

File No. 181094

Committee Item No. 9
Board Item No. 27

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date November 29, 2018

Board of Supervisors Meeting

Date December 11, 2018

Cmte Board

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Completed by: Linda Wong

Date November 29, 2018

Completed by: Linda Wong

Date December 4, 2018

1 [Lease of City Property - ArtSpan - 45 Onondaga Avenue - \$50,928 Per Year Rent]

2
3 **Resolution authorizing the Director of Property to execute a commercial lease, between**
4 **the City and County of San Francisco and ArtSpan, for the City-owned property located**
5 **at 45 Onondaga Avenue for \$50,928 per year; authorizing the reimbursement of up to**
6 **\$410,000 for tenant improvements; for a term of ten years with two five-year options to**
7 **extend, to commence following Board approval; making findings that the proposed**
8 **transaction is in conformance with the General Plan, and the eight priority policies of**
9 **Planning Code, Section 101.1; and adopting California Environmental Quality Act**
10 **findings.**

11
12 WHEREAS, The City owns the real property and improvements consisting of an
13 approximately 4,244 square foot building (the "Premises"), Assessor's Parcel Block No. 6959,
14 Lot No. 016, located at 45 Onondaga Avenue in the City and County of San Francisco (the
15 "Property"); and

16 WHEREAS, The City owns the real property and improvements consisting of an
17 approximately 3,960 square foot building (the "Adjacent Premises"), Assessor's Parcel Block
18 No. 6959, Lot No. 017, located at 35 Onondaga Avenue in the City and County of San
19 Francisco (the "Adjacent Property"); and

20 WHEREAS, The Property and Adjacent Property are collectively referred to herein as
21 the "Project"; and

22 WHEREAS, The Project has been unused and vacant for over 10 years; and

23 WHEREAS, The City's Office of Economic and Workforce Development ("OEWD"),
24 through the City's Real Estate Division ("RED"), issued a request for proposal in late 2016
25 ("RFP") soliciting competitive bids from 501c3 non-profit public benefit corporations, to award

1 the right to negotiate a long term, below market rate, lease of either the Property, the Adjacent
2 Property, or the Project, for the specified purpose of improving the Premises, and operating
3 an active, community-serving use at the location; and

4 WHEREAS, The proposal submitted by ArtSpan ("Tenant") requesting use of the
5 Property was determined by representatives from San Francisco Arts Commission ("SFAC"),
6 OEWD and RED to be the proposal that best met the goals and objectives of the RFP; and

7 WHEREAS, The proposal submitted by Volunteers in Medicine – San Francisco, DBA
8 Clinic By the Bay ("Adjacent Tenant") requesting use of the Adjacent Property was determined
9 by representatives from SFAC, OEWD and RED to be the proposal that best met the goals
10 and objectives of the RFP; and

11 WHEREAS, RED, in consultation with the Office of the City Attorney, negotiated a ten -
12 year commercial lease, with two five year extensions subject to future approval by the Board
13 of Supervisors and the Mayor, between City and Tenant dated December ___, 2018 (the
14 "Lease") for Tenant, in conjunction with Adjacent Tenant regarding the Adjacent Property, to
15 undertake improvements for purposes of operating a local arts support and exhibit space
16 within the Premises (the "Improvements"), with rent payments to begin upon the date Tenant
17 has received all permits necessary to safely occupy the Premises for the intended uses
18 described in the Lease after the Lease has been fully executed by all parties after approval of
19 this resolution by the Board of Supervisors and Mayor in their absolute and sole discretion
20 ("Rent Commencement Date"), at an annual rent of \$50,928; and

21 WHEREAS, A copy of the Lease is on file with the Clerk of the Board of Supervisors in
22 File No. 181094, which is hereby declared to be a part of this resolution as if set forth fully
23 herein; and

24 WHEREAS, City is providing \$410,000 as a contribution towards rehabilitation of the
25 roofs, walls, windows and exterior shells of the Premises and Adjacent Premises, to be

1 allocated as agreed to by the Tenant, the Adjacent Tenant, and the City (the "Allowance");
2 and

3 WHEREAS, SFAC is providing sufficient funding, estimated to be \$90,000, for the sole
4 purpose of restoring the historic mural located in the Adjacent Premises ("Mural Funding");
5 and

6 WHEREAS, The Planning Department, through General Plan Referral letter dated
7 November 28, 2018 , ("Planning Letter"), which is on file with the Clerk of the Board of
8 Supervisors under File No. 181094, has verified that the Lease is consistent with the General
9 Plan, and the eight priority policies under Planning Code, Section 101.1 that the project is
10 categorically exempt under CEQA Guidelines, Section 15303; and

11 RESOLVED, That the Board of Supervisors finds the Lease is consistent with the
12 General Plan, and the eight priority policies of Planning Code, Section 101.1 and adopts
13 CEQA findings and hereby incorporates such findings by reference as though fully set forth in
14 this Resolution; and, be it

15 FURTHER RESOLVED, RED is authorized to expend the Allowance for the purposes
16 contemplated in this resolution; and, be it

17 FURTHER RESOLVED, That the Director of Property is hereby authorized to take all
18 actions, on behalf of the City, to execute the Lease on the terms and conditions herein; and,
19 be it

20 FURTHER RESOLVED, That the Board of Supervisors authorizes the Director of
21 Property to enter into any amendments or modifications to the Lease (including in each
22 instance, without limitation, the attachment of exhibits) that the Director of Property, in
23 consultation with the City Attorney, determine are in the best interests of the City, do not
24 otherwise materially increase the obligations or liabilities of, or materially decrease the
25

1 benefits to, the City beyond those contemplated in this resolution, and are in compliance with
2 all applicable laws, including the City's Charter; and, be it

3 FURTHER RESOLVED, That any action taken by the Director of Property and other
4 officers of the City, including the Director of SFAC and the Director of OEWD, with respect to
5 the Lease are hereby approved, confirmed and ratified by this Board of Supervisors; and, be it


6 FURTHER RESOLVED, That within thirty (30) days of the Lease being fully executed
7 by all parties, RED shall provide the final lease agreement to the Clerk of the Board for
8 inclusion into the official file.

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FY 18/19 Funds Available: \$410,000

Fund ID: 14300
Department ID: 228875
Project ID: 10001302
Authority ID: 17375
Account ID: 528000


Controller:

Subject to enactment of the Annual
Appropriation Ordinance for
Fiscal Year 2019/2020

RECOMMENDED:


Andrico Q. Penick **ACTING DIRECTOR**
Director of Property
Real Estate Division

Items 9 and 10 Files 18-1094 and 18-1095	Department: Department of Public Health (DPH)
EXECUTIVE SUMMARY	
<p style="text-align: center;">Legislative Objectives</p> <p>File 18-1094 is a resolution authorizing the lease between the City and ArtSpan, a nonprofit organization, for 45 Onondaga Avenue.</p> <p>File 18-1095 is a resolution authorizing the lease between the City and Volunteers in Medicine, dba Clinic by the Bay, a nonprofit organization, for 35 Onondaga Avenue.</p> <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • 35 Onondaga Avenue and 45 Onondaga Avenue are City-owned properties in the City's Outer Mission – Ingleside neighborhoods. The Office of Economic and Workforce Development and the City's Real Estate Division advertised a leasing opportunity for nonprofit organizations to lease the two Onondaga Avenue properties in January 2017 with proposals due in March 2017. The prospective tenant was to be responsible for making tenant improvements. The City received responsive proposals from Clinic by the Bay to lease 45 Onondaga Avenue, and Art Span to lease 35 Onondaga Avenue, who will use one contractor to make structural repairs and other work on the two buildings. • The leases are for 10 years through 2029 with two (2) five-year options to extend the leases through 2039. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • Rent for each lease is \$12 per year. First year rent for 35 Onondaga Avenue is \$47,520 and for 45 Onondaga Avenue is \$50,928. Rent may be each year based on the Consumer Price Index at the option of the City. • According to the City's Real Estate Division, tenant improvements to be made by the nonprofit tenants to the two buildings are expected to cost up to \$2 million. The proposed leases provide for the City to pay a tenant improvement allowance for both buildings of up to \$410,000. Due to the potential costs of the tenant improvement work, ArtSpan and Clinic by the Bay have the right to terminate their respective leases within four months of the lease commencement date if the scope of tenant improvements exceeds the organization's financial capacity. • The Arts Commission has authorized \$90,000 to conserve the historic murals at 45 Onondaga Avenue. According to the Real Estate Division, the extent to which ArtSpan, the tenant at 45 Onondaga Avenue, is responsible for the mural's safety and public viewing has not yet been finally determined. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolutions. 	

MANDATE STATEMENT

City Administrative Code Section 23.30 provides for Board of Supervisors approval of leases of City-owned property with terms of one year or more.

BACKGROUND

35 Onondaga Avenue and 45 Onondaga Avenue are City-owned properties in the City's Outer Mission – Ingleside neighborhoods. These properties were formerly used by the Department of Public Health but have been vacant since 2011. 35 Onondaga Avenue is approximately 3,960 square feet and 45 Onondaga Avenue is approximately 4,244 square feet. The properties, which are adjacent, are shown in Exhibit 1 below.

Exhibit 1: 35 Onondaga Avenue and 45 Onondaga Avenue

Source: Real Estate Division

The Office of Economic and Workforce Development and the City's Real Estate Division advertised a leasing opportunity for nonprofit organizations to lease the two Onondaga Avenue properties in January 2017 with proposals due in March 2017. According to the leasing opportunity documents, priority for leasing the properties would be given to nonprofit organizations based in San Francisco and serving San Francisco residents, and demonstrating financial stability and effective use of the space.

The advertised rent for the two Onondaga properties was \$1 per month or \$12 per year, not including expenses for utilities, janitorial services, security, and insurance. The lease term(s) could be up to 10 years.

35 Onondaga Avenue and 45 Onondaga Avenue were to be leased “as is”. The prospective tenant was to be responsible for making tenant improvements, with the City offering an allowance for both buildings of up to \$350,000 for improvements to the buildings and \$90,000 for restoration of the buildings’ murals.

The City received responsive proposals from Clinic by the Bay, a nonprofit organization, to lease 45 Onondaga Avenue, and Art Span, a nonprofit organization, to lease 35 Onondaga Avenue. According to emails from Clinic by the Bay and ArtSpan, the two nonprofit organizations would use one contractor to make structural repairs and other work on the two buildings.

According to Ms. Claudia Gorham, Real Estate Division Deputy Director, the proposed leases were submitted to the Board of Supervisors for approval nearly 18 months after selection of the nonprofit tenants in March 2017 due to the nonprofit organizations concerns about the financial obligation to make tenant improvements in light of the age, condition and considerable tenant improvements needed at both buildings. City and nonprofit staff made numerous in-person and onsite meetings and tours. In late 2017, due to hazardous material (hazmat) concerns, the City paid for a survey and hazmat study to be performed by the Department of Public Works and its consultants. The study was completed in late August 2018. An agreement was reached in November 2018.

DETAIL OF PROPOSED LEGISLATION

File 18-1094 is a resolution authorizing the lease between the City and ArtSpan, a nonprofit organization, for 45 Onondaga Avenue.

File 18-1095 is a resolution authorizing the lease between the City and Volunteers in Medicine, dba Clinic by the Bay, a nonprofit organization, for 35 Onondaga Avenue.

Lease terms are summarized in Exhibit 2 below.

