to property taxation and Subtenant/Operator may be subject to the payment of property taxes levied on its possessory interest.

(l) Subtenant/Operator will pay taxes of any kind, including possessory interest taxes, lawfully assessed on the leasehold interest created by this Agreement and to pay all other taxes, excises, licenses, permit charges, and assessments based on Subtenant/Operator's use of the Premises and imposed on Subtenant/Operator by Legal Requirements, all of which will be paid when they become due and payable and before delinquency.

(m) Subtenant/Operator will not allow or suffer a lien for any taxes to be imposed on the Premises or on any equipment or property located in the Premises without promptly discharging the lien, provided that Subtenant/Operator, if it desires, may have reasonable opportunity to contest the validity of the same.

(n) San Francisco Administrative Code Sections 23.38 and 23.39 require that certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Agreement be provided to the County Assessor within sixty (60) days after the transaction. Accordingly, Subtenant/Operator must provide a copy of this Agreement to the County Assessor not later than sixty (60) days after the Effective Date, and any failure of Subtenant/Operator to timely provide a copy of this Agreement to the County Assessor will be a default under this Agreement. Subtenant/Operator will also timely provide any information that City may request to ensure compliance with this or any other reporting requirement.

Restrictions on the Use of Pesticides

(o) Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "**IPM Ordinance**") describes an integrated pest management ("**IPM**") policy to be implemented by all City departments. Subtenant/Operator may not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Subtenant/Operator may need to apply to the Premises during the Term, (ii) describes the steps Subtenant/Operator will take to meet City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii) identifies, by name, title, address, and telephone number, an individual to act as the Subtenant/Operator's primary IPM contact person with City. Subtenant/Operator will comply, and will require all of Subtenant/Operator's contractors to comply, with the IPM plan approved by City and will comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Subtenant/Operator were a City department. Among other matters, the provisions of the IPM Ordinance: (i) provide for the use of pesticides only as a last resort, (ii) prohibit the use or application of pesticides on City property, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (iii) impose certain notice requirements, and (iv) require Subtenant/Operator to keep certain records and to report to City all pesticide use at the Premises by Subtenant/Operator's staff or contractors.

(p) If Subtenant/Operator or Subtenant/Operator's contractor would apply pesticides to outdoor areas at the Premises, Subtenant/Operator will first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("**CDPR**") and the pesticide application will be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

Prohibition of Alcoholic Beverage Advertising

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

Subtenant/Operator's Compliance with City Business and Tax and Regulations Code

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

EXHIBIT J

EXISTING PRIORITY REQUIREMENTS FOR THE USE OF LEASE REVENUES UNDER THE METREON LEASE, CB-1 RETAIL LEASE, AND CB-1 REA

The following agreements include priority of use requirements for Gross Revenues (as defined in the Agreement):

1. CB-2 Entertainment and Retail Lease ("Metreon Lease") dated May 9, 1997
2. CB-1 Retail Lease (for the Yerba Buena Lane commercial parcels) dated March 31, 1998
3. Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens ("CB-1 REA") dated March 31, 1998

Relevant excerpts from the above-noted agreements are included below in addition to the priority of use requirements of each agreement.

Metreon Lease

Section 2.14(b):

"Because of the integrated nature of the development of CB-2 and the CB-3 Gardens Parcel; and because of the importance to the Landlord that the uses on such real property be successfully operated as part of the integrated development; and because appropriate operation of the cultural activities by Landlord's cultural subtenants and sub-subtenants, and the appropriate operation, maintenance and security of the Gardens Parcels is necessary to the integration and feasibility of the development, directly benefits Tenant and is important to Tenant, and, in the opinion of the parties, essential to the ultimate commercial and noncommercial success of the uses and CB-2 and the CB-3 Gardens Parcel, Landlord shall establish a separate bank account (the **"Separate Account")**[1] into which:

(i) Tenant, shall pay its share of the GMOS, as provided in Section 2.15;
(ii) Tenant shall pay Rent;
(iii) Landlord shall deposit all rent received from the tenant under the Hotel Lease (Marriott Lease) or other tenants of the CB-2 Hotel Parcel; and
(iv) Other tenants of Landlord may deposit rent and other sums.

CB-1 Retail Lease

Section 2.7(b):

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[1] Now referenced as the "Accounts" under the Lease.

