

OFFICE LEASE

between

THIRD AND MISSION ASSOCIATES, LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

167 Jessie Street, San Francisco, California

December 12, 2014

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EXHIBIT B – Emergency Access Easement Areas

EXHIBIT C – Disability Access Obligations Notification to Prospective Tenant

## OFFICE LEASE

THIS OFFICE LEASE (this “**Lease**”), dated for reference purposes only as of December 12, 2014, is by and between THIRD AND MISSION ASSOCIATES, LLC, a California limited liability company (“**Landlord**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Tenant**”).

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

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

Lease Reference Date:	December 12, 2014
Landlord:	THIRD AND MISSION ASSOCIATES, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building ( <u>Section 2.1</u> ):	167 Jessie Street, San Francisco, California, commonly known as “ <b>The Paramount</b> ”
Premises ( <u>Section 2.1</u> ):	The leasable area of that portion of the third and fourth floors commonly known as the “ <b>Jessie Hotel</b> ” portion of the Building, as generally depicted on the attached <u>Exhibit A</u> .
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 4,124 rentable square feet of space
Term ( <u>Section 3</u> ):	Commencement Date: April 1, 2014. Expiration Date: March 31, 2101
City Cancellation Right ( <u>Section 3.1</u> )	City shall have the right at any time during the Term to cancel this Lease without any penalty, fee or other liability, by giving Landlord not less than three hundred sixty-five (365) days prior written notice.
Extension Option ( <u>Section 3.4</u> ):	None

Base Rent ( <u>Section 4.1</u> ):	Base Rent shall be calculated in accordance with the provisions of <u>Section 4.1</u> below.
Tenant's Share ( <u>Section 4.2</u> ):	Two and 62/100 percent (2.62%), subject to the Sublease Condition described in <u>Section 4.2(b)(iv)</u> below.
Use ( <u>Section 5.1</u> ):	General non-profit office use, subject to the provisions of <u>Section 5.1</u> below.
Utilities and Services ( <u>Section 9.1</u> ):	Landlord shall furnish utilities for the Premises as further set forth in <u>Section 9.1</u> . Tenant shall contract directly for telephone services and janitorial services.
Notice Address of Landlord ( <u>Section 23.1</u> ):	Third and Mission Associates, LLC c/o The Related Companies, L.P. 60 Columbus Circle New York, New York 10019
with a copy to:	Michael, Levitt & Rubenstein, LLP 60 Columbus Circle New York, New York, 10022 Attn: Jeffrey A. Levitt, Esq.
Key Contact for Landlord:	Bruce A. Beal
Landlord Contact Telephone No.:	(212) 801-1000
Notice Address for Tenant ( <u>Section 23.1</u> ):	Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: John Updike, Director of Property Re: 167 Jessie Street Fax No.: (415) 552-9216
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Real Estate/Finance Team Re: 167 Jessie Street Fax No.: (415) 554-4755
Key Contact for Tenant:	Director of Property
Tenant Contact Telephone No.:	415-554-9850
Brokers ( <u>Section 23.8</u> ):	None

Other Noteworthy Provisions (Section 14): Sublease terms and conditions.

Security Deposit: None

## 2. PREMISES

### 2.1 Lease Premises; Property

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and generally depicted on the floor plan attached hereto as Exhibit A (the “**Premises**”). Landlord and Tenant hereby agree that the rentable square footage of the Premises has been agreed to by Landlord and Tenant and is as stipulated in the Basic Lease Information and there shall be no remeasurement of the Premises by Tenant. The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the “**Property**.”

### 2.2 Common Area; Access to Premises

The term “**Common Area**” shall mean all areas and facilities within the Building and the parcel or parcels of real property on which the Building and its associated improvements are located that are designated by Landlord, from time to time, for the non-exclusive use of Landlord, Tenant or any other tenant or other occupant of the Property, such as lobbies, fire vestibules, restrooms on multi-tenant floors, mechanical areas, tenant and ground floor corridors, elevator foyers, electrical and janitorial closets, ground floor lobbies, telephone and equipment rooms, pedestrian sidewalks, landscaped areas, trash enclosures and other similar facilities maintained for the benefit of Building tenants and invitees. Landlord shall operate, manage, equip, light, insure, secure, repair and maintain the Common Area in such manner as Landlord shall in its sole discretion determine, and may from time to time change the size, location and nature of any Common Area and may make installations therein and move and remove such installations. Landlord may at any time close temporarily any Common Area to make repairs or changes to prevent the acquisition of public rights in such area, and may do such other acts in and to the Common Area as in its judgment may be necessary or desirable. Except in emergency situations, Tenant’s sole right of ingress and egress to and from the Premises shall be by means of the entrance to the Building located on Jessie Street and the elevator that has been designated for the use of Tenant in the location shown on Exhibit A (the “**Premises Elevator**”).

### 2.3 Emergency Access Easement Areas

Landlord hereby grants to Tenant a non-exclusive easement for the purpose of emergency ingress and egress to and from the Premises in, over and through those portions of the Common Area described in Exhibit B attached hereto (i.e., stairways 3 and 4 which have been darkened on the exhibit) and incorporated herein by this reference (the “**Emergency Access Easement Areas**”). The location of the Emergency Access Easement Areas may be relocated from time to time by Landlord in its reasonable discretion without Tenant’s consent. Landlord shall deliver to Tenant written notice of any such relocation at least fifteen (15) days prior to the effective date of such relocation. Tenant shall comply with the Rules and Regulations in the use of the Emergency Access Easement Areas and any other rules and regulations adopted by Landlord in



its reasonable discretion with respect to the Emergency Access Easement Areas. Except as expressly set forth in this Section, neither Tenant nor its agents, employees, guests or invitees shall have any rights of access in, over or through any other portion of the Building, including without limitation the Common Area and those portions of the Building reserved by Landlord for the exclusive use by residential occupants of the Building.

### **3. TERM**

#### **3.1 Term of Lease; Termination Right of City**

(a) Term of Lease. The Premises are leased for a term (the “**Term**”) commencing on the Commencement Date specified in the Basic Lease Information and ending on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease; provided that as a condition precedent to the effectiveness of this Lease, City’s Mayor and Board of Supervisors shall have approved the transaction contemplated by this Lease, in their respective sole and absolute discretion..

(b) Termination Right of City. Notwithstanding anything to the contrary herein, City shall have the right at any time during the Term to terminate this Lease without any penalty, fee or other liability, by giving Landlord not less than three hundred sixty-five (365) days’ prior written notice (the “**Termination Notice**”). The Termination Notice shall specify the date that the Lease termination shall be effective. Upon the termination date specified in the Termination Notice, this Lease shall terminate and be of no further force or effect, except with respect to those provisions intended to survive the expiration or earlier termination of this Lease, Tenant’s surrender and restoration obligations under this Lease and for any obligations, including rent, accrued prior to such termination date.

#### **3.2 Commencement Date and Expiration Date**

The dates on which the Term commences and expires pursuant hereto are referred to respectively as the “**Commencement Date**” and the “**Expiration Date**.”

### **4. RENT**

#### **4.1 Base Rent**

On the Commencement Date, City shall pay to Landlord, in advance, base rent (the “**Base Rent**”) in an amount equal to One Dollar (\$1.00) per year for each year of the Term of this Lease for a total payment of Eighty-Seven Dollars (\$87.00).

#### **4.2 Additional Rent**

(a) Additional Rent. Tenant shall pay to Landlord (or, where specified in this Lease, to third parties) all charges and other amounts whatsoever as provided in this Lease at the place where the Base Rent is payable, and Landlord shall have the same remedies for a default in the payment of such sums as for a default in the payment of Base Rent. As used herein, the term “**Additional Rent**” shall mean all monetary obligations of Tenant hereunder other than the obligation for the payment of Base Rent, and the term “**Rent**” shall mean all Base Rent plus all Additional Rent.

(b) Definitions. For purposes of this Section 4.2, the following terms shall have the meanings hereinafter set forth:

(i) “**Tenant’s Share**” shall have the meaning set forth in the Basic Lease Information, except that, where “Expenses” consist of expenses related solely to the Premises, “Tenant’s Share” shall mean one hundred percent (100%).