Exhibit 2: Summary of Lease Terms for 35 Onondaga Avenue and 45 Onondaga Avenue

	35 Onondaga Avenue	45 Onondaga Avenue
Tenant	Clinic by the Bay	ArtSpan
Use	Low cost public health and medical clinic	Artist studio space, classes and art exhibition space
Estimated Rent Commencement Date	January 1, 2020	January 1, 2020
Initial Term	10 years from January 2020 to December 2029	10 years from January 2020 to December 2029
Options to Extend	Two (2) five-year options to extend to December 2039	Two (2) five-year options to extend to December 2039

	35 Onondaga Avenue	45 Onondaga Avenue
Square Feet	3,960	4,244
Annual Rent per Square Foot	\$12.00	\$12.00
Total Annual Rent	\$47,520	\$50,928
Rent Increases	Annual rent increases based on the Consumer Price Index (CPI) up to 5 percent at the option of the City	Annual rent increases based on the Consumer Price Index (CPI) up to 5 percent at the option of the City
Tenant Improvements	Building renovation with plans and specifications approved by the Director of Real Estate (estimated to cost approximately \$1 million for 35 Onondaga Avenue and 45 Onondaga Avenue)	Building renovation with plans and specifications approved by the Director of Real Estate (estimated to cost approximately \$1 million for 35 Onondaga Avenue and 45 Onondaga Avenue)
Tenant Improvement Allowance Paid by the City	Up to \$410,000 for 35 Onondaga Avenue and 45 Onondaga Avenue combined	Up to \$410,000 for 35 Onondaga Avenue and 45 Onondaga Avenue combined
Utilities and Services	Paid by tenant City maintains structure Up to two (2) months' rent per year offset for tenant's actual expenses to maintain and repair HVAC	Paid by tenant City maintains structure Up to two (2) months' rent per year offset for tenant's actual expenses to maintain and repair HVAC

Source: Draft Leases

FISCAL IMPACT

Estimated base rent paid to the City over the initial 10-year term (including estimated annual CPI increases of 3 percent) by Clinic by the Bay is \$544,764, and by ArtSpan is \$583,832, totaling \$1,128,596. These rents would be offset by (a) the tenant improvement allowance of up to \$410,000, and (b) potential annual rent abatements for repair and maintenance of the HVAC system up to an estimated \$188,099, for net rent payments to the City over 10 years of \$530,497.

According to Ms. Gorham, due to continued damage from leaks in the roof in the 2017 rainy season and resulting mold, both nonprofits asked if the City's tenant improvement allowance could be increased. The former Director of Real Estate agreed to an increase of \$60,000 or from \$350,000 to \$410,000.

Tenant Improvements

According to the proposed leases, the tenants are to submit detailed plans for tenant improvements to be approved by the Director of Real Estate. The tenants are to assume full costs for tenant improvements, which are estimated to be up to \$2 million for both buildings,

and receive \$410,000 in rent credits.¹ Rent credits apply to the tenant's joint costs for preparing design and construction documents (up to \$25,000), construction costs, third party construction management fees (up to \$40,000), and permit fees.

According to Ms. Gorham, the City assumes that 35 Onondaga Avenue and 45 Onondaga Avenue may require abatement of asbestos and/or lead. Due to the potential costs of the tenant improvement work, ArtSpan and Clinic by the Bay have the right to terminate their respective leases within four months of the lease commencement date if the scope of tenant improvements exceeds the organization's financial capacity. Each of the tenants would be responsible to refund the City any allowance paid for their respective share of the tenant improvement work if the tenant terminates the lease within five years of the rent commencement date (or prior to January 2025).

Murals

35 Onondaga Avenue and 45 Onondaga Avenue were built as the Alemany Emergency Hospital and Health Center in 1933; these buildings were added to the Landmark Designation Work Program in 2015 by the City's Historic Preservation Commission. 45 Onondaga Avenue contains murals painted by Bernard Zakheim in 1934, funded by the federal Public Works of Art Project.² The Arts Commission has authorized \$90,000 to conserve the murals. According to Ms. Gorham, the extent to which ArtSpan, the tenant at 45 Onondaga Avenue, is responsible for the mural's safety and public viewing has not yet been finally determined.

RECOMMENDATION

Approve the proposed resolutions.

¹ Rent credits total \$410,000 for both leases. As noted above, the two nonprofit organizations are hiring one contractor and sharing the costs of the tenant improvements.

² The federal Public Works of Art Project preceded the federal Works Progress Administration (WPA). Bernard Zakheim also painted the Library fresco at COIT Tower.

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LEASE

between

CITY AND COUNTY OF SAN FRANCISCO,
as Landlord

and

ArtSpan,
a California 501(c)(3) nonprofit corporation,
as Tenant

For the lease of
45 Onondaga Avenue
San Francisco, California

November _____, 2018

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LIST OF EXHIBITS

Parties need to finalize highlighted exhibits.

- EXHIBIT A – Floor Plan
- EXHIBIT B – Notice of Commencement Date
- EXHIBIT C – First Source Agreement
- EXHIBIT D – Rules and Regulations
- EXHIBIT E - Operating Covenants
- EXHIBIT F – General Description of Proposed Tenant Improvements

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LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of November ____, 2018 is between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and ArtSpan, a California 501(c)(3) nonprofit corporation ("Tenant").

A. The City owns the improved real property located at 45 Onondaga Avenue (the "Premises").

B. The Premises have been unused by the City for some time. The City issued a Request for Proposals ("RFP") to make the Premises available at below market rent to nonprofit organizations to provide services to the City and neighborhood.

C. Tenant responded to the RFP, and was selected as the successful bidder. The parties are entering into this Lease consistent with the RFP terms and conditions.

D. In exchange for below market rent, Tenant agrees to rehabilitate the Premises and then to operate the Premises as a local arts support and exhibit space, as more particularly described in this Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, City and Tenant hereby covenant and agree as follows:

1. BASIC LEASE INFORMATION

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

Lease Reference Date:	November ____, 2018
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	ArtSpan, a California 501(c)(3) nonprofit corporation
Building (<u>Section 2.1</u>):	Building located at 45 Onondaga Avenue San Francisco, California
Premises (<u>Section 2.1</u>):	The entire Building
Rentable Area of Premises (<u>Section 2.1</u>):	Approximately 4,244 leasable square feet
Term (<u>Section 3.1</u>):	Commencement Date: the date of execution and delivery of this Lease following approval by the

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Board of Supervisors and Mayor, each in their sole discretion.

Rent Commencement Date: Five (5) days following the issuance of a temporary certificate of occupancy for the Premises following Tenant's substantial completion of the Tenant Improvements.

Estimated Rent Commencement Date: January 1, 2020

Expiration Date: The date that is ten (10) years after the Rent Commencement Date.

Estimated Expiration Date January 1, 2030

Extension Options (Section 27.1):

Two (2) extension options as set forth in Section 27.1, each for a period of five (5) years

First Option Term: Estimated to be January 1, 2030, to December 31, 2034

Second Option Term: Estimated to be January 1, 2035 to December 31, 2039

Base Rent (Section 4.1):

Annual Base Rent: \$50,928.00
(\$12.00 per sq. ft.)

Monthly payments: \$4,244.00
(\$1.00 per sq. ft.)

Rent Adjustment Dates (Section 4.2)

On the 12 month anniversary of the Rent Commencement date, and annually thereafter, the City shall have the option to increase Base Rent by the CPI, with a maximum increase of 5%.

Use (Section 5.1):

Upon substantial completion of the Tenant Improvements, Tenant will use the Premises as a local arts support and exhibit space accordance with Exhibit E.

Tenant Improvements (Section 6.1):

Tenant shall renovate the Building in accordance with plans and specifications approved by the Director of Real Estate (estimated to cost approximately \$1 million).

Utilities and Services (Section 10.1):

Tenant shall pay and be responsible for all utilities, taxes, insurance, maintenance and operational

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costs, except City shall maintain the structural walls, foundation, exterior windows, skylights and roof of the Building. Tenant shall be allowed to offset the cost of up to two (2) months' rent per calendar year with proof of actual expenses paid for maintenance and repair of the HVAC system.

Security Deposit (Section 23):

None

Notice Address of City (Section 28.1):

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Real Estate
Re: 45 Onondaga Avenue
Fax No.: (415) 552-9216

and to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: RE/Finance Team
Re: 35 Onondaga Avenue
Fax No.: (415) 554-4757

Key Contact for City:

Andrico Q. Penick, Director of Real Estate

Telephone No.:

415 554-9860

Alternate Contact for City:

Sandi Levine, Project Manager

Telephone No.:

(415) 554-9867

Address for Tenant (Section 28.1):

Before Rent Commencement Date:

ArtSpan
934 Brannan Street
San Francisco, CA 94103
Attn: Executive Director

After Rent Commencement Date:

ArtSpan
45 Onondaga Avenue
San Francisco, CA 94112
Attn: Executive Director

Key Contact for Tenant:

Joan Madonna, Executive Director

Telephone No.: _____

Alternate Contact for Tenant: _____

Telephone No.: _____

Brokers (Section 28.8): Not Applicable

Other Noteworthy Provisions: _____

2. PREMISES; AS IS CONDITION

2.1 Lease Premises

Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City those premises identified in the Basic Lease Information (the "Building" or the "Premises"). The rentable area of the Premises specified in the Basic Lease Information shall be conclusive for all purposes hereof. The Building, land upon which the Building is located and all other improvements on and appurtenances to such land are referred to collectively as the "Property."

2.2 Accessibility Disclosures

(a) 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 hereby 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 shall mutually agree on the arrangements for the time and manner of such 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.

(b) Tenant acknowledges that prior to the execution of this Lease, City provided Tenant with, and Tenant signed, the Disability Access Obligations Notice described in Section 38.3 of the San Francisco Administrative Code. Tenant and City each agree to use reasonable efforts to notify the other party if making any Alterations (as defined in Section 7.1

(Tenant's Alterations)) that might impact accessibility to the Premises under any disability access laws.

2.3 As Is Condition

TENANT ACKNOWLEDGES AND AGREES THAT THE PREMISES ARE BEING LEASED AND ACCEPTED IN THEIR "AS IS" CONDITION, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES GOVERNING THEIR USE, OCCUPANCY AND POSSESSION. TENANT REPRESENTS AND WARRANTS TO CITY THAT TENANT HAS INVESTIGATED AND INSPECTED, EITHER INDEPENDENTLY OR THROUGH AGENTS OF TENANT'S OWN CHOOSING, THE CONDITION OF THE PREMISES AND THE SUITABILITY OF THE PREMISES FOR TENANT'S INTENDED USE. TENANT HAS DETERMINED, BASED SOLELY ON ITS OWN INVESTIGATION, THAT, SUBJECT TO TENANT'S COMPLETION OF THE TENANT IMPROVEMENTS CONTEMPLATED BY THIS LEASE, THE PREMISES ARE SUITABLE FOR TENANT'S BUSINESS AND INTENDED USE. 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 THE RENTABLE AREA OF THE PREMISES, THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PREMISES OR THE PROPERTY, THE PRESENT OR FUTURE SUITABILITY OF THE PREMISES FOR TENANT'S BUSINESS, OR ANY OTHER MATTER WHATSOEVER RELATING TO THE PREMISES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. TERM

3.1 Lease Term

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the Commencement Date. The Term of this Lease shall end on the Expiration Date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease. This Lease is subject to the Extension Options set forth in Section 27.1 (Option to Extend Term). City shall deliver the Premises to Tenant on the Commencement Date in their then existing as is condition as further provided above, with no obligation of the City to make any improvements, repairs or alterations (except for City's repair obligations as expressly provided in Section 8.1 of this Lease).

3.2 Confirmation of Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." Upon request by either party, the parties shall execute a notice substantially in the form of Exhibit B to confirm the actual Commencement Date, but either party's failure to do so shall not affect the commencement of the Term.

4. RENT

4.1 Base Rent

Throughout the Term beginning on the Rent Commencement Date, Tenant shall pay to City the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be paid to City in advance, without prior demand and without any deduction, setoff or counterclaim whatsoever (except as expressly provided herein), in equal consecutive monthly payments on or before the first day of the Term and on or before the first day of each month thereafter. All sums payable by Tenant to City hereunder shall be paid in cash or by good (cashier's or certified) check to the City and County of San Francisco in care of the Director of Real Estate at the primary address for City specified in the Basic Lease Information, or such other place as City may designate in writing. If Tenant pays by check and such check is not honored, then City may require Tenant to make all future payments in cash or by cashier's check. If the Rent Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2 Adjustments in Base Rent

On each date specified in the Basic Lease Information for adjustment of the Base Rent (an "Adjustment Date"), City shall have the option, exercisable by delivering written notice to Tenant at least sixty (60) days before the applicable Adjustment Date, to adjust Base Rent payable under this Lease as follows (provided, if City fails to send a notice 60 days before an Adjustment Date, it may do so anytime thereafter and the Adjustment Date will become, for that one year, 60 days following delivery of the City's notice):

The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("Index") published most immediately preceding the Adjustment Date ("Adjustment Index"), shall be compared with the Index published most immediately preceding the Commencement Date ("Beginning Index").