"Because of the integrated nature of the development of CB-1 and the Gardens Parcels; and because of the importance to the Landlord that the uses on such real property be successfully operated as part of the integrated development; and because appropriate operation of the cultural activities by Landlord's cultural subtenants and sub-subtenants, and the appropriate operation, maintenance and security of the Gardens Parcels is necessary to the integration and feasibility of the development, directly benefits Tenant and is important to Tenant, and, in the opinion of the parties, essential to the ultimate commercial and noncommercial success of the uses and CB-1, CB-2 and the Gardens Parcels, Landlord shall, in accordance with term and provisions of the CB-2 Lease, establish a separate bank account (the **"Separate Account")** into which:

(i) Tenant, shall pay its share of the GMOS, as provided in Section 2.8;
(ii) Tenant shall pay Rent;
(iii) Landlord shall deposit all rent received from the tenant under the Hotel Lease (Marriott Lease) or other tenants of the CB-1; and
(iv) Other tenants of Landlord may deposit rent and other sums.

CB-1 REA

Section 7.7.(2):

"A separate account (the "**Separate Account**") shall be established by SFRA at a bank or trust company designated by SFRA having an office in San Francisco, California, and which has capital and surplus of at least Fifty Million Dollars ($50,000,000), into which SFRA shall deposit all amounts received by it which comprise Net Cash Flow [i.e., rent revenue, any revenue in connection with the use of any portion of the CB-1 Real Property, or any portion of CB-2 or CB-3, and interest earnings]."

Funds are disbursed from the Accounts for the following restricted uses:

Metreon Lease

Section 2.14(e): "Until the same (GMOS) has been paid in full for any calendar year, the Landlord shall pay the **CMO** ([City's] annual payments to [City's] cultural tenants or operators...for operating, maintaining and securing the [City]-owned Cultural Parcels) and the **GMOS** (annual expenditure of maintenance costs for the Gardens for the maintenance, operation and security of the Gardens Parcels ... and costs of Promotional Events in the Gardens) from the [Accounts] and shall not use funds in the [Accounts] for any other purpose. Until GMOS for any Lease Year has been paid in full, Landlord shall use that portion of the GMOS paid to Landlord by Tenant solely for uses required by this Lease."

Section 2.14(f): "After payment in full of the applicable CMO and GMOS for any calendar year, at the option of the Landlord, unexpended and legally uncommitted amounts remaining in the [Accounts] may be paid to Landlord or carried forward."

Section 2.14(g): "Landlord shall maintain, repair and operate the Gardens Parcels as a first-class open space, consistent with the level of maintenance, repair and operation required of Tenant with respect to the Premises."

CB-1 Retail Lease

Section 2.7(a)(i): "GMOS means the [City's] annual expenditure of maintenance costs for the Gardens Parcels to be made pursuant to the Gardens Budget for maintenance, operation and security of the Gardens Parcels necessary to maintain, operate and secure the Gardens Parcels in a first-class condition, and costs of promotional, marketing, cultural and recreational events in the Gardens Parcels limited, however, to the funds annually available for such purposes from the [Accounts].

Any income from promotional, marketing, cultural and recreational events in the Gardens Parcels shall be utilized to offset the costs thereof and any excess after the payment of such costs shall be deposited into the [Accounts].

Section 2.7(e): "...the Landlord shall pay the GMOS from the [Accounts] and shall not use funds in the [Accounts] for any other purpose. Until GMOS for any Lease Year has been paid in full, Landlord shall use that portion of the GMOS paid to Landlord by Tenant solely for uses required by this Lease."

Section 2.7(f): "After payment in full of the applicable GMOS for any calendar year, at the option of the Landlord, unexpended and legally uncommitted amounts remaining in the [Accounts] may be paid to Landlord or carried forward."

Section 2.7(g): "...Landlord shall maintain, repair and operate the Gardens Parcels as a first-class open space, consistent with the level of maintenance, repair and operation ..."