(ii) “**Real Estate Taxes**” shall mean all taxes, assessments and charges levied upon or with respect to the Property or any personal property of Landlord used in the operation thereof, or Landlord’s interest in the Property or such personal property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees or assessments for transit, housing, police, fire or other governmental services or purported benefits to the Property, service payments in lieu of taxes, and any tax, fee or excise on the act of entering into this Lease, or any other lease of space in the Property, or on the use or occupancy of the Property or any part thereof, or on the rent payable under any lease or in connection with the business of renting space in the Property, or in connection with the sale or transfer of the Property, that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California, or any political subdivision, public corporation, district or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes, whether or not now customary or in the contemplation of the parties on the date of this Lease. Real Estate Taxes shall not include franchise, inheritance or capital stock taxes, or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax. Real Estate Taxes shall also include reasonable legal fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes; provided that such fees, costs and disbursements do not exceed the actual savings in Real Estate Taxes over the Term of this Lease. If any assessments are levied on the Property, Tenant shall have no obligation to pay more than that amount of annual installments of principal and interest that would become due during the Term of this Lease had Landlord elected to pay the assessment in installment payments, even if Landlord pays the assessment in full.

(iii) “**Tax Year**” shall mean each twelve (12) consecutive month period commencing January 1<sup>st</sup> of the calendar year during which the Commencement Date of this Lease occurs.

(iv) “**Expenses**” shall mean the following costs and expenses paid or incurred by Landlord in connection with the management, operation, maintenance and repair of the Property: (a) the cost of such insurance on the Property as landlord, in its sole and absolute discretion, elects to obtain including, without limitation, insurance premiums and any deductible amounts paid by Landlord; (b) fees, charges and other costs, consulting fees, legal fees, accounting fees, and fees of all independent contractors engaged by Landlord directly related to the operation of the Property; (c) compensation (including employment taxes and fringe benefits) of all on-site and off-site employees of Landlord or its agent at the rank of property manager or below who perform duties in connection with the operation, maintenance and repair of the Property, such compensation to be appropriately allocated for persons who also perform duties

unrelated to the Property; (d) an office in the Building for the management of the commercial portion of the Property, including, without limitation, expenses of furnishing and equipping such office and the rental value of any space occupied for such purposes; and (e) the cost of any capital improvements made to the Property after the Commencement Date (i) as a labor saving device or to effect other economies in the operation or maintenance of the Property (from which a reasonable person would anticipate that savings would actually result), (ii) to repair or replace capital items which are no longer capable of providing the services required of them (other than in connection with a casualty to which Section 12 applies), or (iii) that are made to the Property after the date of this Lease and are required under any Laws (as hereinafter defined) (excluding, however, any capital improvements required by Laws that are the responsibility of Tenant under Section 10.2), which shall be paid directly by Tenant pursuant to Section 10.2, or which are the responsibility of another tenant pursuant to the provisions of the lease to such other tenant), where such capital improvements were not required under any such Laws to be completed with respect to the Building or Common Area prior to the date the Lease was executed or which requirement was triggered by any event occurring after the date of this Lease. With respect to any capital improvements described in clause (e) above, the cost of such capital improvements incurred during any calendar year shall be amortized over the useful life of the capital item in question as reasonably determined by Landlord, together with interest on the unamortized balance at the greater of (x) the rate paid by Landlord on funds borrowed for the purpose of constructing such capital improvements; and (y) ten percent (10%) per annum. Expenses for any calendar year during which average occupancy of the Building is less than one hundred percent (100%) shall be calculated based upon the Expenses that would have been incurred if the Building had an average occupancy of one hundred percent (100%) during the entire calendar year.

Notwithstanding anything to the contrary herein contained, Expenses shall not include: (aa) any rent payable pursuant to any ground lease, and debt service (including, but without limitation, interest and principal) required to be made on any Mortgage (as defined in Section 11) other than financing charges imposed in connection with funds borrowed by Landlord for the purpose of making capital improvements that are allowed hereunder to be included in Expenses; (bb) the cost of special services, goods or materials provided to any tenant; (cc) depreciation; (dd) costs occasioned by Landlord's fraud or willful misconduct under applicable laws; (ee) costs for which Landlord has received reimbursement from others; (ff) advertising or promotional costs; (gg) leasing commissions; (hh) the cost of tenant improvements and concessions in connection with preparing space for any Building tenant or in connection with a renewal or expansion; (ii) other leasing costs; (jj) legal and accounting fees arising in connection with negotiations or disputes with other tenants, prospective purchasers, lenders or other third parties; (kk) wages, salaries and benefits paid to any party above building manager; (ll) costs reimbursed from insurance, warranty or condemnation proceeds or which are reimbursable by any tenant; (mm) fines or penalties including penalties or interest payable as a result of Landlord's failure to timely pay Real Estate Taxes or Expenses; (nn) costs for services, supplies or repairs paid to any entity related to Landlord in excess of costs that would have been payable in an arm's length transaction; (oo) costs of operating, maintaining and/or repairing the loading dock; or (pp) costs relating exclusively to the residential units within the Building. All costs and expenses shall be determined in accordance with sound real estate management and accounting practices, consistently applied. Irrespective of the foregoing, Expenses shall only be due and owing by Tenant during any period of time that Tenant has a fully executed sublease in effect

with a subtenant (a “**Sublease**”) for use of all or a portion of the Premises for the permitted use (the “**Sublease Condition**”). In the event that a Sublease terminates during the Term of this Lease such that there is no Sublease in effect for use of the Premises, the Sublease Condition shall be suspended until such time as a new Sublease is in effect at which time City’s obligation to pay Expenses and other costs arising under this Lease shall be restored. City shall notify Landlord within ten (10) days of the effective date or termination date of any Sublease in order to advise Landlord of any changes to the status of the Sublease Condition.

(c) Additional Rent for Real Estate Taxes and Expenses.

(i) Tenant shall pay Landlord as “Additional Rent” during each year commencing on the Commencement Date and ending on the Expiration Date (prorated for any partial calendar year during the Term of this Lease), (i) Tenant’s Share of Expenses, and (iii) Tenant’s Share of Real Estate Taxes for the then current tax year. Tenant’s Share of Expenses and Tenant’s Share of Real Estate Taxes shall be separately calculated.

(ii) With reasonable promptness after Landlord has received the annual tax bills for any Tax Year, Landlord shall furnish Tenant with a statement which shall include a copy of the tax bill (herein called “**Landlord’s Tax Statement**”) setting forth the amount of Real Estate Taxes for such Tax Year and Tenant’s Share of Real Estate Taxes for such Tax Year. Tenant shall pay to Landlord, in two equal installments on or before March 10 and November 10 of each year, one-half (1/2) of Tenant’s Share of Real Estate Taxes for such Tax Year. Additionally, if Landlord receives any supplemental or other tax bills for Real Estate Taxes separate from the annual tax bill for a Tax Year, Landlord shall furnish Tenant with an additional Landlord’s Tax Statement setting forth the amount of such supplemental or other Real Estate Taxes and Tenant’s Share thereof, and Tenant shall pay to Landlord its Tenant’s Share thereof no later than thirty (30) days before the date on which Landlord is required to pay such Real Estate Taxes to the taxing authority.

(iii) Commencing on the Commencement Date and continuing on the first day of every month thereafter, Tenant shall pay Landlord, as Additional Rent, one-twelfth (1/12th) of the amount specified by Landlord as being Landlord’s estimate of and Tenant’s Share of Expenses for the applicable calendar year. If Landlord thereafter estimates that Expenses for such year will vary from Landlord’s prior estimate, Landlord may, by notice to Tenant, revise the estimate for such year (and Additional Rent for Expenses shall thereafter be payable based on the revised estimate).

(iv) As soon as reasonably practicable, but not more than one hundred twenty (120) days, after the end of the first calendar year and each calendar year thereafter, Landlord shall furnish Tenant a statement with respect to such year, showing Expenses and Additional Rent for Expenses for the year, and the total payments made by Tenant with respect thereto (a “**Year-End Statement**”). If Tenant’s Additional Rent for Expenses as finally determined for the year exceeds the total estimated payments made by Tenant on account thereof, Tenant shall pay to Landlord the deficiency within fifteen (15) days after the receipt of the Year-End Statement, and if the total estimated payments made by Tenant on account thereof exceed Tenant’s Additional Rent for Expenses as finally determined for the year, such excess shall be credited toward the next installment of Additional Rent due from Tenant to Landlord hereunder. If it has been determined that Tenant has overpaid Additional Rent for Expenses during the last

year of the Term of this Lease, then Landlord shall reimburse Tenant for such overage on or before the thirtieth (30th) day following the Expiration Date.

(v) If, for any reason Real Estate Taxes for any year during the Term are reduced, refunded or otherwise changed, Tenant's Additional Rent for Real Estate Taxes shall be adjusted accordingly. The obligations of Landlord to refund any overpayment of Additional Rent for Real Estate Taxes and of Tenant to pay any Additional Rent for Real Estate Taxes not previously paid shall survive the expiration of the Term.