If the Adjustment Index has increased over the Beginning Index, the Base Rent payable on and after the Adjustment Date shall be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than the monthly Base Rent in effect immediately prior to the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.3 Additional Charges

Tenant shall pay to City any and all charges and other amounts required under this Lease as additional rent (collectively, "Additional Charges"). All such Additional Charges shall be payable to City at the same place and the same manner as the Base Rent is payable. City shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. As used in this Lease, the term "Rent" shall include the Base Rent, Additional Charges and any other amounts Tenant is obligated to pay hereunder, whether or not any such amounts are specifically characterized as rent.

4.4 Late Charges

If Tenant fails to pay any Rent or any portion of Rent within five (5) days following receipt of written notice of such delinquency from City, such unpaid amount shall be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance; provided, however, that no late charge shall be assessed the first time during any 12-month period that Rent is not paid within five (5) days following the due date, so long as Tenant pays such delinquent amount within three (3) days after notice of such delinquency from City. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and shall be paid to City together with such unpaid amount.

4.5 Default Interest

Any Rent, if not paid within five (5) days following the due date, shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under law (the "Interest Rate"). However, interest shall not be payable on late charges incurred by Tenant nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.

5. USE

5.1 Permitted Use and Operating Covenants

Tenant shall use and occupy the Premises for at least ten (10) months of every calendar year during the Term for the purposes described in the Basic Lease Information and Exhibit E and for no other purpose without the prior written consent of the Director of Real Estate. Failure to use the Premises for a local arts support and exhibit space, as described in Exhibit E, shall be a material default.

5.2 No Unlawful Uses, Nuisances or Waste

Without limiting the foregoing, Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises, except such hazardous uses or wastes as are necessary and customary (as reasonably determined by the City's Department of Public Health as consistent with other health clinics in the City) for the permitted use of the Premises as a local arts support and exhibit space. Tenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises, Building or on or about the Property except identification signs in a location and size and design approved by City in its sole discretion.

5.3 Prevailing Wages for Certain Uses

Tenant shall pay, and shall require its subtenants contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Trade Show and Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Upon City's request (and no more than once in any 12-month period), Tenant shall provide to City (and to require any subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

- The types of covered services related to a Show includes individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services.
- The types of covered services related to a Special Event includes individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property.
- The types of covered services related to Broadcast Services includes individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote

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production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions.

If tenant has any questions about the applicability or implementation of the requirements of this Section, Grantee shall contact the Director of Real Estate in advance.

6. TENANT IMPROVEMENTS

6.1 Tenant Improvement Work

Tenant's architect or space planner shall prepare detailed plans and specifications for the construction and installation of the tenant improvements (such work is referred to as the "Tenant Improvement Work" or "Tenant Improvements" and such plans and specifications are referred to as the "Plans"), generally consistent with the work described in Exhibit F. Upon Director of Real Estate's approval of the Plans, Tenant shall be responsible, at no cost to the City, for performing the Tenant Improvement Work in accordance with the approved Plans and the standards contained in Section 7.1 (Tenant's Alterations) below. City shall approve or disapprove the Plans within ten (10) business days after receipt of the Plans. If the Director of Real Estate disapproves the Plans, (s)he shall, within fifteen (15) business days after said disapproval, return the Plans to Tenant with a statement of City's reasons for disapproval, or specifying any required corrections and/or revisions. The Director of Real Estate shall approve or disapprove of any revisions to the Plans by written notice given to Tenant within five (5) business days after receipt of such revisions. Tenant shall use commercially reasonable efforts to begin the Tenant Improvements as soon as possible and diligently prosecute the same to completion, subject to the occurrence of the condition described in Section 13.2(a)(i) [Tenant's Inability to Perform; Termination Right]. Tenant shall further be responsible, at no cost to the City, for obtaining all permits and licenses required in connection with the Tenant Improvements. Tenant shall not make any material change to the approved Plans or consent to any material change order (that changes the Plans) during the course of construction without first obtaining the Director of Real Estate's written approval. Upon completion of the Tenant Improvements, Tenant shall furnish City with a copy of the final as-built plans and specifications. No approval by the Director of Real Estate or any of their Agents of the Plans, any changes thereto or of any Alterations for purposes of this Lease shall be deemed to constitute approval of any federal, state or local regulatory authority with jurisdiction over the Premises or Tenant's use hereunder, and nothing herein shall limit Tenant's obligation to obtain all such regulatory approvals at no cost to the City.

City agrees to contribute the sum of Four Hundred and Ten Thousand Dollars (\$410,000.00) (the "Allowance") toward the cost of the Tenant Improvement Work. The Parties acknowledge that the Allowance is to be allocated between the Tenants of both 35 and 45 Onondaga Avenue for a single licensed general contractor performing a single project at both locations. Tenants shall jointly submit a request for release of funds ("Payment Request") from the City, together with an invoice from the general contractor covering the work for which payment is being requested. Upon City's confirmation that the work has been completed as stated in the Payment Request, City shall pay to Tenant in the amount of the Payment Request (or so much thereof as is permitted in accordance with the requirements of this Lease). If City

determines that the Payment Request contains errors or does not approve the Payment Request based on Tenant's or its' contractor's failure to complete the work as required, the Director of Property will notify Tenant as soon as possible (including a statement of the reason for the nonapproval), but in no event later than thirty (30) days following City's receipt of the Payment Request. Upon receipt of the payment from City, Tenant shall promptly use the funds to pay the contractor for the work to the extent not previously paid by Tenant.

Tenant may use the Allowance for the following: (i) up to Twenty Five Thousand Dollars (\$25,000.00) for the cost of preparing design and construction documents for the Tenant Improvements, (ii) hard costs in connection with the construction of the Tenant Improvements, (iii) up to Forty Thousand Dollars (\$40,000.00) for third party construction management fees (not including Tenant or its employees or affiliates) for the supervision of the construction of the Tenant Improvements and (iv) permit fees for the construction of the Tenant Improvements. Tenant shall not be permitted to apply the Allowance toward the cost of furnishings, equipment, trade fixtures, or moving expenses. Notwithstanding anything in Section 7.1 to the contrary, Landlord acknowledges that Tenant shall have the right to remove or alter any portion of the existing heating, ventilating, or air conditioning equipment which services adjacent premises, provided that the Tenant Improvements include adequate provision of those systems to the adjacent premises.

6.2 Local Hiring Requirements

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations (as defined in Section 7.1) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project").

Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

6.3 Prevailing Wages and Working Conditions

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its contractors and subcontractors performing (i) labor in connection with a “public work” as defined under California Labor Code Section 1720 *et seq.* (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, “Prevailing Wage Requirements”). Tenant agrees to cooperate with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and contractors and subcontractors (regardless of tier), to include the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any construction contract with specific reference to San Francisco Administrative Code Section 23.61. Each such construction contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any contractor or subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant’s failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor’s or subcontractor’s failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call the City’s Office of Labor Standards Enforcement at 415-554-6235.

Tenant shall also pay, and shall require its subtenants, and contractors and subcontractors (regardless of tier) to pay, the Prevailing Rate of Wage for the following activities on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11).

7. ALTERATIONS

7.1 Tenant’s Alterations

(a) General

Tenant shall not make or permit any alterations to the Building or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building (“Building Systems”), and shall

not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Premises, without City's prior written consent in each instance. All Alterations shall be done at Tenant's expense (except for the Tenant Improvements for which City shall fund the Allowance as provided in Section 6.1), in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. With respect to any Alterations which would be visible from the exterior of the Building, Tenant, shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103. City shall, if requested by Tenant at the time its approval of an Alteration or Tenant Improvement is requested, notify Tenant whether City requires that Tenant remove such Alteration or Tenant Improvement upon the expiration or earlier termination of this Lease, in which event Tenant shall remove such Alteration or Tenant Improvement in accordance with Section 24 hereof [Surrender of Premises].

(b) Asbestos

Without limiting Section 26.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

(c) Prevailing Wage and Local Hiring Requirements

Tenant and its subtenants shall comply with the applicable requirements of Section 6.2 (Local Hiring Requirements) and Section 6.3 (Prevailing Wages and Working Conditions) above in the performance of any Alterations.

(d) Tenant's Improvements or Alterations that Disturb or Remove Lead-Based Paint

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based

or “presumed” lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter (“HEPA”) local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is “disturbed or removed” if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

7.2 Title to Improvements

Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 24 (Surrender of Premises) below.

7.3 Tenant's Personal Property

All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, “Tenant's Personal Property”) shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises) below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

7.4 City's Alterations of the Building and Building Systems

City reserves the right at any time to make alterations, additions, repairs, deletions or improvements to any part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for the uses permitted hereunder. City shall use commercially reasonable efforts to

conduct any of the foregoing activities in a manner that minimizes inconvenience or disturbance to Tenant.

8. REPAIRS AND MAINTENANCE

8.1 City's Repairs

City shall repair and maintain, at no expense to Tenant, the structural walls, foundation, exterior windows, skylights and roof of the Building in good repair, and working order; provided, however, that subject to Section 19.4 (Waiver of Subrogation), Tenant shall reimburse City for any damage, excluding normal wear and tear, caused by any act or omission of Tenant, its Agents or Invitees (as such terms are defined in Section 28.5 (Parties and Their Agents; Approvals) below). For the purpose of making any such repairs, City may use structures in the Premises where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the Premises nor, to the extent commercially feasible, interfere with Tenant's business. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby.

8.2 Tenant's Repairs

Tenant shall maintain, at no expense to City, the Premises (including, without limitation, the floors, interior plumbing, electrical wiring, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (e) in accordance with any applicable Building Rules and Regulations (as defined in Section 22 (Rules and Regulations)) and all applicable laws, rules and regulations. If the cost of any repairs or replacements that are required to be made by Tenant pursuant to this Section is estimated to cost in excess of Fifteen Thousand Dollars (\$15,000.00), Tenant shall provide City not less than ten (10) business days' prior written notice of the commencement of any work in connection therewith. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect. Within any single calendar year, Tenant may withhold an amount equal to a maximum of two (2) months of the then current Base Rent, as an offset for repairs and/or maintenance for the HVAC system paid for by Tenant ("HVAC Offset"). Tenant will submit proof of payment together with a summary of the work performed, and City shall confirm work completed in a satisfactory manner, in the reasonable discretion of the City, before Tenant may use any HVAC Offset.

9. LIENS AND ENCUMBRANCES

9.1 Liens

Tenant shall keep the Premises and the rest of the Property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event

Tenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Tenant upon demand. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Building, from mechanics' and material supplier's liens. Tenant shall give to City at least fifteen (15) days' prior written notice of commencement of any Alteration, repair or construction on the Premises. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, material supplier's or other liens in connection with any Alterations, repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

9.2 Encumbrances

Tenant shall not create, permit or suffer any liens or encumbrances affecting any portion of the Premises, the Property or City's interest therein or under this Lease.

10. UTILITIES AND SERVICES

10.1 Utilities and Services

Tenant shall be responsible for furnishing, at no cost to the City, any utilities or services that Tenant may need for its use of the Premises. Tenant shall maintain all utility connections in good working order, and shall not, without City's prior consent, (a) connect or use any apparatus, device or equipment that will require a dedicated circuit or that will impair the proper functioning or capacity of the Building Systems; or (b) connect any apparatus, device or equipment through electrical outlets except in the manner for which such outlets are designed and without the use of any device intended to increase the plug capacity of any electrical outlet; or (c) maintain at any time an electrical demand load in excess of the amount supported by the existant Building Systems.

10.2 Water and Energy Conservation; Mandatory or Voluntary Restrictions

In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Property or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Building in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such

meter or other corrective measures and the installation and maintenance thereof shall be paid for by Tenant.

10.3 [intentionally deleted]

10.4 Floor Load

Without City's prior written consent, which City may give or refuse in its sole discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with Section 7.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

10.5 Interruption of Services

In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant; provided, however, that if such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises for a period of five (5) or more consecutive business days and such interruption was not caused by Tenant or its Agents (including by failure to maintain systems), then Tenant shall have the right, as Tenant's sole remedy, to abate the Rent based on the extent such interruption, failure or inability impairs Tenant's ability to carry on its business in the Premises. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability.