CB-1 REA

Section 7.7(2)

"Funds from the [Accounts] shall be applied by [City] in the following order and priority, to the extent that [City] does not pay such obligations from sums obtained from other sources:

(a) First, to the payment of all costs of maintenance, operation and security of gardens and open space uses developed by SFRA on CB-2 and CB-3;
(b) Then, to the payment of [City] to [City's] cultural tenants or operators, in such amount as [City] shall be obligated to pay such cultural tenants and/or operators for operating, maintaining, repairing and securing [City]-owned cultural parcels and/or [City's] subleased property located on CB-2;
(c) Then, to the payment by [City] of its Allocable Share of Allocable Costs as Owner under this Section 7.7(2), first to the extent of any unpaid portion thereof for the Accounting Period preceding the current Accounting Period..., and thereafter to its Allocable Share of Allocable Costs for the current Accounting Period;

(d) Then, to the payment of rent to the City and County of San Francisco, if applicable, under SFRA's lease of all portions of CB-3[2];
(e) Then in such manner as [City] shall determine in its sole and absolute discretion."

[2] No longer applicable following the transfer of the Premises to the City.

EXHIBIT K

GMOS PAYMENT AGREEMENTS

1. Commercial Retail Lease dated as of October 18, 2005, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and PJR LLC, as tenant, as amended by the First Amendment to Commercial Retail Lease dated September 14, 2015 (the "Samovar Lease").

2. Commercial Retail Lease dated as of January 17, 2006, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Gourmet Provisions, LLC, as tenant, as amended by the First Amendment to Commercial Retail Lease dated September 14, 2015 (the "B Café Lease").

3. Central Block 2 Entertainment and Retail Lease dated May 9, 1997, between the Redevelopment Agency of the City and County of San Francisco, as landlord, and Yerba Buena Entertainment Center, as tenant (the "Metreon Lease").

4. Central Block 1 Retail Lease dated as of March 31, 1998 between the Redevelopment Agency of the City and County of San Francisco, as landlord, and CB-1 Entertainment Partners LP, as tenant (the "CB-1 Retail Lease").

EXHIBIT L

DEVELOPER EXACTIONS AGREEMENTS

1. Development Agreement dated as of December _____, 2015, between the City and County of San Francisco and 5M Project, LLC, and recorded on January 4, 2016, in Book ____, Page ____, as Document No. 2016-K183795-00

2. Disposition and Development Agreement dated as of May 25, 1999, between the Redevelopment Agency of the City and County of San Francisco and CC California LLC, and recorded on November 17, 2000, in Book H767, Page 0369, as Document No. 2000-G865171-01, as assigned and amended ("St. Regis DDA").

3. Agreement for the Purchase and Sale of Real Property dated as of July 16, 2013, between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, as transferor, 706 Mission Street Co LLC, as transferee, and The Mexican Museum, as third party beneficiary, and recorded on April 17, 2014, as Document No. 2014-J864850-00 (the ("706 Mission PSA") with respect to 50% of the "Open Space Fee" described in Section 8.3(a)-(c) of the 706 Mission PSA.

EXHIBIT M

FORM OF FIRST SOURCE HIRING AGREEMENT

(Attached)

SAN FRANCISCO
Office of Economic and Workforce Development

CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT
WORKFORCE DEVELOPMENT DIVISION

FIRST SOURCE HIRING PROGRAM
NON-CONSTRUCTION END USE

Business Name: _____ **Phone:** _____

Main Contact: _____ **Email:** _____

_____ _____

Signature of authorized representative* **Date**

**By signing this form, the contractor/lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- The employer must notify the First Source Hiring Program (Contact Info below) if an **Entry Level Position** becomes available.

Section 1: Select your Industry

☐ Auto Repair	☐ Entertainment	☐ Personal Services
☐ Business Services	☐ Elder Care	☐ Professionals
☐ Consulting	☐ Financial Services	☐ Real Estate
☐ Construction	☐ Healthcare	☐ Retail
☐ Government Contract	☐ Insurance	☐ Security
☐ Education	☐ Manufacturing	☐ Wholesale
☐ Food and Drink	☐ I don't see my industry *(Please Describe)*_____	

Section 2: Describe Primary Business Activity

_____

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

We will not hire any new workers for this project/program. ☐

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848 Fax: 415-701-4897
mailto:Business.Services@sfgov.org
Website: www.workforcedevelopmentsf.org

FOR CITY USE ONLY: Business Services Staff: _____ Approved: Yes ☐ No ☐ Date: _____

Reason: _____

WDD/BS(2/22/2019)

EXHIBIT N

FORM MEMORANDUM OF LEASE

(Attached)

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

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

The undersigned hereby declare this instrument to be exempt from recording fees per Government Code §27383 and §27388.1

Space Above for Recorder's Use

APNs: _____

MEMORANDUM OF LEASE

This Memorandum of Lease (this "**Memorandum**") is dated as of _____, 2019 (the "**Effective Date**"), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the Department of Real Estate ("**City**"), and YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation ("**Tenant**").