(vi) To the extent any item of Real Estate Taxes or Expenses is payable by Landlord in advance of the period to which it is applicable (e.g. insurance and tax escrows required by any Mortgagee (as defined in Section 11)), or to the extent that prepayment is customary for the service or matter, Landlord may (a) include such items in Landlord's estimate for periods prior to the date such item is to be paid by Landlord and (b) to the extent Landlord has not collected the full amount of such item prior to the date such item is to be paid by Landlord, Landlord may include the balance of such full amount in a revised monthly estimate for Additional Rent for Real Estate Taxes or Expenses. If the Commencement Date or Expiration Date shall occur on a date other than the first day of January, Tenant's Share of Real Estate Taxes and Tenant's Share of Expenses for the calendar year in which the Commencement Date occurs shall be prorated.

(vii) Within ninety (90) days after receipt of any Year-End Statement from Landlord, Tenant shall have the right to examine Landlord's books and records relating to such Year-End Statement, or cause an independent audit thereof to be conducted by a nationally-recognized accounting firm which is not compensated on a contingency fee basis, to be selected by Tenant and subject to the reasonable approval of Landlord. If the audit conclusively proves that Tenant has overpaid either Tenant's Share of Expenses or Tenant's Share of Real Estate Taxes, then Landlord shall promptly reimburse Tenant for such overage, and if such overage exceeds five percent (5%) of the actual amount of Expenses or Real Estate Taxes paid by Landlord for the calendar year covered by such audit, then Landlord shall bear the cost of such audit, up to a maximum cost of Five Thousand Dollars (\$5,000.00). If Tenant fails to object to any such Year-End Statement or request an independent audit thereof within such ninety (90) day period, such Year-End Statement shall be final and shall not be subject to any audit, challenge or adjustment, except that Landlord may deliver to Tenant an amended Year-End Statement in the event that additional Expenses or Real Estate Taxes are thereafter found to be properly attributable to the calendar year in question. All of the information obtained through any audit by Tenant and any compromise, settlement or adjustment reached between Landlord and Tenant relative to the results of such audit shall be held in strict confidence by the Tenant. The audit right set forth in this Section 4.2(c)(vii) is personal to City as Tenant, and shall not apply to any assignee of said Tenant's interest in this Lease or to any subtenant.

### **4.3 Real Property Tax Exemption**

Tenant has informed Landlord that Tenant may be entitled to obtain a real property tax exemption for the Premises pursuant to the provisions of Section 202 of the California Revenue and Taxation Code. Landlord consents to Tenant seeking to obtain such an exemption provided that all applications, appraisals, documents, correspondence, writings and communications made or submitted by Tenant or any officer, director, shareholder, member, employee, agent,

contractor, consultant or representative of Tenant to the office of the Tax Assessor of the City and County of San Francisco and/or any other governmental authority, agency, department or representative (whether appointed or elected) thereof with respect thereto shall be submitted, transmitted or made through Landlord and Tenant shall provide Landlord with a copy of any such all materials received from the office of the Tax Assessor of the City and County of San Francisco and/or any other governmental authority, agency, department or representative thereof with respect thereto promptly upon receipt thereof. Tenant shall be entitled to receive the economic benefit of any such exemption which it obtains with respect to the Premises, provided, however, that the economic benefit of such exemption which Tenant shall be entitled to receive pursuant to this Section 4.3 shall not exceed the amount (if any) by which the real property taxes which Landlord is required to pay for the Property are reduced as a direct result of the granting of such exemption.

#### **4.4 Manner of Payment of Rent**

Base Rent shall be payable at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. Base Rent, together with any other amount payable by City to Landlord under this Lease, is sometimes referred to as "**Rent.**"

### **5. USE**

#### **5.1 Permitted Use**

City may use the Premises for non-profit office space uses that are not incompatible with a first class, urban mixed-use building. City shall not do or permit anything to be done in or about the Premises that will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or the Building or injure, annoy, or disturb them, or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose, or commit any waste. The Premises shall not be used for any other use without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed, so long as the proposed use is not incompatible with a first class, urban mixed-use building.

#### **5.2 Observance of Rules and Regulations**

City shall observe and comply with all reasonable rules and regulations for the Building (the "**Rules and Regulations**") promulgated by Landlord from time to time, following reasonable advance notice from Landlord of such Rules and Regulations, provided that such Rules and Regulations shall not reduce Landlord's obligations hereunder, must be applicable to the other tenants in the Building, must not materially conflict with the provisions of this Lease, must not materially increase the burdens or obligations of City, must not impose a charge upon City for services which this Lease expressly states are to be provided to City at no charge, and must not materially adversely affect the conduct of any business in the Premises which City is permitted to conduct pursuant to Section 5.1 hereof. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use commercially reasonable efforts to cause other Building tenants to comply with them, provided however, that Landlord shall not be

responsible for the nonperformance by any other tenant or occupant of the Building of any such Rules or Regulations. In the event of an express and direct conflict between the terms, covenants, agreements and conditions of this Lease and those set forth in the Rules and Regulations, as such may be modified and amended from time to time by Landlord, the terms, covenants, agreements and conditions of this Lease shall control.

### **5.3 Interference with Access**

Landlord shall provide to City access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, together with uninterrupted access thereto to the maximum extent reasonably possible, including, without limitation, during any power outages affecting the Premises or any portion of the Building; provided, however, that Landlord may interrupt City's access to the Premises or the Building in the event of an immediate threat of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy, or other emergency and in such event, Landlord will use commercially reasonable efforts to deliver reasonable notice thereof to City. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises, the Common Areas or any other portion of the Building being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall promptly undertake all commercially reasonable steps as are reasonably necessary to correct such condition. In the event such condition continues for five (5) business days and materially impairs City's ability to conduct its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and materially impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease, to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's ability to use the Premises for its permitted use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such sixty (60) day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

## **6. LEASEHOLD IMPROVEMENTS**

### **6.1 Improvements to Premises and Premises Elevator**

City shall be responsible, at its sole cost and expense, for all improvements to the Premises and to the Premises Elevator (and Tenant acknowledges that the Premises and the Premises Elevator shall be delivered in the condition set forth below in Section 10.1), including without limitation any initial improvements in or to the Premises and the installation of plumbing and bathroom(s) in the Premises and all start-up costs for the Premises Elevator, all of which shall be performed pursuant to the terms of Section 7.1; provided, however, that City shall have sole and absolute discretion regarding the timing of the initiation of the start-up work for the Premises Elevator and shall not be required to incur any maintenance costs for the Premises Elevator except from and after the date that the Sublease Condition is satisfied. Notwithstanding the foregoing, Landlord agrees to reimburse Tenant for twenty-five percent (25%) of the reasonable actual out-of-pocket costs incurred by Tenant in connection with the ongoing

maintenance of the Premises Elevator, provided, however, that Landlord shall not be required to reimburse Tenant for any such costs unless and until Tenant provides Landlord with reasonably detailed invoices evidencing such ongoing maintenance costs and such other evidence as Landlord may reasonably require. Tenant agrees that if any work must be undertaken within the Premises in order for Landlord or any other tenant or occupant in the Building to be able to obtain a certificate of occupancy or its equivalent for any other portion of the Building (such as, by way of example only, life safety work), Tenant will, promptly upon its receipt of written notice from Landlord identifying such work, commence such work and thereafter diligently pursue the same to completion (such work in any event to be completed within thirty (30) days after Landlord's written notice), and all such work shall be performed at Tenant's sole cost and expense. If Tenant fails to promptly commence or elects in a written notice to Landlord not to promptly commence, pursue and complete all such work identified in Landlord's written notice, Landlord shall have the right to enter the Premises upon reasonable notice to Tenant and perform such work at the expense of Tenant, and all costs and expenses incurred by Landlord in performing such work, shall be paid by Tenant to Landlord as Additional Rent within ten (10) days after the date that the Sublease Condition is next satisfied. Upon completion of the work, Landlord shall submit to City a bill or statement for all such costs. Promptly following written request from Tenant, Landlord shall cooperate with Tenant, at no additional cost or expense to Landlord, in obtaining any such governmental approvals, permits and licenses.

## **6.2 Telecommunications and Other Equipment**

City shall be responsible for installing any telecommunications, data and computer cabling facilities and equipment desired by City, if any, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the floors on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring; provided, however, that City shall not be permitted access to the roof of the Building without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed and further provided that any such installation shall be performed pursuant to the terms of Section 7.1.

## **6.3 Landlord Work**

Prior to the Commencement Date, Landlord shall, at its sole cost and expense, cause the following work (the "**Landlord Work**") to be performed using Building standard methods, materials and finishes: installation of a new, Building standard demising wall separating that portion of the Premises located on the third (3<sup>rd</sup>) floor of the Building from the remainder of the third (3<sup>rd</sup>) floor of the Building. Except as expressly set forth in this Section 6.3, Landlord and Tenant acknowledge and agree that Landlord shall not be required to perform any work or undertake or install any improvement in or about the Premises or the Building for the account or on behalf of Tenant.