11. COMPLIANCE WITH LAWS AND RISK MANAGEMENT REQUIREMENTS

11.1 Compliance with Laws

Tenant shall promptly comply, at no cost to the City, with all present or future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority relating to the Premises or the use or occupancy thereof (the "Legal Requirements") and with any and all recorded covenants, conditions and restrictions affecting the Property or any portion thereof, whether in effect at the time of the execution of this Lease or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties. Tenant further understands and agrees that it is Tenant's obligation, at no cost to the City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with the Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq. and any other applicable disability access laws. Any Alteration made by or on behalf of Tenant pursuant to the provisions of this Section shall comply with the provisions of Section 8.2 (Tenant's Repairs) above. The parties acknowledge and agree that Tenant's obligation to comply with all Legal Requirements as provided herein is a material

part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make substantial or structural repairs and Alterations to the Premises (including any of the Tenant Improvements or any of Tenant's Alterations), 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 the curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Legal Requirement involved, and whether the Legal Requirement involved is related to Tenant's particular use of the Premises.

11.2 Regulatory Approvals

(a) Responsible Party

Tenant understands and agrees that Tenant's use of the Premises and construction of the Tenant Improvements permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall not seek any regulatory approval without first obtaining the written consent of City under this Lease. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval provided that Tenant may apply the Allowances to such costs. Tenant shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval; provided, however, any such condition that could affect use or occupancy of the Property or adversely affects the City's interest in the Property must first be approved by City in its sole discretion. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Tenant shall Indemnify City and the other Indemnified Parties hereunder against all Claims (as such terms are defined in Section 18.2 (Tenant's Indemnity) below) arising in connection with Tenant's failure to obtain or failure by Tenant, its Agents or Invitees to comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property

Tenant further understands and agrees that City is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Tenant's obligation to obtain any required approvals from City officials, departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Tenant's obligation to cause the Premises to be used and occupied in accordance with applicable laws, as provided further above.

11.3 Compliance with City's Risk Management Requirements

Tenant shall not do anything, or permit anything to be done, in or about the Premises which would be prohibited by or increase rates under a standard form fire insurance policy or

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subject City to potential premises liability. Tenant shall faithfully observe, at no cost to the City, any and all requirements of City's Risk Manager with respect to Tenant's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with Tenant's use of the Premises or are otherwise connected with standard prudent commercial practices of other landlords. or are otherwise connected with standard prudent commercial practices of other landlords.

12. SUBORDINATION

This Lease is and shall be subordinate to any reciprocal easement agreement, ground lease, facilities lease or other underlying lease and the lien of any mortgage or deed of trust and all renewals, modifications, consolidations, replacements and extensions of any of the foregoing (collectively, "Encumbrances"), that may now exist or hereafter be executed by City affecting the Property, or any part thereof, or City's interest therein, without the necessity of executing any instrument to effectuate such subordination; provided, however, upon City's request, Tenant, or Tenant's successor-in-interest, shall execute and deliver any and all instruments desired by City evidencing such subordination in the manner requested by City. Notwithstanding the foregoing, City or the holder shall, in its respective discretion, have the right to subordinate any such interests to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall attorn to the successor-in-interest to City, at the option of such successor-in-interest. The provisions of this Section shall be self-operative and no further instrument shall be required. Tenant agrees, however, to execute and deliver, upon demand by City and in the form requested by City, any additional documents evidencing the priority or subordination of this Lease.

Notwithstanding the foregoing provisions of this Section 12, with respect to any Encumbrances entered into by City after the execution of this Lease, Tenant's subordination of this Lease shall be subject to receiving a non-disturbance agreement (a "Non-Disturbance Agreement") from the lender (or other counterparty) in lender's (or such party's) commercially reasonable form, which Non-Disturbance Agreement provides that Tenant's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Tenant is not in default hereof (beyond notice and cure periods) and attorns to the record owner of the Premises. In addition, City agrees to use commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holders of any existing mortgages and, if applicable, from any existing ground lessors. Tenant agrees to execute and deliver any appropriate instruments necessary to carry out the foregoing provisions.

13. INABILITY TO PERFORM; TERMINATION RIGHT

13.1 City's Inability to Perform

If City is unable to perform or is delayed in performing any of City's obligations under this Lease due to events of Force Majeure (as defined in Section 28.51), no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Tenant's business or use and occupancy or quiet enjoyment of the Premises or any loss or

damage occasioned thereby. Tenant hereby waives and releases any right to terminate this Lease under Section 1932, subdivision 1 of the California Civil Code or any similar law, statute or ordinance now or hereafter in effect.

13.2 Tenant's Inability to Perform; Termination Right

(a) City and Tenant acknowledge that Tenant, as a nonprofit local arts support organization, faces unique funding and operating constraints. Accordingly, Tenant shall have the right to terminate the Lease (the "Termination Right") upon written notice to City (the "Termination Notice") if any of the following conditions are met:

(i) On or before one hundred twenty (120) days after the Commencement Date, Tenant determines, in Tenant's reasonable discretion, that the cost or scope of Tenant Improvement Work required to bring the Building into a condition suitable for Tenant's intended use is infeasible;

(ii) At any time during the Term, with thirty (30) days prior written notice, Tenant determines, in Tenant's reasonable discretion, that it is no longer feasible to continue operations in the Premises, due to circumstances including, but not limited to:

- a. City fails to perform repairs required under Section 8.1 of this Lease [City Repairs] within sixty (60) days after notice from Tenant and such failure materially interferes with Tenant's ability to operate as a local arts support organization,
- b. Changes in Laws or Legal Requirements respecting the Building or Tenant's use of the Premises impose requirements (such as Alterations or operational changes) on Tenant that are not feasible due to funding or operational limitations,
- c. Unavailability of sufficient funds for continued operations or Premises maintenance,
- d. City fails to cure a City default under this Lease within sixty (60) days after notice from Tenant and such failure materially interferes with Tenant's ability to operate as a local arts support organization.

(iii) Should Tenant exercise its Termination Right under this Section within Five (5) years of the date of the Board of Supervisors and Mayoral approval of the resolution authorizing this Lease, Tenant shall reimburse the City any portion of the Allowance used to reimburse incurred costs for anything other than the structural walls, foundation, exterior windows, skylights and roof of the Building, or installation of a functioning HVAC system (such as design and construction management).

(b) If Tenant exercises the Termination Right, then, within thirty (30) days after delivery of the Termination Notice, Tenant shall surrender the Premises to City in the condition required by Section 24 of this Lease [Surrender of Premises], and neither party shall have any further liability hereunder, except to the extent any obligations expressly survive the termination of this Lease.

14. DAMAGE AND DESTRUCTION

14.1 Damage and Destruction

If the Premises or the Building is damaged by fire or other casualty, then City shall repair the same provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Tenant shall be entitled to a proportionate reduction of Base Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Tenant's use or occupancy of the Premises.

City shall use reasonable efforts to notify Tenant within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Tenant. If such repairs cannot be made within the Repair Period, City shall have the option to notify Tenant of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. If funds for such repairs are not appropriated by City within sixty (60) days after such damage or if such repairs cannot be made within the Repair Period, Tenant shall have the right to terminate this Lease as of the date specified in Tenant's termination notice, which date shall be not less than thirty (30) nor more than sixty (60) days after delivery of Tenant's termination notice. In case of termination, the Base Rent shall be reduced as provided above, and Tenant shall pay such reduced Base Rent, if any, up to the date of termination.

If at any time during the last six (6) months of the Term of this Lease, the Premises or the Building is materially damaged or destroyed, then either City or Tenant may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Tenant may terminate only if such damage or destruction substantially impairs its use or occupancy of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination; which date shall not be more than thirty (30) days from the date of the notice.

Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Building in the event the damage or destruction is attributable to any act or omission of Tenant, its Agents or Invitees. In no event shall City be required to repair any damage to Tenant's Personal Property or any paneling, decorations, railings, floor coverings, or

any non-structural Tenant Improvements or Alterations installed or made on the Premises by or at the expense of Tenant. In the event the Premises or the Building is substantially damaged or destroyed and City intends to rebuild for public purposes inconsistent with this Lease, City may terminate this Lease upon written notice to Tenant.

14.2 Waiver

City and Tenant intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, City and Tenant each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

15. EMINENT DOMAIN

15.1 Definitions

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

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

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

(d) "Improvements Pertaining to the Realty" means machinery or equipment installed for use on the Property that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation. In determining whether particular property can be removed "without a substantial economic loss," the value of the machinery or equipment in place and considered as part of the realty should be compared with its value if it were removed and sold.

15.2 General

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

15.3 Total Taking; Automatic Termination

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

15.4 Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant, (B) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) Tenant elects to terminate; or (ii) if City elects to terminate; provided, however, that this Lease shall not terminate if Tenant agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) If there is a partial Taking of a substantial portion of the Building but not the Premises, City shall have the right to terminate this Lease in its entirety.

(c) Either party electing to terminate under the provisions of this Section 15 shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

15.5 Termination of Lease; Rent and Award

Upon termination of this Lease in its entirety pursuant to Section 15.3 (Total Taking; Automatic Termination), or pursuant to an election under Section 15.4 (Partial Taking, Election to Terminate) above, then: (a) Tenant's obligation to pay Rent shall continue up until the date of termination and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

15.6 Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 (Partial Taking; Election to Terminate) above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking; provided, however, in no event shall the monthly Base Rent be reduced to less than seventy-five percent (75%) of the monthly Base Rent immediately prior to the Date of Taking, and (b) City

shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to movable Tenant's Personal Property.

15.7 Temporary Takings

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, Tenant shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by Tenant for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1 Restriction on Assignment and Subletting

Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant); voluntarily or by operation of law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder (collectively, an "Assignment"), or permit or license any portion of the Premises to be used or occupied by anyone other than itself, or sublet any portion of the Premises (collectively, "Sublease"), without City's prior written consent, such consent to be at the sole discretion of the City, in each instance, as provided below. The Parties acknowledge and agree that Tenant will be permitting local artists to use various spaces within the Premises as temporary workspaces. Tenant is not required to obtain City approval of such use, provided no leaseholds are established thereby.

Notwithstanding the foregoing, Tenant may Assign this Lease or Sublet any or all portions of the Premises to any Tenant's Affiliate (as defined below) without obtaining the consent of City by giving City written notice of its intent thereof at least fifteen (15) business days before the proposed effective date of such transfer. As used in this Section, the term "Tenant's Affiliate" shall mean, any of the following: (a) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Tenant (an "Owning Person"), (b) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Owning Person, (c) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Tenant, or (d) any entity into which Tenant is merged or consolidated.

16.2 Notice of Proposed Transfer

If Tenant desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer

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shall identify the proposed transferee and state the terms and conditions of the proposed Assignment or Sublease. Tenant shall deliver to City with its request for City's consent the proposed Assignment or Sublease and current financial statements of the proposed Transferee, prepared by an independent certified public accountant, and promptly upon City's request for same, any additional documents or information reasonably related to the proposed transaction or Transferee.

16.3 City's Response

Within twenty (20) business days after City's receipt of the Notice of Proposed Transfer (the "Response Period"), City may elect, by written notice to Tenant, to: **(a)** sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in Section 16.4 (Sublease or Recapture Space), or **(b)** terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with a proportionate reduction in Base Rent (a "Recapture").

If City declines to exercise either of its options provided above, then Tenant shall have ninety (90) days following the earlier of **(i)** City's notice that it will not elect either such option or **(ii)** the expiration of the Response Period, to enter into such Assignment or Sublease, subject to City's prior written approval of the proposed assignee or subtenant (collectively, "Transferee") and the terms and conditions of the proposed Sublease or Assignment. However, One Hundred percent (100%) of any rent or other consideration realized by Tenant under any such Assignment or Sublease in excess of the Base Rent and Additional Charges payable hereunder (or the amount thereof proportionate to the portion of the Premises subject to such Sublease or Recapture) shall be paid to City. Tenant shall provide City with such information regarding the proposed Transferee and the Assignment or Sublease as City may reasonably request. City agrees that it will not unreasonably withhold its approval of any proposed Transferee.