RECITALS

A. City is the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, described on Exhibit A attached hereto and depicted as the "Premises" on Exhibit B attached hereto (the "**Premises**"). The Premises consists of portions of those certain city blocks commonly referred to as "Central Block 1," "Central Block 2," and "Central Block 3" and includes the Yerba Buena Gardens. Notwithstanding the foregoing, the Premises shall exclude the Substructure (as defined in the Lease, which is in turn defined in Recital C below).

B. City is also the owner in fee simple of that certain real property located in the City and County of San Francisco, State of California, depicted as the "Retained Lease Areas," the "Retained Public Space Areas," and the "Retained Other Gardens Areas" on Exhibit B attached hereto (collectively, the "**City Retained Areas**"), which City Retained Areas are composed of the Retained Lease Areas, the Retained Public Space Areas, and the Retained Other Gardens Areas, as each of those terms is defined in the Lease (as defined in Recital C below). The City Retained Areas consist of portions of those certain city blocks commonly referred to as "Central Block 1" and "Central Block 2." The City Retained Areas are not included in the Premises; however, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and Retained Public Space Areas, including over certain leases, subleases, licenses, concessions or other agreements for the use or occupancy of the Retained Lease Areas or the

Retained Public Space Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

C. Concurrently herewith, City and Tenant have entered into that certain unrecorded Lease (the "**Lease**"), pursuant to which City has leased the Premises to Tenant, subject to the terms and conditions set forth therein. Also concurrently herewith, City and Tenant have entered into that certain Assignment and Assumption Agreement (Yerba Buena Gardens Leases and Contracts) (the "**Assignment of Agreements**"), pursuant to which City has assigned, and Tenant has assumed the "Existing Subleases and Agreements" (as defined in the Assignment of Agreements), subject to the terms and conditions set forth in the Assignment of Agreements and the Lease.

D. City and Tenant desire to execute this Memorandum to provide constructive notice of City's and Tenant's rights under the Lease to all third parties.

AGREEMENT

1. Lease of the Premises. Pursuant to the Lease, which Lease is incorporated herein by this reference, City has leased to Tenant, and Tenant has leased from City, the Premises and all improvements affixed thereto. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall govern and control.

2. City Retained Areas. Pursuant to the Lease, Tenant has certain consultation and approval rights with respect to the Retained Lease Areas and the Retained Public Space Areas, including over certain leases, subleases, licenses, concessions or other agreements for the use or occupancy of the Retained Lease Areas or the Retained Public Space Areas, as more particularly set forth in the Lease. Tenant also has certain consultation rights with respect to the Retained Other Gardens Areas, as more particularly set forth in the Lease.

3. Term. The term of the Lease commenced on the Effective Date and shall expire with respect to the entire Premises on September 1, 2061, unless earlier terminated in accordance with the terms of the Lease.

4. Counterparts. This Memorandum may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the Effective Date.

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

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

Board of Supervisors Resolution No.: _____

TENANT: YERBA BUENA GARDENS CONSERVANCY, a California nonprofit public benefit corporation

By: _____
Name: _____
Title: _____

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

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

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On _____, 2019 before me, _____
Notary Public (insert name and title of the officer),

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

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

WITNESS my hand and official seal.

Signature: _____

[Seal]

EXHIBIT A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

[To Be Attached]

EXHIBIT B TO MEMORANDUM OF LEASE

DIAGRAM OF PREMISES AND CITY RETAINED AREAS

[To Be Attached]

EXHIBIT O

MODIFICATIONS TO REPORTING REQUIREMENTS FROM SECTIONS 7.3A, 10.2 & 10.3

[To be attached after Lease execution, if necessary]