## **6.4 Construction of Improvements that Disturb or Remove Paint**

If Landlord performs any alterations or improvements in or to the Premises, Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws,



including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or “presumed” lead-based paint (as defined below). Landlord and its Agents shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents, when disturbing or removing exterior or interior 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. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or 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 a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

## **7. ALTERATIONS**

### **7.1 Alterations by City**

City shall not make or permit any alterations, installations, additions or improvements (collectively, “**Alterations**”) to the Premises without first obtaining Landlord’s written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Landlord’s consent, provided that any such installation complies with the other terms of this Section 7.1. Any Alterations permitted hereunder shall be made at City’s cost in compliance with applicable Laws (as defined below), including without limitation all Disabilities Laws and the building standards set forth in Title 24 of the California Code of Regulations. Any disability access improvements to the Property or Premises required due to Alterations made to the Premises by Tenant shall be the responsibility of Tenant in all respects, including without limitation, cost and effort. Landlord shall, without cost to itself, reasonably cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. Tenant shall be responsible for obtaining all governmental approvals, permits and licenses required for all Alterations and shall provide Landlord with a copy of all such approvals, permits, licenses and certificates prior to commencing any work in or about the Premises. City shall not be required to remove any

Alterations upon the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves such Alterations that they must be removed at the Expiration Date or earlier termination of the Lease.

## **7.2 Title to Improvements**

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

## **7.3 City's Personal Property**

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing or otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable written request, shall execute and deliver to any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property Landlord's form of subordination agreement with respect to any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises on or prior to Expiration Date or within ten (10) days after the date of any earlier termination of the Term (but if it does not remove City's Personal Property within such time it shall have waived any rights it had with respect to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises upon reasonable written notice to Landlord and at a mutually agreed upon time to remove such property at any time during the Term or within ten (10) days after any earlier termination of the Term.

## **7.4 Alteration by Landlord**

Landlord shall use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building, including without limitation any leasehold improvement work for other tenants in the Building. Landlord shall promptly remedy any such material interference or disruption upon receiving City's written notice thereof. Notwithstanding the foregoing, City acknowledges that other tenants of the Building may perform construction in the Building during the Term of this Lease but Landlord shall require such other tenants to use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during such construction.

## **8. REPAIRS AND MAINTENANCE**

### **8.1 Landlord's Repairs**

Except to the extent otherwise provided in this Lease (including without limitation in Sections 8.2 and 12), Landlord shall repair and maintain, at its cost, and in a commercially reasonable condition, the Common Areas and the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the “**Building Systems**”), excepting those portions of such systems that are within the Premises for which Tenant has responsibility hereunder; and Landlord shall have no other duties or obligations with respect to the maintenance, repair and/or replacement of the Building. Landlord shall perform its maintenance, repair and replacement duties in such manner and to such extent as Landlord deems appropriate in its sole and absolute discretion. The costs incurred by Landlord in connection with such repair, maintenance, repair and replacement obligations shall be included in Expenses. Without limiting the foregoing, Landlord shall maintain the Building in a manner consistent with a first class, urban mixed-use building, shall provide exterior graffiti removal with reasonable frequency, and shall use commercially reasonable efforts to keep other tenants of the Building from disturbing or interfering with City's use of the Premises or permit to be done in or about the Building or the Common Areas activities that are illegal or dangerous to persons or property or constitutes a nuisance.

### **8.2 City's Repairs**

Subject to Landlord's warranty under Section 10.1 (Premises Condition) and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain at its cost all portions of the Premises (including, without limitation, all electrical, plumbing, HVAC, and mechanical systems located within the Premises or serving the Premises exclusively, the interior walls, floor coverings, ceiling (ceiling tiles and grid), fire extinguishers, outlets and fixtures, any appliances (including dishwashers, hot water heaters and garbage disposals) in the Premises), the Premises Elevator (subject to Section 6.1), and any tenant improvements and/or Alterations installed for Tenant or by or on behalf of Tenant within the Premises, in good working order and first-class condition, except for ordinary wear and tear and damage by casualty. City shall make any such required repairs and replacements that Landlord specifies in writing (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all reasonable times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City. If Tenant fails after thirty (30) days' written notice by Landlord to proceed with due diligence to make repairs required to be made by Tenant, the same may be made by Landlord at the expense of Tenant and the expenses thereof incurred by Landlord shall be reimbursed as Additional Rent within thirty (30) days after the date that the Sublease

Condition is next satisfied. Upon completion of the work, Landlord shall deliver to Tenant a bill or statement therefor.

### **8.3 Liens**

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

## **9. UTILITIES AND SERVICES**

### **9.1 Utilities and Services**

Landlord shall furnish the following utilities and services to the Premises: (a) heating and ventilation; (b) electric current; and (c) water. All such utilities and services shall be paid for by Tenant, and Landlord may cause submeters to be installed in the Premises so as to measure the amount of such utilities and services consumed. The cost of any such submeters and of installation, maintenance and repair thereof shall be paid for by Tenant, and Tenant agrees to pay Landlord promptly upon demand by Landlord for all such utilities and services consumed, as shown by said submeters, at the rates charged by the local public utility furnishing the same, plus any additional expense incurred in keeping account of the utilities and services so consumed. Tenant's use of electrical service shall not exceed, either in voltage, rated capacity, hours of use or overall load, that which Landlord deems to be standard for commercial tenants of the Building. Landlord shall provide at its cost (i) janitorial service to the Common Areas sufficient to maintain the Common Areas in a clean and orderly condition and (ii) pest control as needed to keep the Common Areas pest free. Landlord shall provide trash removal service with respect to the Building; provided that any cost incurred by Landlord in connection with such trash removal may be included in Expenses, and further provided that Tenant shall deposit trash daily in the area designated by Landlord from time to time and only through such entry-ways and elevators provided for such purposes at such times as Landlord shall designate. No material shall be placed in the trash 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 downtown area of San Francisco, California without violation of any applicable Law. If Landlord, or any local governmental authority having jurisdiction over the Building, requires separation of "wet" and "dry" garbage as of the date hereof or at any time after the date hereof, City shall comply with the requirements imposed by Landlord and/or such governmental entity (as the case may be) with respect to the separation of refuse. In addition to the foregoing, City shall participate in any recycling program currently or from time to time conducted by Landlord at the Building.

### **9.2 Conservation**

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms, so long as these measures do not unreasonably interfere with City's use of the Premises.

### 9.3 Services Provided by City at City Cost

(a) Janitorial. City, at City's sole cost, shall be responsible for providing janitorial service to the Premises as reasonably required to maintain the Premises in a clean and orderly condition. If City desires to obtain telephone or internet service in the Premises, City shall have the option, at City sole cost, to install any additional equipment or connections required for such service (provided such installations shall be subject to the approval of Landlord) and to enter into a contract with a telephone or telecommunications service provider to activate the service. City shall be responsible for the cost (including any deposits) of activating the connections, monthly fees for service, and any maintenance required. City and Landlord shall ensure that all on-site janitorial services used by either of them with respect to the Premises or the Building maintain harmonious labor relations with other janitorial service providers and other contractors working at the Building.

(b) Pest Control. City, at its sole cost and expense, shall procure and maintain in full force and effect during any period of time that the Sublease Condition is satisfied, a pest control contract (the "**Pest Contract**") for the pest extermination services to control cockroaches, rodents and other pests with a pest control firm reasonably acceptable to Landlord. City shall follow all reasonable recommendations of said contractor with respect to pest control. A copy of the then current Pest Contract shall be delivered to Landlord annually. If Tenant fails to enter into the Pest Contract or cause the performance of monthly extermination services in accordance with this Section 9.3(b), Landlord may, upon thirty (30) day notice to City, enter into such Pest Contract on behalf of City or perform the work and in either case, charge Tenant the cost thereof along with a reasonable amount for Landlord's overhead.

### 9.4 Disruption in Essential Utilities or Services

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall promptly notify City of such failure, stoppage or interruption, use commercially reasonable efforts to restore service and shall keep City reasonably apprised of its efforts. In the event Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and security, electronic communications, hazard detection and alarm, or other essential services serving the Premises (collectively, "**Essential Services**") and such inability of Landlord materially impairs City's ability to carry on its business in the Premises for a period of five (5) or more business days if such failure is in the reasonable control of Landlord or a period of ten (10) or more consecutive business days if such failure is not within the reasonable control of Landlord, then the Rent shall be abated based on the extent such inability of Landlord impairs City's ability to carry on its business in the Premises or, alternatively at City's election, City shall have the option to provide such services and offset the reasonable cost thereof against Base Rent next due under this Lease. Such abatement, or right to provide the services and offset against Base Rent, shall continue until the Essential Services have been restored so that the lack of any remaining services no longer materially impairs City's ability to carry on its business in the Premises. Landlord shall use commercially reasonable efforts to restore disrupted Essential Services as soon as practicable. However, if such failure to provide any Essential Services continues for any reason for thirty (30) days and such failure interferes with City's ability to carry on its business in the Premises, then City may, without limiting any of its other rights or remedies hereunder or at law or in equity, terminate this Lease upon written notice to Landlord, unless Landlord

supplies City with evidence reasonably satisfactory to City that the Essential Services will be restored within sixty (60) days of the date City's use was interrupted, and the Essential Services are actually restored within such sixty (60) day period. City shall not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City is due solely to the acts, omissions or negligence of City and its Agents.