If after City declines to exercise any of the foregoing options Tenant desires to enter into such Assignment or Sublease **(A)** on terms and conditions materially more favorable to Tenant than those contained in the Notice of Proposed Transfer or **(B)** with a Transferee that is currently a tenant or other occupant of the Building, then Tenant shall give City a new Notice of Proposed Transfer, which notice shall state the terms and conditions of such Assignment or Sublease and identify the proposed Transferee, and City shall again be entitled to elect one of the options provided in clauses (a) and (b) at any time within twenty (20) business days after City's receipt of such new Notice of Proposed Transfer.

In the event City elects either of the options provided in clauses (a) or (b), City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such new Notice of Proposed Transfer) with the proposed Transferee identified in Tenant's notice.

Notwithstanding the foregoing, if any event of default by Tenant is outstanding hereunder at the time of Tenant's Notice of Proposed Transfer (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then

City may elect by notice to Tenant to refuse to consent to Tenant's proposed Transfer and pursue any of its right or remedies hereunder or at law or in equity.

16.4 Sublease or Recapture Space

If City elects to Sublease or Recapture from Tenant as described in Section 16.3 (City's Response) the following shall apply:

(a) In the case of a Sublease, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose, (ii) the rent payable by City to Tenant shall be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Base Rent payable by Tenant under this Lease at the time of the Sublease (or the amount thereof proportionate to the Sublease Space if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal, (iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Tenant, and (v) Tenant shall pay to City on demand any costs incurred by City in physically separating the Sublease Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable laws or regulations relating to such separation.

In the case of Recapture, (i) the portion of the Premises subject to the Recapture (the "Recapture Space") shall be deleted from the Premises for all purposes hereunder, and Tenant and City shall be relieved of all their rights and obligations hereunder with respect to the Recapture Space except to the extent the same would survive the Expiration Date or other termination of this Lease pursuant to the provisions hereof, and (ii) City shall pay any cost incurred in physically separating the Recapture Space (if less than the entire Premises) from the balance of the Premises and in complying with any applicable governmental laws or regulations relating to such separation.

16.5 Effect of Sublease or Assignment

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant, or any guarantor, of any obligation to be performed by Tenant under this Lease. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Base Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublease, whether in violation of or in compliance with this Section, in the event of default by any Transferee, or any successor of Tenant, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Tenant without the necessity of exhausting remedies against such Transferee or successor.

16.6 Assumption by Transferee

Each Transferee (other than City) shall assume all obligations of Tenant under this Lease (except as otherwise provided herein) and shall be liable jointly and severally with Tenant for the payment of the Base Rent and Additional Charges, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder (except as otherwise provided herein). No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument in recordable form that contains a covenant of assumption by such Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Tenant shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent, in an amount not to exceed Five Thousand Dollars (\$5,000.00).

16.7 Indemnity for Relocation Benefits

Without limiting Section 16.6 (Assumption by Transferee) above, Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

17.1 Events of Default

Any of the following shall constitute an event of default (the "Event of Default") by Tenant hereunder:

(a) a failure to pay Base Rent or Additional Charges when due, and such failure continues for five (5) days after the date of written notice by City. However, City shall not be required to provide such notice more than twice during any twelve (12)-month period, and any such failure by Tenant after Tenant has received two (2) such notices in such twelve (12)-month period shall constitute a default by Tenant hereunder without any further action by City or opportunity of Tenant to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) a failure to continuously (defined as no less than ten (10) months within any calendar year) use and operate a local arts support and exhibit space in accordance with Exhibit E, and such failure continues for a period of five (5) days following the date of written notice by the City;

(c) the failure to cause the design of the Tenant Improvements to be performed, the entering into of a construction contract with a general contractor and the submission of bid packages for the Tenant Improvements within one hundred eighty (180) days following the Commencement Date such that Tenant shall be in a position to authorize the

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general contractor to commence construction of the Tenant Improvements upon issuance of all required permits and approvals, and once started, the failure to diligently prosecute such construction to completion, in either case, subject to Force Majeure and City Delay (as defined in Section 28.51 [Force Majeure]);

(d) a failure to comply with any other covenant, condition or representation made under this Lease and such failure continues for fifteen (15) days after the date of written notice by City, provided that if such default is not capable of cure within such fifteen (15)-day period, Tenant shall have a reasonable period to complete such cure if Tenant promptly undertakes action to cure such default within such fifteen (15)-day period and thereafter diligently prosecutes the same to completion within sixty (60) days after the receipt of notice of default from City. City shall not be required to provide such notice more than twice in any twelve (12)-month period with respect to any material non-monetary defaults and after the second notice in any calendar year, any subsequent failure by Tenant during such twelve (12)-month period shall constitute an Event of Default hereunder;

(e) an abandonment of the Premises; or

(f) an appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days. Notwithstanding the foregoing, no Event of Default shall be deemed to have occurred solely due to the occurrence of any of the conditions giving rise to Tenant's Termination Right, as described in Section 13.2 [Tenant's Inability to Perform; Tenant's Termination Right].

If City defaults in its material obligations under this Lease (including, without limitation, pursuant to Sections 7.4 [City's Alterations of the Building and Building Systems], 8.1 [City's Repairs], 11 [Compliance with Laws and Risk Management Requirements], 14 [Damage and Destruction], 21.2 [City's Certificates], and 27 [Extension Option]) and if, as a result of such default, any portion of the Premises is completely inaccessible or not usable by Tenant for the permitted Use identified in the Basic Lease Information for a period of thirty (30) days or longer, then until Tenant is reasonably able to access and use the Premises for the permitted use, Tenant shall be entitled to a proportionate reduction of Base Rent based upon the extent to which such condition and the making of any repairs interferes with Tenant's use or occupancy of the Premises for the permitted use. If City's default continues for more than 90 days, then Tenant shall have the right to terminate this Lease. In no event is City liable for any damages to Tenant.

17.2 Remedies

Upon the occurrence of an Event of Default City shall have the following remedies, which shall not be exclusive but shall be cumulative and shall be in addition to any other remedies now or hereafter allowed by law or in equity:

(a) City may terminate Tenant's right to possession of the Premises at any time by written notice to Tenant. Tenant expressly acknowledges that in the absence of such

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written notice from City, no other act of City, including, but not limited to, its re-entry into the Premises, its efforts to relet the Premises, its reletting of the Premises for Tenant's account, its storage of Tenant's Personal Property and trade fixtures, its acceptance of keys to the Premises from Tenant, its appointment of a receiver, or its exercise of any other rights and remedies under this Section 17.2 or otherwise at law, shall constitute an acceptance of Tenant's surrender of the Premises or constitute a termination of this Lease or of Tenant's right to possession of the Premises.

Upon such termination in writing of Tenant's right to possession of the Premises, this Lease shall terminate and City shall be entitled to recover damages from Tenant as provided in California Civil Code Section 1951.2 or any other applicable existing or future Legal Requirement providing for recovery of damages for such breach, including but not limited to the following:

- (i) The reasonable cost of recovering the Premises; plus
- (ii) The amount of the Allowance used to reimburse incurred costs for anything other than the structural walls, foundation, exterior windows, skylights and roof of the Building, or installation of a functioning HVAC system (such as design and construction management), plus reasonable cost of removing Tenant's Alterations, trade fixtures and improvements; plus
- (iii) All unpaid rent due or earned hereunder prior to the date of termination, less the proceeds of any reletting or any rental received from subtenants prior to the date of termination applied as provided in Section 17.2(b) below, together with interest at the Interest Rate, on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (iv) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 (Additional Charges) above, as reasonably estimated by City, from the date of termination until the date of the award of damages, exceeds the amount of such rental loss as Tenant proves could have been reasonably avoided, together with interest at the Interest Rate on such sums from the date such rent is due and payable until the date of the award of damages; plus
- (v) The amount by which the rent which would be payable by Tenant hereunder, including Additional Charges under Section 4.3 (Additional Charges) above, as reasonably estimated by City, for the remainder of the then term, after the date of the award of damages exceeds the amount such rental loss as Tenant proves could have been reasonably avoided, discounted at the discount rate published by the Federal Reserve bank of San Francisco for member banks at the time of the award plus one percent (1%); plus

Such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable law, including without limitation any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease which in the ordinary course of things would be likely to result therefrom..

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(b) City has the remedy described in California Civil Code Section 1951.4 (a landlord may continue the lease in effect after the tenant's breach and abandonment and recover rent as it becomes due, if the tenant has the right to sublet and assign subject only to reasonable limitations), and may continue this Lease in full force and effect and may enforce all of its rights and remedies under this Lease, including, but not limited to, the right to recover rent as it becomes due. After the occurrence of an Event of Default, City may enter the Premises without terminating this Lease and sublet all or any part of the Premises for Tenant's account to any person, for such term (which may be a period beyond the remaining term of this Lease), at such rents and on such other terms and conditions as City deems advisable. In the event of any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, attorneys' fees and expenses of removal of Tenant's Personal Property, trade fixtures and Alterations; (ii) second, to the payment of rent then due and payable hereunder; (iii) third, to the payment of future rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

During the continuance of an Event of Default, for so long as City does not terminate Tenant's right to possession of the Premises and subject to Section 16 (Assignment and Subletting) and the options granted to City thereunder, City shall not unreasonably withhold its consent to an assignment or sublease of Tenant's interest in the Premises or in this Lease.

(c) During the continuance of an Event of Default, City may enter the Premises without terminating this Lease and remove all Tenant's Personal Property, Alterations and trade fixtures from the Premises and store them at Tenant's risk and expense. If City removes such property from the Premises and stores it at Tenant's risk and expense, and if Tenant fails to pay the cost of such removal and storage after written demand therefor and/or to pay any rent then due, then after the property has been stored for a period of thirty (30) days or more City may sell such property at public or private sale, in the manner and at such times and places as City deems commercially reasonable following reasonable notice to Tenant of the time and place of such sale. The proceeds of any such sale shall be applied first to the payment of the expenses for removal and storage of the property, the preparation for and the conducting of such sale, and for attorneys' fees and other legal expenses incurred by City in connection therewith, and the balance shall be applied as provided in Section 17.2(b) above.

Except to the extent caused by City's intentional misconduct, Tenant hereby waives all claims for damages that may be caused by City's reentering and taking possession of the Premises or removing and storing Tenant's Personal Property pursuant to this Section 17.2, and Tenant shall indemnify, defend and hold City harmless from and against any and all Claims resulting from any such act. No reentry by City shall constitute or be construed as a forcible entry by City..

(d) City may require Tenant to remove any and all Alterations from the Premises or, if Tenant fails to do so within ten (10) days after City's request, City may do so at Tenant's expense.

(e) City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder.

17.3 Waiver of Redemption

Tenant hereby waives, for itself and all persons claiming by and under Tenant, all rights and privileges which it might have under any present or future Legal Requirement to redeem the Premises or to continue this Lease after being dispossessed or ejected from the Premises.

17.4 City's Right to Cure Tenant's Defaults

If Tenant defaults in the performance of any of its obligations under this Lease, then City may, at its sole option, remedy such default for Tenant's account and at Tenant's expense by providing Tenant with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of such default or any rights or remedies of City, and nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform. Tenant shall pay to City upon demand, as additional rent, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Tenant's obligations under this Section shall survive the termination of this Lease.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1 Limitation on City's Liability; Waiver of Claims

City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (a) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises, (b) theft, (c) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (d) stopped, leaking or defective Building Systems, (e) Building defects, and (f) any other acts, omissions or causes. Nothing in this Section shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

18.2 Tenant's Indemnity

Tenant, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, its Real Estate Division, and all of its and their Agents, and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property, howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Property, all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Lease and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of this Lease.

19. INSURANCE

19.1 Tenant's Insurance

(a) Tenant, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

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

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

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion.

(v) Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.

(vi) Such other insurance as is generally required by commercial owners of buildings similar in size, character, age and location as the Building, as may change from time to time

(b) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(d) All liability insurance policies shall be endorsed to provide the following:

(i) Name as additional insured the City and County of San Francisco, its officers, agents and employees.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(e) Each insurance policy required pursuant to Section 19.1(a) above shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

(f) All insurance policies required to be maintained by Tenant hereunder shall be endorsed to provide thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to both Tenant and City. Notice to City shall be mailed to the address(es) for City set forth in the Basic Lease Information.