SAN FRANCISCO
PLANNING DEPARTMENT

General Plan Referral

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Date:	April30, 2018
Case No.	**Case No. 2018-004705GPR** **Master Lease of Yerba Buena Gardens, by Yerba Buena Gardens Conservancy, through 2061**
Block/Lot No.:	CB-1: 3706/096-124 & 3706/276-303, CB-2: 3723/113-117 & 3723/115, CB-3: 3734/091
Project Sponsor:	Joshua Keene San Francisco Real Estate Department 25 Van Ness Ave. Suite 400 San Francisco, CA 94102
Applicant:	Same as Above
Staff Contact:	Robin Abad –(415) 575-9123 *Robin.Abad@sfgov.org*
Recommendation:	Finding the project, on balance, is **in conformity** with the General Plan
Recommended By:	John Rahaim, Director of Planning

PROJECT DESCRIPTION

The Yerba Buena Garden properties are a collection of urban mixed-use spaces that include private uses (i.e., commercial and retail properties) and public uses (i.e., cultural facilities, performance venues, recreational venues, and vast amounts of public open space that includes garden areas, plazas, children's play areas, artwork, a historic carousel, and fountains). The City manages the properties as a single, unified set of properties. The City is entering into a long-term lease and operating agreement with a non-profit known as the Yerba Buena Gardens Conservancy. The Conservancy as established to continue to provide the coordinated and cohesive governance and management of Yerba Buena Gardens. As of the date of this application, current estimate is that the City will both acquire the property and enter into the master lease in 2018, and the lease shall expire in 2061. The submittal is for a General Plan Referral to recommend whether the Project is in conformity with the General Plan, pursuant to Section 4.105 of the Charter, and Section 2A.52 and 2A.53 of the Administrative Code.

ENVIRONMENTAL REVIEW

On April 4, 2018 the Environmental Planning Division of the Department determined that the Project is not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it does not result in a physical change in the environment.

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

The Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 as described in the body of this letter and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 8: ENHANCE SAN FRANCISCO'S POSITION AS A NATIONAL CENTER FOR CONVENTIONS AND VISITOR TRADE.

POLICY 8.3:
Assure that areas of particular visitor attraction are provided with adequate public services for both residents and visitors.

The proposed master lease would facilitate the effective management and programming of Yerba Buena Gardens for the public.

DOWNTOWN PLAN

OBJECTIVE 16: Create and maintain attractive, interesting urban streetscapes.

POLICY 16.4: Use designs and materials and include activities at the ground floor to create pedestrian interest.

Retail Uses
Shops and restaurants contribute liveliness and visual interest to street frontages, lobbies and plazas of office buildings. Group floor space fronting on streets, pedestrian ways, plazas, and courtyards outside the retail district should be devoted primarily to retail and service uses that are of interest to pedestrians and that meet the needs of workers and visitors to nearby buildings.

The master lease will allow for effective management of shops and restaurants at the ground floors and surrounding the gardens, contributing to a lively and interesting streetscape.

OBJECTIVE 16: Create and maintain attractive, interesting urban streetscapes.

POLICY 16.4
Use designs and materials and include activities at the ground floor to create pedestrian interest.

The proposed lease will facilitate active retail and restaurant uses at the ground floor and other levels in and around the gardens.

PROPOSITION M FINDINGS – PLANNING CODE SECTION 101.1

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

Eight Priority Policies Findings

The subject project is found to be consistent with the Eight Priority Policies of Planning Code Section 101.1 in that:

The proposed project is found to be consistent with the eight priority policies of Planning Code Section 101.1 in that:

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

   The Project would have no adverse effect on neighborhood serving retail uses or opportunities for employment in or ownership of such businesses. The Project will have a positive effect on nearby retail and employment, contributing to a continuous retail experience on the street and providing employment at the site.

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

   The Project would have no adverse effect on the City's housing stock or on neighborhood character. The existing housing and neighborhood character will be not be negatively affected.

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

   The Project would have no adverse effect on the City's supply of affordable housing.

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

   The Project would not result in commuter traffic impeding MUNI's transit service, overburdening the streets or altering current neighborhood parking.

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

   The Project would not adversely affect the existing economic base in this area. This will enhance opportunities for employment in the area.

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

   The Project would not adversely affect achieving the greatest possible preparedness against injury and loss of life in an earthquake.

7. That landmarks and historic buildings be preserved.

   No alteration to landmarks or historic buildings is proposed.

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

   The Project would have no adverse effect on parks and open space or their access to sunlight and vista.