## **9.5 Keys and Access Cards**

Landlord will furnish City, free of charge, with each of the following: a key to the door to the Premises, a key or card access key to the Building, and a key or card access key to the Premises Elevator. Landlord shall provide (as part of Expenses) (a) card key access control to the Building and (b) a security camera at the entrance to the Building. Notwithstanding Landlord's obligation to provide access control and a security camera at the Building, Landlord shall not be responsible for damage or injury to Tenant, its employees, invitees or others due to the failure, action or inaction of such access control system or camera, and Tenant shall assume responsibility for keeping the Premises reasonably secure and all exterior doors in and to the Premises locked or monitored at all times and, further, all property belonging to Tenant or any person in the Premises, while in the Building or the Premises, shall be at the risk of Tenant or such other person only and Landlord and its Agents shall not be liable for any theft or misappropriation.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

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

Except to the extent caused or exacerbated by Tenant, or any of Tenant's agents, licensees, employees, invitees, customers or contractors, as of the date Landlord delivers possession of the Premises to Tenant, the Building Systems commonly serving the Building up to the point of connection to the exterior walls of the Premises shall be in good order and satisfactory condition and repair. Tenant shall have three hundred sixty-five (365) days from the Effective Date (as defined in Section 22.30 below) in which to discover and to notify Landlord, in writing, which, if any, of the above stated Building Systems are not in good working order and satisfactory condition and repair and with respect to any such items of which Tenant so notifies Landlord, Landlord shall be responsible for the cost and correction thereof. Notwithstanding anything contained herein to the contrary, Tenant acknowledges and agrees that upon delivery to Tenant, the Premises shall be unimproved "raw" space and, except for the Landlord Work expressly set forth in Section 6.3, any and all leasehold improvements for the Premises, including without limitation any improvements to the Premises Elevator, shall be performed by Tenant, at Tenant's sole cost and expense pursuant to the terms of this Lease, including without limitation the terms of Section 6.1 and Section 7.1, and Landlord shall not be responsible for any improvements in or to the Premises or to the Premises Elevator, or for causing the Premises to be other than "raw" unimproved space. Landlord shall at all times during the Term (subject to Section 10.2 below) maintain, at its cost, the Property, Building structure, Common Areas and the Building Systems commonly serving the Building in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "**Laws**"), including, without limitation, Disabilities Laws (as hereinafter defined), Environmental Laws (as defined in Section 21.1(a) below), seismic safety Laws, and life safety Laws, provided that Landlord's failure to comply therewith would prohibit Tenant from

obtaining or maintaining a certificate of occupancy (or its equivalent) for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees, or would otherwise materially and adversely affect Tenant's use of or access to the Premises; further provided that Landlord shall not be obligated to expend more than an aggregate of Fifty Thousand Dollars (\$50,000.00) for any costs associated with performing repairs, alterations or modifications required to cause the Property, Building, Common Areas and the Building Systems serving the Premises to so comply with applicable Law. “**Disabilities Laws**” shall mean, collectively, the requirements of the Americans with Disabilities Act, a federal law codified at 42 U.S.C. section 12101 et seq., including, but not limited to, Title III thereof, and all regulations and guidelines related thereto, together with any and all laws, rules, regulations, ordinances, codes and statutes now or hereafter enacted by local or state agencies having jurisdiction thereof, including all requirements of the California Unruh Civil Rights Act (Civil Code Section 51 et seq.), the Disabled Persons Act (Civil Code Section 54 et seq.), and the building standards set forth in Title 24 of the California Code of Regulations, as the same may be in effect on the date of this Lease and may be hereafter modified, amended or supplemented.

### **10.2 City’s Compliance with Laws; Indemnity**

City shall use, operate and maintain the Premises during the Term in compliance with applicable Laws, including the Disabilities Laws and the building standards set forth in Title 24 of the California Code of Regulations (“**Title 24**”), except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are not otherwise Landlord’s responsibility under this Lease. Notwithstanding anything to the contrary contained in Section 10.1, City shall be responsible for complying with any requirement of the Disabilities Laws with respect to the Common Areas of the Building to the extent required as a result of Tenant’s specific use of the Premises, including, without limitation, if related to City’s placement of City’s furniture or other City Personal Property and the operation of any programs in the Premises. Without limiting Section 16.1 (Tenant’s Indemnity), Tenant shall Indemnify Landlord against any and all Claims arising out of Tenant’s failure to comply with all applicable Laws as provided in this Section. Notwithstanding the foregoing, Landlord and Tenant hereby agree that if the Premises Elevator is determined by a disability access specialist to be non-compliant with Disabilities Law and/or Title 24, then Landlord and City shall work cooperatively (but at no cost to Landlord) to pursue and attempt to obtain a variance for the Premises Elevator allowing it to be operated in such condition irrespective of such lack of compliance.

### **10.3 City’s Compliance with Insurance Requirements**

City shall not conduct any use in or about the Premises that would: (a) invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, (b) result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements

and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

## 11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "**Encumbrance**"): (a) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (b) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing (any such lien being herein defined as a "**Mortgage**" and the holder of any Mortgage being a "**Mortgagee**") that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, Mortgagee, or trustee elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, Landlord shall use commercially reasonable efforts to obtain from any Mortgagee having a lien against the Building a non-disturbance agreement on such Mortgagee's then standard form. In no event shall such commercially reasonable efforts be deemed to require that Landlord pay any fee or other amount in exchange for such agreement. Landlord shall not be in default under this Lease for failure to obtain such agreement provided that Landlord shall have so used commercially reasonable efforts to obtain such agreement.

(b) Tenant agrees to attorn to any Mortgagee. The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, within twenty (20) days of Landlord's request, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

(c) Tenant shall not encumber in any manner the Premises or the Building, or any portion of or interest in any of the foregoing. In addition, Tenant shall not encumber this Lease or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed.

## 12. DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall, subject to receipt of sufficient insurance proceeds, repair the same without delay, provided that in Landlord's reasonable estimation such repairs can be made under applicable laws within one hundred eighty (180) days after the date of such damage (the "**Repair Period**"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent, on a pro rata basis in accordance with the extent to which the damage and the making of such repairs shall interfere with the use and occupancy by Tenant of the Premises, while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interferes with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result



of, any damage by fire or other cause to any panelings, decorations, partitions, additions, railings, ceilings, floor coverings, office fixtures or any other property or improvements installed on the Premises by, or belonging to, Tenant, or any damage caused by the negligence or willful misconduct of City or its Agents. Upon the occurrence of any damage to the Premises, Tenant shall, at its sole cost and expense, repair any injury or damage to the improvements within the Premises and shall return such improvements to their original condition. Prior to the commencement of construction, Tenant shall submit to Landlord, for Landlord's review and approval, all plans, specifications and working drawings relating thereto.

Within forty-five (45) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period, or if in Landlord's reasonable estimation Landlord does not have sufficient insurance proceeds to complete such repair. If such repairs cannot in Landlord's reasonable estimation be made within the Repair Period, or if in Landlord's reasonable estimation Landlord does not have sufficient insurance proceeds to complete such repair, then either party hereto may, by written notice to the other given within thirty (30) days after the date Landlord's notice of estimated repair time, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord, and this Lease shall expire and all interest of Tenant in the Premises shall terminate as of such date as if such date had been originally fixed in this Lease for the expiration of the Term. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination. In the event that neither Landlord nor Tenant exercises its option to terminate this Lease, Landlord shall repair or restore such damage, with this Lease continuing in full force and effect, and the Rent hereunder shall be proportionately abated as set forth above.

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

Notwithstanding anything to the contrary contained in this Article, (a) if at any time during the last twelve (12) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder or that renders a material portion of the Premises untenantable by Tenant, Landlord or Tenant may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage, and (b) in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises or Building requires that any insurance proceeds be applied to such indebtedness, then Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within fifteen (15) days after such requirement is made by any such holder, whereupon this

Lease shall end on the date of such damage as if the date of such damage were the date originally fixed in this Lease for the expiration of the Term.