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(g) Tenant shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverage required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates within five (5) days after notice of such failure, City may procure, at its option, without waiving any rights or remedies which City may have for Tenant's default hereunder, the same for the account of Tenant, and the cost thereof shall be paid to City within five (5) days after delivery to Tenant of bills therefor.

(h) Upon City's request, Tenant and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Tenant for risks comparable to those associated with the Premises, then Tenant shall, at City's request, increase the amounts or coverage carried by Tenant to conform to such general commercial practice.

(i) Tenant's compliance with the provisions of this Section shall in no way relieve or decrease Tenant's liability under Section 18.2 (Tenant's Indemnity), or any of Tenant's other obligations under this Lease.

(j) Notwithstanding anything to the contrary in this Lease, if any of the required insurance coverage lapses, this Lease shall terminate upon three (3) days' notice to Tenant, unless Tenant renews the insurance coverage within notice period.

19.2 Tenant's Personal Property

Tenant shall be responsible, at no cost to the City, for separately insuring Tenant's Personal Property.

19.3 City's Self Insurance

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Building, the Premises or otherwise

19.4 Waiver of Subrogation

Notwithstanding anything to the contrary in this Lease, City and Tenant (each a "Waiving Party") hereby waives any right of recovery against the other party for any loss or damage relating to the Building or the Premises or any operations or contents therein, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by third party insurance that is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance held by the Waiving Party or its agents. Each Waiving Party agrees to obtain a waiver of subrogation rights endorsements from applicable insurance carriers issuing policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

20. ACCESS BY CITY

City reserves for itself and any of its designated Agents, the right to enter the Premises as follows: **(a)** on a regular basis without advance notice to supply any necessary or agreed-upon service to be provided by City hereunder; **(b)** on an occasional basis, at all reasonable times during the last six (6) months of the Term, after giving Tenant reasonable advance written or oral notice, to show the Premises to prospective tenants or other interested parties; **(c)** on an occasional basis, at all reasonable times after giving Tenant reasonable advance written or oral notice, to post notices of non-responsibility, to conduct any environmental audit of Tenant's use of the Premises, to repair, alter or improve any part of the Building, Building Systems or the Premises, and for any other lawful purpose; and **(d)** on an emergency basis without notice whenever City believes that emergency access is required. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any, designated by Tenant in writing to City) shall be keyed to the Building master key system, and City shall at all times have a key with which to unlock all such doors. Notwithstanding the foregoing, City shall use commercially reasonable efforts to conduct any activities on the Premises in a manner which minimizes annoyance or disturbance of Tenant.

21. CERTIFICATES

21.1 Tenant's Estoppel Certificates

Tenant, at any time and from time to time upon not less than ten (10) days' prior notice from City, shall execute and deliver to City or to any party designated by City a certificate stating: **(a)** that Tenant has accepted the Premises, **(b)** the Commencement Date and Expiration Date of this Lease, **(c)** that, to Tenant's knowledge, this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), **(d)** whether or not, to Tenant's knowledge, there are then existing any defenses against the enforcement of any of Tenant's obligations hereunder (and if so, specifying the same), **(e)** whether or not, to Tenant's knowledge, there are any defaults then existing under this Lease (and if so specifying the same), **(f)** the dates, if any, to which the Base Rent and Additional Charges have been paid, and **(g)** any other information that may be required.

21.2 City's Certificates

City, at any time and from time to time upon not less than ten (10) days' prior notice from Tenant, shall execute and deliver to Tenant or to any party designated by Tenant a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), **(c)** whether or not there are any defaults then existing under this Lease (and if so specifying the same), **(d)** the

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dates, if any, to which the Base Rent and Additional Charges have been paid, and (e) any other information that may be required.

22. RULES AND REGULATIONS

Tenant shall faithfully comply with the rules and regulations attached to this Lease as Exhibit D (Building Rules and Regulations) and all modifications thereof and additions thereto that City may from time to time put into effect (the "Rules and Regulations"). City shall not be responsible for the non-performance of the Rules and Regulations by any other tenant or occupant of the Building. In the event of any conflict between any provision of this Lease and any provision of the Rules and Regulations, this Lease shall control.

23. RESERVED

24. SURRENDER OF PREMISES

Upon the Expiration Date or other termination of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with the Tenant Improvements and all Alterations approved by City in good order and condition, except for (i) normal wear and tear, (ii) any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder and (iii) City's maintenance and repair obligations hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other Encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, City in its sole discretion shall have the right to reserve ownership of any telecommunications equipment, wire, cabling and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, but subject to the last sentence of Section 7.1(a) [Tenant's Alterations], City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations or other improvements or equipment constructed or installed by or at the expense of Tenant including, but not limited to, any telecommunications equipment, wires, cabling and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to the City, any damage to the Premises or the Building resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence or otherwise effect the termination of

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Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

25. REMOVAL OF ELECTRICAL AND TELECOMMUNICATIONS WIRES

25.1 City May Elect to Remove or Retain Wires

Within thirty (30) days after the expiration or sooner termination of this Lease or at any time that the Wires (as defined below) are no longer in active use by Tenant, City may elect by written notice to Tenant to: **(a)** retain any or all wires, cables and similar installations appurtenant thereto (the "Wires") installed by or on behalf of Tenant within the Premises or any portion of the Building outside the Premises, including, without limitation, the plenums or risers of the Building; **(b)** remove any or all of the Wires and restore the Premises or the Building, as the case may be, to their condition existing prior to the installation of the Wires (the "Wire Restoration Work"), at Tenant's sole cost and expense; or **(c)** require Tenant to perform all or part of the Wire Restoration Work at Tenant's sole cost and expense.

25.2 Compliance with Laws and Discontinuance of Wire Use

Tenant shall comply with all applicable laws with respect to the Wires, subject to City's right to elect to retain the Wires. Within thirty (30) days after Tenant discontinues the use of all or any part of the Wires, Tenant shall deliver to City written notice of such discontinuance, together with a plan or other reasonable description of the current type, quantity, points of commencement and termination, and routes of the Wires to allow City to determine if City desires to retain the Wires.

25.3 Condition of Wires

If City elects to retain any or all of the Wires, Tenant covenants that **(a)** Tenant is the sole owners of the Wires, Tenant has the sole right to surrender the Wires, and the Wires shall be free of all liens and encumbrances; and **(b)** all Wires shall be left in a good and safe working condition, properly labeled and capped or sealed at each end and in each telecommunications/electrical closet and junction box.

26. HAZARDOUS MATERIALS

26.1 Definitions

As used herein, the following terms shall have the meanings set forth below:

(a) "Environmental Laws" shall mean any present or future federal, state, local or administrative law, rule, regulation, order or requirement relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage), or to health and safety, industrial hygiene or the environment, including, without limitation, soil, air and groundwater conditions.

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(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Investigate and Remediate" ("Investigation" and "Remediation") shall mean the undertaking of any activities to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Property or that has been, are being or threaten to be Released into the environment, and to clean up, remove, contain, treat, stabilize, monitor or otherwise control such Hazardous Material.

(d) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Premises, or in, on, under or about any other part of the Property or into the environment.

26.2 No Hazardous Materials

Tenant covenants and agrees that neither Tenant nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Property, or transported to or from the Property, with the sole exception that Tenant may keep and use such substances in the Premises in such reasonably limited amounts as are necessary or customarily used for general office purposes (such as copy toner and other normal office and cleaning supplies) and for the production of art (paints and related materials, but not welding, pottery kilns, glass blowing or other similar equipment) and may generate such substances as a result of measures taken pursuant to Articles 7 or 8 of this Lease that disturb or remove lead-based or presumed lead-based paint from the exterior or interior surfaces of the Premises so long as such generation, storage, transportation, use, and disposal are in compliance with all applicable Environmental Laws at all times. Tenant shall give immediate written notice to City of: (a) any action, proceeding or inquiry by any governmental authority (including, without limitation, the California State Department of Health Services, the State or any Regional Water Quality Control Board, the Bay Area Air Quality Management district or any local governmental entity) against Tenant with respect to the presence or Release or suspected presence or Release of Hazardous Material on the Premises, Building or Property or the migration thereof from or to other property; (b) all demands or claims made or threatened in writing by any third party against Tenant or the Premises, Building or Property relating to any loss or injury resulting from any Hazardous Materials; (c) any Release of Hazardous Material on or about the Premises or any other part of the Property has occurred that may require any Investigation or Remediation; and (d) all matters of which Tenant is required to give notice pursuant to Section 25359.7 of the California Health and Safety Code.

26.3 Tenant's Environmental Indemnity

If Tenant breaches any of its obligations contained in this Section, or, if any act or omission of Tenant, its Agents or Invitees, results in any Release of Hazardous Material in, on, under or about the Premises in violation of any applicable Environmental Laws then, without limiting Tenant's Indemnity contained in Section 18.2 (Tenant's Indemnity), Tenant shall, on behalf of itself and its successors and assigns, Indemnify the Indemnified Parties, and each of them, from and against all Claims (including, without limitation, damages for the loss or restriction of the use of rentable or usable space or of any amenity of the Premises and sums paid in settlement of claims; attorneys' fees, consultants' fees and experts' fees and costs) arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, costs incurred in connection with activities undertaken to Investigate and Remediate Hazardous Material and to restore the Property to its prior condition, fines and penalties assessed for the violation of any applicable Environmental Laws, and any natural resource damages. Without limiting the foregoing, if Tenant or any of its Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises, Tenant shall immediately and at no expense to City take any and all appropriate actions to return the Premises affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Tenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Tenant by the City and continues at all times thereafter. Tenant shall afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, or other compromise or proceeding involving Hazardous Material.

26.4 Survival of Obligation

Tenant's obligations under this Section 26 shall survive the Expiration Date or other termination of this Lease.

26.5 Hazardous Substance Disclosure

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, lead, asbestos, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes and Tenant waives, to the extent permitted by Law, any and all rights Tenant may have to assert that City has not complied with the requirements of the statute.

27. SPECIAL PROVISIONS

27.1 Extension Option

(a) Option to Extend Term

City grants to Tenant two options to extend the Term of this Lease as to the entire Premises only (each, an "Extension Option") for an additional sixty (60) months (each, an "Extension Term") as described in the Basic Lease Information and upon the following terms and conditions. Tenant may exercise an Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one hundred eighty (180) days prior to the then-applicable expiration date of this Lease. Any such notice by Tenant shall be irrevocable by Tenant. Tenant shall not have the right to exercise an Extension Option during any period during which Tenant is in default and has not successfully cured the default. Failure to exercise the first Extension Option shall render the second Extension Option automatically null and void. If any event of default by Tenant is outstanding hereunder either at the time of Tenant's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Tenant to reject Tenant's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right, but not the obligation, to void Tenant's Extension Option if (1) Tenant has assigned its interest hereunder or sublet more than fifty percent (50%) of the Premises, and (2) Tenant has not fulfilled its obligation to continuously operate a low cost public health facility in accordance with the requirements of Exhibit E, as reasonably determined by the Director of Real Estate.

(b) Base Rent and Other Terms

If Tenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Lease. Base Rent shall continue to increase each year on the Adjustment Dates.

28. GENERAL PROVISIONS

28.1 Notices

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant's vacating, abandoning or surrendering the Premises; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day

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after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telephone number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile. Tenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

28.2 No Implied Waiver

No failure by City to insist upon the strict performance of any obligation of Tenant under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. Any consent by City hereunder shall not relieve Tenant of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

28.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Real Estate, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Tenant, and City's agreement may be made upon the sole approval of the Director of Real Estate, or his or her designee; provided, however, material amendments or modifications to this Lease (a) changing the legal description of the Premises, (b) increasing the Term, (c) increasing the Rent, (d) changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use) of this Lease, and (e) any other amendment or modification which materially increases the City's liabilities or financial obligations under this Lease shall additionally require the approval of the City's Board of Supervisors.

28.4 Authority

If Tenant signs as a corporation or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

28.5 Parties and Their Agents; Approvals

The words "City" and "Tenant" as used herein shall include the plural as well as the singular. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party, and the term "Invitees" when used with respect to Tenant shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of Tenant. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through City's Director of Real Estate unless otherwise provided in this Lease, subject to applicable law.