RECOMMENDATION:	**Finding the Project, on balance, in-conformity with the General Plan**

Member, Board of Supervisors
District 3

City and County of San Francisco

AARON PESKIN
佩斯金 市參事

DATE:	June 12, 2019
TO:	Angela Calvillo Clerk of the Board of Supervisors
FROM:	Supervisor Aaron Peskin, Chair, Land Use and Transportation Committee
RE:	Land Use and Transportation Committee COMMITTEE REPORT

Pursuant to Board Rule 4.20, as Chair of the Land Use and Transportation Committee, I have deemed the following matter is of an urgent nature and request it be considered by the full Board on Tuesday, June 11, 2019, as a Committee Report:

*June 18 (EDM)

190605 **Master Lease of City Property - Yerba Buena Gardens Conservancy - Yerba Buena Gardens - $1.00 Annual Base Rent**

Resolution approving and authorizing the Director of Property to execute a master lease agreement between the City and County of San Francisco, as landlord, and the Yerba Buena Gardens Conservancy, a California nonprofit public benefit corporation, as tenant, for the lease of City-owned real property and improvements, collectively known as Yerba Buena Gardens at an annual base rent of $1.00 for a total term to commence upon approval from the Board of Supervisors and Mayor, through September 1, 2061; finding the proposed transaction is in conformance with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting California Environmental Quality Act findings.

This matter will be heard in the Land Use and Transportation Committee at a Regular Meeting on Monday, June 10, 2019, at 1:30 p.m.

*June 17 (EDM)

City Hall • 1 Dr. Carlton B. Goodlett Place • Room 244 • San Francisco, California 94102-4689 • (415) 554-7450
Fax (415) 554-7454 • TDD/TTY (415) 554-5227 • E-mail: Aaron.Peskin@sfgov.org

President, District 7
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Tel. No. 554-6516
Fax No. 554-7674
TDD/TTY No. 544-6546

Norman Yee

PRESIDENTIAL ACTION

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2019 MAY 31 PM 3:51
BY

Date: May 30, 2019

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☐ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. _____ _____
(Primary Sponsor)

Title. _____

☒ Transferring (Board Rule No 3.3)

File No. 190605 Department
(Primary Sponsor)

Title. Master Lease of City Property - Yerba Buena Gardens Conservancy -Yerba Buena Gardens - $1.00 Annual Base Rent

From: Budget & Finance Sub Committee

To: Land Use & Transportation Committee

☐ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor _____

Replacing Supervisor _____

For: _____ _____ Meeting
(Date) (Committee)

Norman Yee, President
Board of Supervisors

City and County of San Francisco
REAL ESTATE DIVISION

London N. Breed, Mayor
Naomi M. Kelly, City Administrator

Andrico Q. Penick
Director of Real Estate

June 4, 2019

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

RE: Master Lease at Yerba Buena Gardens between City and YBGC

Dear Board Members:

Enclosed for your consideration is a resolution authorizing the approval of a master lease between the City (as Landlord or Owner) and the Yerba Buena Gardens Conservancy, a California non-profit public benefit corporation ("YBGC" or Tenant), through 2061 (the proposed "Lease"). The Lease requires YBGC to manage and operate portions of the City-owned urban mixed-use property commonly known as "Yerba Buena Gardens", which was acquired by the City from the Office of Community Investment and Infrastructure (OCII) in June of last year.

Yerba Buena Gardens was initially established over forty years ago by the City's former Redevelopment Agency, evolving into a civic institution of parks, museums, hotels, restaurants, and performance venues. The Gardens are self-financed through revenue generating leases and assessments ("Program Income"), and Program Income is governed by Community Development Block Grant ("CDBG") funding, such that the City's direct operation since last year's acquisition, and by entering into this Lease with YBGC, creates no fiscal liability for the City other than costs which are reimbursable to City pursuant to the proposed Lease. The use of the revenues is restricted within the Gardens to operations, capital repairs, maintenance and programming. The City will still retain direct management and oversight of certain leases and properties located within Yerba Buena Gardens, including the leases that contribute to the majority of the revenues.

Through this proposed legislation, the City seeks Board of Supervisors approval and authorization to enter into the Lease with YBGC, to commence on July 1, 2019. Should you have any questions or need additional information, do not hesitate to contact me.

Respectfully,

Andrico Q. Penick
Director of Property

Office of the Director of Real Estate • 25 Van Ness Avenue, Suite 400 • San Francisco, CA 94102
(415) 554-9850 • FAX: (415) 552-9216