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

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

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

(b) **“Date of Taking”** means the earlier of (i) the date upon which title to the portion of the 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.

#### **13.2 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 Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

#### **13.3 Total Taking; Automatic Termination**

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

#### **13.4 Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City’s reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City’s normal operations in the Premises, (ii) the condition rendering the Premises untenable or

unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

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

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

### **13.5 Rent; Award**

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

### **13.6 Partial Taking; Continuation of Lease**

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

### **13.7 Temporary Taking**

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

## **14. ASSIGNMENT AND SUBLETTING**

#### **14.1 Restriction on Assignment and Subletting**

Tenant shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which consent may not be unreasonably withheld or delayed.

#### **14.2 Notice to Landlord; Landlords' Response; No Release**

(a) Notice to Landlord. If Tenant desires at any time to enter into an assignment of this Lease or a sublease of the Premises or any portion thereof, Tenant shall give written notice to Landlord of its desire to enter into an assignment or sublease, which notice shall contain (i) the name of the proposed assignee, subtenant or occupant; (ii) the name of the proposed assignee's, subtenant's, or occupant's business to be carried on in the Premises; (iii) the terms and provisions of the proposed assignment or sublease; (iv) evidence that the proposed assignee, subtenant or occupant is an Internal Revenue Code Section 501(c)(3) non-profit organization, and (v) such financial information as Landlord may reasonably request concerning the proposed assignee, subtenant or occupant.

(b) Landlord's Response. At any time within thirty (30) days after Landlord's receipt of all the information specified in Section 14.2(a), Landlord may by written notice to Tenant elect to (a) consent to the sublease or assignment or (b) disapprove the sublease or assignment. Failure by Landlord to either consent to or disapprove a proposed assignment or sublease within the twenty (20) day time period specified above shall be deemed to be Landlord's disapproval thereof. If Landlord consents to the sublease or assignment within said twenty (20) day period, Tenant may within one hundred twenty (120) days after Landlord's consent, but not later than the expiration of said one hundred twenty (120) days, enter into such assignment or sublease of the Premises or portion thereof upon the terms and conditions set forth in the notice furnished by Tenant to Landlord pursuant to Section 14.2(a), which assignment or sublease shall be in compliance with all of the terms and conditions of this Lease.

(c) No Release. No consent by Landlord to any assignment or sublease by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether arising before or after the assignment or sublease. The consent by Landlord to any assignment or sublease shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other assignment or sublease. Any assignment or sublease that is not in compliance with this Section 14 shall be void and, at the option of Landlord, shall constitute an Event of Default by Tenant under this Lease. The acceptance of Rent by Landlord from a proposed assignee or sublessee shall not constitute the consent to such assignment or sublease by Landlord.

#### **14.3 Transfer to Other City Departments, Commissions or Agencies**

City shall have the right from time to time, upon written notice to Landlord, but without the consent of Landlord, to transfer this Lease or the right to use and occupy all or any of the Premises to any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease and otherwise in conformance with all other terms and

conditions of this Lease; provided that in such event, City shall not be released of its obligations under this Lease.

## **15. DEFAULT; REMEDIES**

### **15.1 Events of Default by City**

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

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord;

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

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

### **15.2 Landlord's Remedies**

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

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

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

### **15.3 Landlord's Default**

Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure periods provided above, then the Base Rent and any other charges hereunder shall be abated based on the extent to which such default materially interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty

(60)-day period. City's rights hereunder and under Section 3.3 (Delay in Delivery of Possession), Section 5.3 (Interference with Access), and Section 9.4 (Disruption in Essential Services), shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City shall indemnify, defend and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use and occupancy of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, (c) any grossly negligent acts or omissions of City or its Agents in, on or about the Premises or the Property, or (d) the conduct of any work or business of Tenant in or about the Building or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the gross negligence or willful misconduct of Landlord or its Agents. Additionally, City shall Indemnify Landlord and its Agents from and against any and all claims or liability for any injury or damage to any person or property whatsoever (except to the extent caused by the gross negligence or willful misconduct of Landlord) occurring in or on the Premises. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

### **16.2 Landlord's Indemnity**

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any grossly negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the gross negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

Notwithstanding anything contained herein to the contrary, Landlord shall not be liable to Tenant, and Tenant hereby waives all claims against Landlord and Landlord's Agents for any injury or damage to any person or property in or about the Premises or the Building by or from any cause whatsoever (other than the gross negligence or willful misconduct of Landlord), and without limiting the generality of the foregoing, whether caused by water leakage of any

character from the roof, walls, or other portion of the Premises or the Building, or caused by gas, fire, oil, electricity, or any cause whatsoever, in, on, or about the Premises, the Building or any part thereof (other than that caused by the gross negligence or willful misconduct of Landlord). Tenant acknowledges that any casualty insurance carried by Landlord will not cover loss of income to Tenant or damage to the alterations in the Premises installed by Tenant or Tenant's personal property located within the Premises.

## **17. INSURANCE**

### **17.1 Tenant's Insurance**

Tenant shall procure at its cost and expense and keep in effect during the Term the following insurance:

(a) Liability Insurance. Commercial general liability insurance, including contractual liability coverage, with respect to the Premises and with a minimum combined single limit of liability of Three Million Dollars (\$3,000,000) with respect to the Premises. Such insurance shall name Landlord and its agents, employees, officers, directors, members, owners, representatives, contractors and Mortgagees as additional insureds, shall specifically include the liability assumed hereunder by Tenant, and is intended to be primary insurance, and not excess over or contributory with any insurance in force for or on behalf of Landlord. The limits of said insurance shall not, however, limit the liability of Tenant hereunder, and Tenant is responsible for ensuring that the amount of liability insurance carried by Tenant is sufficient for Tenant's purposes.

(b) Property Insurance. "All risk" property insurance (including, without limitation, boiler and machinery (if applicable); sprinkler damage, vandalism and malicious mischief) on any Alterations installed in the Premises by or on behalf of Tenant, all leasehold improvements installed in the Premises by Tenant at its expense, on the plate or tempered glass which is part of the Premises and all of Tenant's personal property, such insurance to include a building ordinance provision (as to those tenant improvements and Alterations for which such a provision will apply). Such insurance shall be an amount equal to full replacement cost of the aggregate of the foregoing and shall provide coverage comparable to the coverage in the standard ISO All Risk form, when such form is supplemented with the coverages required above, and shall name Landlord as a loss payee. Tenant acknowledges and agrees that insurance coverage carried by Landlord will not cover Tenant's property within the Premises and that Tenant shall be responsible, at Tenant's sole cost and expense, for providing insurance coverage for Tenant's movable equipment, furnishings, trade fixtures and other personal property in or upon the Premises and for any Alterations and tenant improvements made by Tenant, in the event of damage or loss thereto from any cause whatsoever.

(c) Other Insurance. Worker's compensation insurance and such other insurance as may be required by law.

All insurance policies required under this Section 17.1 shall be issued by carriers each with a Best's Insurance Reports policy holder's rating of not less than A and a financial size category of not less than Class VIII and shall provide that such policy shall not be cancelable or subject to reduction of coverage except after thirty (30) days' prior written notice to Landlord. Tenant shall

deliver policies of such insurance or certificates thereof to Landlord on or before the Commencement Date, and thereafter at any time and from time-to-time within ten (10) business days after written request from Landlord. If Tenant shall fail to procure and keep such insurance in full force and effect during the Term, or to deliver such policies or certificates within said time frame, Landlord may, at its option, procure same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent within five (5) business days after delivery to Tenant of bills therefor. The provisions of this Section 17.1 shall survive the expiration or termination of this Lease with respect to any claims or liability occurring prior to such expiration or termination.

### **17.2 City's Self-Insurance**

Notwithstanding anything herein to the contrary, so long as City shall be Tenant under this Lease, Tenant may self-insure in lieu of maintaining the insurance described in Section 17.1. No such self-insurance shall diminish the rights and privileges to which Landlord would otherwise have been entitled under the terms of this Lease had there been a third party insurer, including, without limitation, the duty of the insurer to defend Landlord and all additional insureds and the waiver of subrogation set forth in Section 17.4. Any right to self insure as provided herein is personal to City as Tenant, and shall not apply to any assignee of said Tenant's interest in this Lease or to any subtenant. For so long as Tenant may self-insure under this Section 17.2, any deductible shall be deemed self insured by Tenant.

### **17.3 Landlord's Insurance**

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives any rights against City for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

In addition, Landlord shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general 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 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); and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident.



#### **17.4 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, (a) Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord, and (b) Tenant hereby waives any right of recovery against Landlord for any loss or damage sustained by Tenant with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of Tenant, to the extent such loss or damage is covered by insurance which Tenant is required to purchase under this Lease (or would be covered by insurance which Tenant is required to purchase under this Lease if Tenant had not elected to self insure pursuant to Section 17.2 above) or is otherwise actually recovered from valid and collectible insurance covering Tenant. Each of Landlord and Tenant agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, either party's failure to do so shall not affect the above waivers.