28.6 Interpretation of Lease

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

28.7 Successors and Assigns

Subject to the provisions of this Lease relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Tenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Building as owner or lessee, including any transfer by operation of law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

28.8 Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

28.9 Severability

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

28.10 Governing Law

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

28.11 Entire Agreement

This instrument, including the exhibits hereto, which are made a part of this Lease, contains the entire agreement between the parties and all prior written or oral negotiations, understandings and agreements are merged herein. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Tenant hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises, the Building or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Tenant by implication or otherwise unless expressly set forth herein.

28.12 Attorneys' Fees

In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs

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and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, the terms "court costs and reasonable attorneys' fees" shall mean the fees and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "court costs and attorneys' fees" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

28.13 Holding Over

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis Base Rent equal to one hundred twenty-five percent (125%) of the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the term hereof. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease.

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a Base Rent equal to the latest Base Rent payable by Tenant hereunder prior to such expiration, together with an amount estimated by City for the monthly Additional Charges payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

28.14 Time of Essence

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

28.15 Cumulative Remedies

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

28.16 Survival of Indemnities

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof.

28.17 Signs

Tenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without City's prior written consent, which City may give or withhold in its sole discretion.

28.18 Relationship of the Parties

City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venturer or member in any joint enterprise with Tenant. Neither party shall act as the agent of the other party in any respect hereunder. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

28.19 Light and Air

Tenant covenants and agrees that no diminution of light, air or view by any structure that may hereafter be erected (whether or not by City) shall entitle Tenant to any reduction of the Base Rent or Additional Charges under this Lease, result in any liability of City to Tenant, or in any other way affect this Lease or Tenant's obligations hereunder.

28.20 No Recording

Tenant shall not record this Lease or any memorandum hereof in the public records.

28.21 Options Personal

Any right or option to extend the Term of this Lease or renew this Lease is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Assignment of this Lease or Subletting of the Premises, or any portion thereof, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

28.22 Public Transit Information

Tenant shall 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, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Tenant's sole expense.

28.23 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 that Tenant may be subject to the payment of property taxes levied on such interest.

(b) Tenant agrees to pay taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises that may be imposed upon Tenant by law, all of which shall be paid when the same become due and payable and before delinquency.

(c) Tenant agrees not to allow or suffer a lien for any such taxes to be imposed upon the Premises or upon any equipment or property located thereon without promptly discharging the same, provided that Tenant, if so desiring, may have reasonable opportunity to contest the validity of the same.

(d) San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to such matters to City within thirty (30) days after the applicable transaction. Tenant agrees to provide such information as may be requested by City to enable it to comply with this requirement.

28.24 Non-Liability of City Officials, Employees and Agents

No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

28.25 Non-Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

In the performance of this Lease, Tenant agrees 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,

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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 such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subleases and Other Subcontracts

Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall 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 such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) CMD Form

As a condition to this Lease, Tenant shall 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 hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

(e) Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to 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 such 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.

28.26 No Relocation Assistance; Waiver of Claims

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, WAIVES 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 laws, 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.), except as otherwise specifically provided in this Lease with respect to a Taking.

28.27 MacBride Principles - Northern Ireland

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

28.28 Tropical Hardwood and 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 expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Tenant Improvements or the Alterations, 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.

28.29 Restrictions on the Use of Pesticides

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 shall 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 of this Lease, (ii) describes the steps Tenant will take to meet the 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 the City. Tenant shall comply,

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and shall require all of Tenant's contractors to comply, with the IPM plan approved by the City and shall 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, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, 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), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will 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 any such pesticide application shall 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>.

28.30 First Source Hiring Agreement

Tenant and City are parties to the First Source Agreement attached to this Lease as Exhibit C pursuant to San Francisco Administrative Code, Chapter 83 (the "First Source Agreement"). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

28.31 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.

28.32 Conflicts of Interest

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

28.33 Charter Provisions

This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

28.34 Drug-Free Workplace

INTENTIONALLY OMITTED

28.35 Prohibition of Tobacco Sales and Advertising

Tenant acknowledges and agrees that no advertising or sale of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

28.36 Prohibition of Alcoholic Beverage Advertising

Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall 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.

28.37 Counterparts

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

28.38 Effective Date

This Lease shall become effective on the date upon which (a) City's Board of Supervisors and the Mayor, in their sole and absolute discretion, adopt a resolution or enact an ordinance approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed and delivered by the parties hereto.

28.39 Acceptance of Lease by Tenant

This Lease shall be null and void unless Tenant accepts it and returns to City three (3) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time of the tenth (10th) business day following delivery of the City approved Lease to Tenant via email or other method.

28.40 Memorandum of Lease

INTENTIONALLY OMITTED

28.41 Requiring Health Benefits for Covered Employees

Unless exempt, Tenant agrees to 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 the same 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 shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(c) Tenant's failure to comply with the HCAO shall constitute a material breach of this Lease. City shall notify Tenant if such 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 such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(d) Any subcontract entered into by Tenant shall require the subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Tenant shall notify City's Purchasing Department when it enters into such a subcontract and shall 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 shall 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 obtain a cure of the violation.

(e) Tenant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to 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.

(f) 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.

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(g) Tenant shall keep itself informed of the current requirements of the HCAO.

(h) Tenant shall 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.

(i) Tenant shall 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.

(j) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

(k) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars (\$25,000) Fifty Thousand Dollars (\$50,000) for nonprofits, 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), all the agreements shall 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.

28.42 Notification of Limitations on 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, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each Tenant; each member of Tenant's board of directors, and Tenant's 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 each person, entity or committee described above.

28.43 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 Environment Code Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment 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, ammoniac 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 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.

28.44 Resource-Efficient City Buildings

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

28.45 Food Service and Packaging Waste Reduction Ordinance

Tenant agrees to comply fully with and be bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. Accordingly, Tenant acknowledges that City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease, and shall instead use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware. This provision is a material term of this Lease.

28.46 San Francisco Packaged Water Ordinance

Tenant agrees to comply with San Francisco Environment Code Chapter 24 (“Chapter 24”). Tenant shall 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 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 Agreement and the Director of the City’s Department of the Environment may impose administrative fines as set forth in Chapter 24.

28.47 Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and

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Employment Decisions; “Chapter 12 T”), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all subtenants to comply with such provisions. Tenant’s failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and subtenants shall not inquire about, require disclosure of, or if such 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 shall 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 shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants shall 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 at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants shall 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 shall 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 understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall 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, termination or suspension in whole or in part of this Lease.

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(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.

28.48 Cooperative Drafting

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

28.49 Vending Machines; Nutritional Standards

Tenant shall not install or permit any vending machine on the Premises without the prior written consent of the Director of Real Estate. Any permitted vending machine must comply with the food nutritional 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 agrees to 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 28.48 shall be deemed a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord shall 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.]

28.50 All-Gender Toilet Facilities

If applicable, Tenant shall 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 Real Estate for guidance.

28.51 Force Majeure

Whenever a period of time is prescribed for the taking of an action by City or Tenant, the period of time for the performance of such action shall be extended by the number of days that the performance is actually delayed due to strikes, acts of God, accidents, strikes, lockouts, shortages of labor or materials, protests, riots, demonstrations, war, civil disturbances and other causes beyond the reasonable control of the performing party ("Force Majeure"). Events of

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Force Majeure shall not extend any period of time for the payment of Rent or other sums payable by either party or any period of time for delivery of any required documentation (including, but not limited to, environmental notices, insurance certificates and estoppel certificates) the written exercise of an option or right by either party. Force Majeure does not include failure to obtain financing or have adequate funds (unless such lack results from some other event of Force Majeure such as failure of a bank's accounting or computers which is caused by Force Majeure). For purposes hereof, as it relates to Tenant's construction of the Tenant Improvements.

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 TO THIS LEASE UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION OR ORDINANCE, AND THIS LEASE SHALL BE NULL AND VOID IF CITY'S MAYOR AND THE BOARD OF SUPERVISORS DO NOT APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION OR ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGE]

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

TENANT:

ARTSPAN, a California 501(c)(3) nonprofit corporation

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

ANDRICO Q. PENICK
Director of Real Estate

RECOMMENDED:

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

EXHIBIT A
FLOOR PLAN

EXHIBIT B

NOTICE OF COMMENCEMENT DATE

[Date]

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

RE: Acknowledgement of Commencement Date, Lease Between _____ (Tenant), and the City and County of San Francisco (Landlord), for the Premises located at _____

Dear Mr. Penick:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 20__ and the Rent Commencement Date (as defined in the Basic Lease Information is _____, 20__.

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

Very truly yours,

By: _____
Title: _____

Accepted and Agreed:

By: _____
Andrico Q. Penick
Director of Real Estate

Dated: _____

EXHIBIT C

FIRST SOURCE AGREEMENT [SEE ATTACHED]

EXHIBIT D

RULES AND REGULATIONS

1. The sidewalks, halls, passages, exits, entrances, elevators and stairways of the Building shall not be obstructed by Tenant or used by it for any purpose other than for ingress to and egress from the Premises. City shall in all cases retain the right to control and prevent access to the halls, passages, exits, entrances, elevators, escalators and stairways that are not for the use of the general public, and City shall in all cases retain the right to control and prevent access thereto of all persons whose presence in the judgment of City would be prejudicial to the safety, character, reputation and interests of the Building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities. Tenant shall not go upon the roof of the Building, except in areas that City may designate as "Common Areas" from time to time.
2. No sign, placard, picture, name, advertisement or notice visible from the exterior of the Premises shall be installed or displayed by Tenant on any part of the outside or inside of the Building without the prior written consent of City. City shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors shall be printed, painted, affixed or inscribed at the expense of Tenant by a person approved by City, which approval will not be unreasonably withheld. Material visible from outside the Building will not be permitted.
3. The Premises shall not be used for the storage of merchandise held for sale to the general public or for lodging. No cooking shall be done or permitted by Tenant on the Premises, except that use by Tenant of Underwriters' Laboratory-approved microwave oven and portable equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted, provided that such use is in accordance with all applicable federal, state and local laws, codes, ordinances, rules and regulations.
4. Tenant shall not employ any person or persons other than the janitor of City for the purpose of cleaning the Premises, unless otherwise agreed to by City in writing. Except with the written consent of City, no person or persons other than those approved by City shall be permitted to enter the Building for the purpose of cleaning same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness. Janitor service will not be furnished on nights when rooms are occupied after 9:00 p.m. unless, by agreement in writing, service is extended to a later hour for specifically designated rooms.
5. City will furnish Tenant with two (2) keys to the Premises, free of charge. City may make a reasonable charge for such additional keys and for having locks changed. Tenant shall not make or have made additional keys without City's prior written consent, which consent shall not be unreasonably withheld or delayed. Tenant shall not alter any lock or install any new or additional locking devices without the prior written consent of City. All locks installed in the Premises, excluding Tenant's vaults and safes, or special security areas (which shall be designated by Tenant in a written notice to City), shall be keyed to the Building master key system. City may make reasonable charge for any additional lock or any bolt (including labor) installed on any door of the Premises. Tenant, upon the termination of its tenancy, shall deliver to City all keys to doors in the Premises. If Tenant loses any keys, Tenant shall pay City for the cost of re-keying the Premises.

6. The elevators to be used for the loading of freight shall be available to Tenant in accordance with such reasonable scheduling as City shall deem appropriate. Tenant shall schedule with City, by written notice given no less than forty-eight (48) hours in advance, its move into or out of the Building, which moving shall occur only on weekend days if required by City; and Tenant shall reimburse City upon demand for any additional security or other charges incurred by City as a consequence of such moving. The persons employed by Tenant to move equipment or other items in or out of the Building must be acceptable to City. The floors, corners and walls of elevators and corridors used for the moving of equipment or other items in or out of the Building must be adequately covered, padded and protected, and City may provide such padding and protection, at Tenant's expense, if City determines that such measures undertaken by Tenant or Tenant's movers are inadequate. City shall have the right to prescribe the weight, size and position of all equipment, materials, supplies, furniture or other property brought into the Building. Heavy objects shall, if considered necessary by City, stand on wood strips of such thickness as is necessary to properly distribute the weight of such objects. City will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Building by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.
7. Tenant shall not use or keep in the Premises or the Building any kerosene, gasoline or flammable, combustible or noxious fluid or materials (other than those customarily used in medical clinics) or use any method of heating or air conditioning other than those limited quantities necessary for the operation and maintenance of normal office and medical equipment. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to City or other occupants of the Building by reason of noise, odors, and/or vibrations, or interfere in any way with other tenants or those having business in the Building.
8. In the case of invasion, mob, riot, public excitement or other circumstances rendering such action advisable in City's opinion, City reserves the right to prevent access to the Building during the continuance of same by such action as City may deem appropriate, including closing any doors in the Building.
9. The directory of the Building will be provided for the display of the name and location of tenants and a reasonable number of the principal officers and employees of tenants, and City reserves the right to exclude any other names therefrom. Any additional name that Tenant shall desire to place upon the directory must first be approved by City and, if so approved, a charge will be made for each such name.
10. Tenant shall not cut or bore holes for wires in the partitions, woodwork or plaster of the Premises except as approved by City. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by City.
11. No curtains, draperies, blinds, shutters, shades, screens or other coverings, hangings or decorations shall be attached to, hung or placed in, or used in connection with any window of the Building without City's prior written consent. In any event, with the prior written consent of City, such items shall be installed on the office side of City's standard window covering and shall in no way be visible from the exterior of the Building.
12. Tenant shall see that the doors of the Premises are closed and locked and that all water faucets, water apparatus and utilities are shut off before Tenant or Tenant's employees leave the Premises, so as to prevent waste or damage, and for any default or carelessness in this regard Tenant shall make good all injuries sustained by other tenants or occupants of the Building or City. On multiple-tenancy floors, all tenants shall keep the doors to the

Building corridors closed at all times except for ingress and egress, and all tenants shall at all times comply with any rules or orders of the fire department with respect to ingress and egress.

13. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, no foreign substance of any kind whatsoever shall be deposited therein. The expense of any breakage, stoppage or damage resulting in any violation of this rule shall be borne by Tenant.
14. Except with City's prior consent, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any sidewalk or mall area adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theater tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants or any other portion of the Building, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in Tenant's lease.
15. Tenant shall not install any radio or television antenna, loudspeaker, or other device on or about the roof area or exterior walls of the Building. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.
16. Tenant shall not use in any space, or in the common areas of the Building, any hand-trucks except those equipped with rubber tires and side guards or such other material-handling equipment as City may approve. No other vehicles of any kind shall be brought by Tenant into the Building or kept in or about the Premises.
17. Tenant shall store all its trash and garbage within the Premises until removal of the same to such location in the Building as may be designated from time to time by City. No material shall be placed in the Building trash boxes or receptacles if such material is of such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco without being in violation of any law or ordinance governing such disposal.
18. All loading and unloading of merchandise, supplies, materials, garbage and refuse shall be made only through such entryways and freight elevators and at such times as City shall designate. In its use of the loading areas of the Building, Tenant shall not obstruct or permit the obstruction of said loading areas, and at no time shall Tenant park vehicles therein except for immediate loading and unloading purposes.
19. Canvassing, soliciting, peddling or distribution of advertisements in the Building is prohibited and Tenant shall cooperate to prevent the same.
20. Tenant shall immediately, upon request from City (which request need not be in writing), reduce its lighting in the Premises for temporary periods designated by City, when required in City's judgment to prevent overloads of the mechanical or electrical systems of the Building, to the extent that such reduction in lighting does not materially interfere with Tenant's operation as a medical clinic.
21. City reserves the right to select the name of the Building and to make such change or changes of name as it may deem appropriate from time to time, and Tenant shall not refer to the Building by any name other than: (i) the name as selected by City (as the same may be changed from time to time), or (ii) the postal address approved by the United States Post

Office. Tenant shall not use the name of the Building in any respect other than as an address of its operation in the Building without the prior written consent of the City.

22. Tenant assumes all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry closed.
23. No vending machine shall be maintained or operated within the Premises or the Building without City's prior written consent.
24. All incoming mail and package deliveries shall be received at the area in the Building designated by City for such purposes and distributed through means established by City. No messenger or other delivery personnel shall be permitted to enter any area of the Building other than the area designated by City for the pick-up and receipt of such deliveries.
25. City reserves the right to exclude or expel from the Building any person who is, in the judgment of City, intoxicated or under the influence of alcohol or other illicit drug or who is in violation of any of the Rules or Regulations of the Building.
26. No animal or bird shall be permitted in the Premises or the Building, except for seeing eye dogs when in the company of their masters.
27. The requirements of Tenant will be attended to only upon application by telephone or writing or in person at the management office of the Building. Employee of City shall not perform any work or do anything outside of their regular duties unless under special instructions from City.
28. City may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by City shall be construed as a waiver of these Rules and Regulations in favor of any other tenant or tenants, nor prevent City from thereafter enforcing any such Rules and Regulations against any or all of the tenants of the Building.
29. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean Tenant's associates, agents, clerks, employees and visitors. Wherever the word "City" occurs in these Rules and Regulations, it is understood and agreed that it shall mean City's assigns, agents, officers, employees and visitors.
30. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of premises in the Building.
31. City reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for the safety, care and cleanliness of the Building, and for the preservation of good order therein.
32. Tenant shall be responsible for the observance of all the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

EXHIBIT E

EXHIBIT F

GENERAL DESCRIPTION OF TENANT IMPROVEMENTS

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

BOARD OF SUPERVISORS
2010 NOV 13 PM 2:00
Time stamp
or meeting date

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

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [redacted] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [redacted] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [redacted]
- 9. Reactivate File No. [redacted]
- 10. Topic submitted for Mayoral Appearance before the BOS on [redacted]

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

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

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

Sponsor(s):

District 11 Supervisor Ahsha Safai

Subject:

Lease of City Property - ArtSpan - 45 Onondaga Avenue - \$50,928 per year Rent

The text is listed:

Resolution authorizing the Director of Property to execute a Ten (10)-year commercial lease, with Two (2) Five (5) year extension options, between City and ArtSpan, for the City-owned property located at 45 Onondaga Avenue for \$50,928 per year; authorizing the reimbursement of up to \$410,000 for tenant improvements; finding the proposed transaction is in conformance with the City's General Plan, and the eight priority policies of Planning Code, Section 101.1; and adopting CEQA findings.

Signature of Sponsoring Supervisor:



For Clerk's Use Only



SAN FRANCISCO PLANNING DEPARTMENT

General Plan Referral

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

Date: November 28, 2018
Case No. **2018-015846GPR**
35-45 Onondaga Avenue - Sublease

Reception:
415.558.6378

Block/Lot No: 6959/017
6959/016

Fax:
415.558.6409

Project Sponsors: Andrico Q. Penick, Director
San Francisco Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

Planning
Information:
415.558.6377

Applicant: Sandi Levine
415-554-9867
sandi.levine@sfgov.org

Staff Contact: Lisa Fisher – (415) 575-8715
lisa.fisher@sfgov.org

Recommendation: Finding the project, on balance, is in conformity with the
General Plan

Recommended
By: John Rahaim, Director of Planning

PROJECT DESCRIPTION

On November 7, the Planning Department (herein “the Department”) received a request from the City and County of San Francisco Real Estate Division to consider two long-term, below-market rate leases to non-profit/neighborhood-serving organizations in a vacant, City-owned, former public health facility. Clinic by the Bay is a health care clinic being considered for 35 Onondaga, which provides services to low-income persons. ArtSpan is a non-profit arts organization being considered for 45 Onondaga, which provides workspace to local artists, classes, and public events. These organizations would also provide public access to this historic building and features, including a restored historic mural.

Both proposed uses currently require Conditional Use (CU) authorization under existing zoning. Thirty-five Onondaga is in the Excelsior Outer Mission Neighborhood Commercial District (NCD), within which Clinic by the Bay could be considered a Community Facility use. Forty-five Onondaga is a Public District, within which ArtSpan could be considered an Arts Activity or Community Facility. Arts Activities are Principally Permitted (P) only on 35 Onondaga.

ENVIRONMENTAL REVIEW

The project was determined to be categorically exempt under CEQA Guidelines Section 15303 (Class 3, New Construction or Conversion of Small Structures) on 11/28/2018 (Planning Case No. 2018-015846PRJ).

GENERAL PLAN COMPLIANCE AND BASIS FOR RECOMMENDATION

As described to follow, the Project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, **in-conformity** with the following Objectives and Policies of the General Plan outlined below.

Note: General Plan Objectives and Policies are in **bold font**; General Plan text is in regular font. Staff comments are in *italic font*.

Arts Element:

ART.SUP.1. RECOGNIZE THE ARTS AS NECESSARY TO THE QUALITY OF LIFE FOR ALL SEGMENTS OF SAN FRANCISCO.

ART.SUP.1.4. Provide access to the creative process and cultural resources for all neighborhoods.

ArtSpan promotes and supports local artists in their facilities, as well as provides opportunities for the community to experience and interact with art and artists, and create art.

ART.ENV.1. SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

ART.ENV.1.7. Encourage the use of available and existing facilities under local government jurisdiction by artists and arts organizations.

The proposed long-term, below-market rate lease provides affordability and stability to an art-based non-profit organization, helping maintain art in San Francisco.

Commerce and Industry Element:

GOVERNMENT, HEALTH AND EDUCATION SERVICES POLICY 7.3

Promote the provision of adequate health and educational services to all geographical districts and cultural groups in the city.

Clinic by the Bay promotes and supports healthy residents in the surrounding community, especially focused on lower-income persons. Its location in the Excelsior also provides health services to those that may find it difficult to travel to downtown or other areas where health services are currently concentrated, such as Mission Bay, Laurel Heights, and the Van Ness corridor.

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:

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 proposed sublease will not negatively affect existing neighborhood-serving retail uses or opportunities for employment in or ownership of such businesses.
2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.
The proposed sublease would not displace any existing housing. The leases will facilitate the renovation and use of an historic building that contributes to neighborhood character.
3. That the City's supply of affordable housing be preserved and enhanced.
The proposed sublease would not displace any existing affordable housing.
4. That commuter traffic not impede Muni transit service or overburden our streets or neighborhood parking.
The proposed property leases are not anticipated to impact MUNI service, but could impact neighborhood street parking; no on-site parking will be provided. The project applicant is encouraged to work with tenants to provide ample bike parking, and information to staff and users that facilitates sustainable travel by walking, biking, and transit.
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 proposed property leases are not displacing anyone and could enhance the economic base in this area.
6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.
The proposed property sublease would not affect the City's preparedness to protect against injury and loss of life in an earthquake. The renovation is anticipated to improve seismic safety of the property.
7. That landmarks and historic buildings be preserved.
The proposed property leases will support historic preservation of the existing building.
8. That our parks and open space and their access to sunlight and vistas be protected from development.
The proposed leases will not impact existing open spaces or access to light/views, and will maintain its existing tree. Due to the set-back nature of the property on a corner lot, the project applicant is encouraged to work with new tenants to consider adding an attractive and usable public open space/amenity.

RECOMMENDATION: Finding the Project, on balance, in-conformity with the General Plan

cc: Sandi Levine, Real Estate Division

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

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

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: ArtSpan (501(c)3 nonprofit organization)	
<p><i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i></p> <ol style="list-style-type: none"> 1. See Attached 2. Joen Madonnace, Executive Director 3. NA, non profit organization without ownership 4. NA 5. NONE 	
Contractor address: 934 Brannan Street, 2nd Floor San Francisco, CA 94103	
Date that contract was approved: <i>(By the SF Board of Supervisors)</i>	Amount of contracts: \$410,000
Describe the nature of the contract that was approved: long term lease at below market rent in exchange for tenant paid improvements with City contribution for shell of building	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

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

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

Print Name of Board

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

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

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

BOARD OF DIRECTORS, ARTSPAN, INC.

Curtis Wilhelm, Chair

Matt McKinley, Vice-chair

Jay R. Shah, CPA, treasurer

ROBO GERSON, Secretary

Noah Antieau

Ethan James Appleby

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