#### **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (a) inspecting the Premises, (b) supplying any service to be provided by Landlord hereunder, (c) showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, (d) posting notices of non-responsibility, and (e) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, City's use of the Premises pursuant to this Lease shall not be materially interfered with, and Landlord shall use commercially reasonable efforts to minimize its impact on City's use of the Premises pursuant to this Lease. Landlord shall use commercially reasonable efforts during re-entry to not unreasonably interfere with Tenant's use of the Premises or its business conducted therein. Landlord shall not, however, be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising from Landlord's entry and acts pursuant to this Section and Tenant shall not be entitled to an abatement or reduction of Rent if Landlord exercises any rights reserved in this Section. Tenant hereby 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, and any other loss occasioned thereby. For each of the aforesaid purposes, Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes, or special security areas (designated by Tenant from time to time, in its absolute discretion, by written notice to Landlord in advance of the installation or creation of any such vaults, safes or special security areas), and Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises, or portion thereof obtained by Landlord

by any of said means, or otherwise, shall not under any emergency circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof.

## **19. ESTOPPEL CERTIFICATES**

(a) Tenant Estoppel. Tenant shall have ten (10) business days following the written request of Landlord or any Mortgagee to execute and deliver to Landlord any documents, including estoppel certificates, in the form prepared by Landlord (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are no uncured defaults on the part of Landlord, or, if there are uncured defaults on the part of Landlord, stating the nature of such uncured defaults, (iii) certifying that Tenant has no defenses or offsets then outstanding against any of its obligations under this Lease, or stating those claimed by Tenant, and (iv) certifying any other matters pertaining to the status of this Lease or performance of obligations thereunder by Landlord or Tenant as to which Tenant has actual knowledge and as may be reasonably required either by a purchaser of the Premises or a Mortgagee making a loan to Landlord to be secured by the Premises or Property. Tenant's failure to deliver an estoppel certificate within ten (10) business days after delivery of Landlord's written request therefor shall be conclusive upon Tenant that (aa) this Lease is in full force and effect, without modification except as may be represented by Landlord, (bb) there are no uncured defaults in Landlord's performance, (cc) Tenant has no defenses or right of offset against its obligations hereunder, and (dd) no Rent has been paid in advance.

(b) Landlord Estoppel. Landlord shall have ten (10) business days following the written request of Tenant to execute and deliver to Tenant any documents, including estoppel certificates, in the form prepared by Tenant (i) certifying that this Lease is unmodified and in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that, to Landlord's knowledge, there are no uncured defaults on the part of Tenant, or, if there are uncured defaults on the part of Tenant, stating the nature of such uncured defaults, and (iii) certifying any other matters pertaining to the status of this Lease or performance of obligations thereunder by Landlord or Tenant as to which Landlord has actual knowledge. Landlord's failure to deliver an estoppel certificate within ten (10) business days after delivery of Tenant's written request therefor shall be conclusive upon Landlord that (aa) this Lease is in full force and effect, without modification except as may be represented by Tenant, (bb) there are no uncured defaults in Tenant's performance, and (cc) no Rent has been paid in advance.

## **20. SURRENDER OF PREMISES**

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Prior to the Expiration Date, City shall remove from the Premises, at City's sole cost and expense, any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above and, notwithstanding anything to the contrary contained herein, all of City's Personal Property, City's

telecommunications, data and computer facilities, and any telephone and other cabling. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## **21. HAZARDOUS MATERIALS**

### **21.1 Definitions**

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

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

(b) “**Hazardous Material**” shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“**CERCLA**”, also commonly known as the “Superfund” law), as amended (42 U.S.C. 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; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) “**Release**” when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

### **21.2 Landlord's Representations and Covenants**

Landlord represents and warrants to City that, to Landlord's actual knowledge, as of the date of Landlord's delivery of possession of the Premises to Tenant, (a) Landlord has not received any written notice that the Premises fails to comply with any applicable building codes, governmental ordinances or regulations (that has not been subsequently cured), including, but not limited to, disabled access codes which were created in order to comply with the Americans With Disabilities Act; and (b) Landlord has not received any written notice that Hazardous Materials exist at the Building in violation of Environmental Laws that would prohibit Tenant from obtaining or maintaining a certificate of occupancy for the Premises, or would unreasonably and materially affect the safety of Tenant's employees or create a significant health hazard for Tenant's employees, or would otherwise materially and adversely affect Tenant's use of or access to the Premises.

To the extent it is determined that Hazardous Materials exist at the Building as of the Commencement Date in violation of Environmental Laws, and such violation or condition does

not arise out of, is not disturbed by or is not exacerbated by (in whole or in part) any acts or omissions of Tenant or its Agents, Landlord shall promptly take such action as is necessary to comply with such Environmental Laws. If, following the Commencement Date, the Building becomes contaminated with Hazardous Materials in violation of Environmental Laws as a result of the negligence or intentional misconduct of Landlord or Landlord's Agents and such violation or condition does not arise out of, is not disturbed by or is not exacerbated by (in whole or in part) any acts or omissions of Tenant or its Agents, Landlord shall promptly take such action as is necessary to comply with such Environmental Laws to the extent Landlord caused such violation or condition, or if the violation of Environmental Laws governing Hazardous Materials arises out of the acts or negligence of third parties, Landlord shall exercise commercially reasonable efforts to cause such third parties to take such action as is necessary to comply with such Environmental Laws to the extent caused by such third parties.

### **21.3 Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease solely to the extent resulting from a breach of any of Landlord's representations, warranties or covenants in the preceding Section 21.2(b).

### **21.4 City's Covenants**

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws.

### **21.5 City's Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims, including without limitation any costs of investigation, clean up, monitoring, and restoration, arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

## **22. GENERAL PROVISIONS**

### **22.1 Notices**

(a) General. Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, or by sending it by reputable overnight carrier, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other

address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, the day upon which recipient accepts and signs for delivery from a reputable overnight carrier, or on the date a reputable overnight carrier indicates refusal of delivery, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile 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.

(b) Notices to Mortgagees. If Tenant is notified in writing of the identity and address of any Mortgagee or ground or underlying lessor, Tenant shall give to such Mortgagee or ground or underlying lessor notice of any default by Landlord under the terms of this Lease in writing sent by registered or certified mail, and such Mortgagee or ground or underlying lessor shall be given the opportunity to cure such default prior to Tenant exercising any remedy available to it.

## **22.2 No Implied Waiver**

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

## **22.3 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 Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. 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 Landlord, and City's agreement may be made upon the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (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 of this Lease, and (e) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of City's Board of Supervisors.

#### **22.4 Authority**

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

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

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "**Agents**" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "**Invitees**" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

#### **22.6 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 intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

#### **22.7 Successors and Assigns**

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord

and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

## **22.8 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 for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

## **22.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

## **22.10 Governing Law**

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

## **22.11 Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

## **22.12 Attorneys' Fees**

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such

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

### **22.13 Holding Over**

If Tenant holds possession of any portion of the Premises after expiration or termination of the term of this Lease with respect to that portion of the Premises without the written consent of Landlord, then absent express agreement of Landlord, such holding over shall be a tenancy at sufferance and not for any periodic or fixed term. Tenant shall pay monthly rental hereunder at a rate equal to one hundred fifty percent (150%) of the fair market rental value for the Premises, as reasonably determined by Landlord, plus Additional Rent, together with such other amounts as may become due hereunder, and otherwise all of the terms and conditions of this Lease shall continue to apply, excluding any options or rights of Tenant to renew or extend this Lease or expand the Premises hereunder. Nothing herein shall be construed as a consent in advance by Landlord to any holding over by Tenant or to any specific terms or conditions of any holding over, and Landlord expressly reserves the right to require Tenant to surrender possession of the Premises to Landlord when and as required hereunder. Any holding over with the written consent of Landlord shall, except as otherwise specified in such consent, thereafter constitute a lease from month to month, and shall be set at fair market rent or other rate as agreed to by Landlord and Tenant, but otherwise subject to all of the terms and conditions of this Lease, excluding any options or rights of Tenant to renew or extend this Lease or expand the Premises hereunder.

### **22.14 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.

### **22.15 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.

### **22.16 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. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

### **22.17 Signs**

City may erect or post signs on or about the Premises, and may erect or maintain signage on Jessie Street, provided such signage is compatible with a first class, urban mixed-use development and in compliance with all applicable Laws, in each case subject to Landlord's prior written approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Landlord shall provide and install, at Landlord's sole cost and expense, the initial signage for Tenant in the Building directory located at the Jessie Street entrance to the Building.

### **22.18 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents.

### **22.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to Landlord's actual knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein.

### **22.20 Transfer of Landlord's Interest**

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

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

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord,

its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

#### **22.22 MacBride Principles - Northern Ireland**

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

#### **22.23 Controller's Certification of Funds**

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

#### **22.24 Prevailing Wages for Construction Work**

Landlord agrees that any person performing labor in the construction of the leasehold improvements or other improvements to the Premises, which Landlord provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Landlord shall include, in any contract for construction of such leasehold improvements or other improvements to the Premises, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any leasehold improvements or other improvements to the Premises.

#### **22.25 Non Discrimination in City Contracts and Benefits Ordinance**

(a) Covenant Not to Discriminate. In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or

applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

(c) Non-Discrimination in Benefits. Landlord does not as of the date of this Lease and will not during the term 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 or 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) HRC Form. As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: (a) Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (b) the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of 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 Landlord and/or deducted from any payments due Landlord.

## **22.26 Tropical Hardwood and Virgin Redwood Ban**

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

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

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

#### **22.27 Bicycle Storage Facilities**

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "**Planning Code**") requires the provision of bicycle storage at City-leased buildings at no cost to Landlord and if funds are available. Landlord acknowledges that City's Agents and Invitees shall be permitted to store bicycles in such storage area(s) within the Building as may be designated by Landlord from time to time.

#### **22.28 Resource-Efficient City Buildings and Pilot Projects**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

#### **22.29 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.

#### **22.30 Effective Date**

The date on which this Lease shall become effective (the "**Effective Date**") is the date upon which this Lease is duly executed by the parties hereto.

#### **22.31 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.

### **22.32 Conflicts of Interest**

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

### **22.33 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing 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. Landlord 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. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

### **22.34 Preservative-Treated Wood Containing Arsenic**

As of July 1, 2003, Landlord 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. Landlord 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 Landlord 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.

### **22.35 Certified Access Specialist**

For purposes of Section 1938 of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp).

### **22.36 California Waivers**

(a) Tenant hereby waives any and all rights under and benefits of subsection 1 of Section 1932 and 1995.310 (Assignment and Subletting) of the California Civil Code, or any similar or successor Laws now or hereinafter in effect.

(b) TENANT HEREBY WAIVES ANY AND ALL RIGHTS CONFERRED BY SECTION 3275 OF THE CIVIL CODE OF CALIFORNIA AND BY SECTIONS 1174 (c) AND 1179 OF THE CODE OF CIVIL PROCEDURE OF CALIFORNIA AND ANY AND ALL OTHER APPLICABLE LAWS AND RULES OF LAW FROM TIME TO TIME IN EFFECT DURING THE TERM OF THE LEASE, AS AMENDED HEREBY, PROVIDING THAT TENANT SHALL HAVE ANY RIGHT TO REDEEM, REINSTATE OR RESTORE THE LEASE FOLLOWING ITS TERMINATION BY REASON OF TENANT'S BREACH. TENANT ALSO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THE LEASE.

### **22.37 Disability Access Obligations Notice and Access Information Notice**

(a) Tenant hereby acknowledges and agrees that Landlord has delivered to Tenant, at least twenty-four (24) hours prior to execution of this Lease by Tenant, a copy of the “Disability Access Obligations Notice to Prospective Tenant” attached hereto as Exhibit C, and that Tenant executed and delivered the same to Landlord at least twenty-four (24) hours prior to execution of this Lease.

(b) Tenant further hereby acknowledges and agrees that, at least twenty-four (24) hours prior to execution of this Lease by Tenant, Landlord delivered to Tenant a copy of the San Francisco Office of Small Business Access Information Brochure (the “**Access Information Brochure**”) in an available language as selected by Tenant. A copy of the Access Information Brochure is also available at <http://sfgsa.org/index.aspx?page=4927>.

### **22.38 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.

**22.39 Authority to Execute**

Pursuant to San Francisco Administrative Code Section 23.26, the Director of Property for the City has the authority to execute this Lease on behalf of the City.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGE FOLLOWS]**

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

LANDLORD:

THIRD AND MISSION ASSOCIATES, LLC,  
a California limited liability corporation

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

Name: William Witte

Its: Authorized Signatory

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

JOHN UPDIKE

Director of Property

RECOMMENDED:

\_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

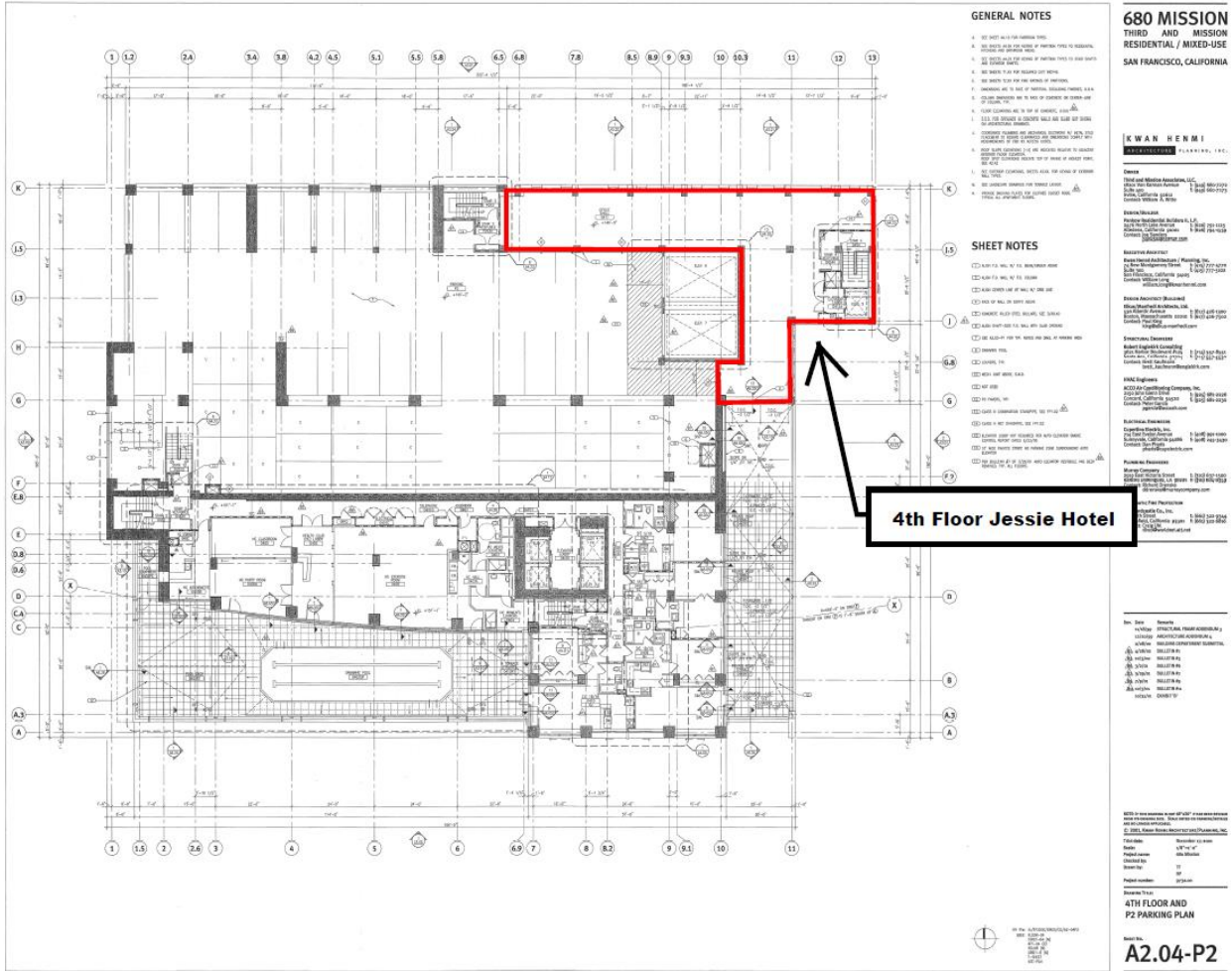
By: \_\_\_\_\_

Heidi J. Gewertz

Deputy City Attorney







**GENERAL NOTES**

1. SEE ALL NOTES ON ALL SHEETS.
2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODE AND ALL APPLICABLE REGULATIONS.
3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA MECHANICAL, ELECTRICAL AND PLUMBING CODES AND ALL APPLICABLE REGULATIONS.
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13. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA WASTE MANAGEMENT ACT AND ALL APPLICABLE REGULATIONS.
14. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA OCEANOGRAPHY AND MARINE RESEARCH ACT AND ALL APPLICABLE REGULATIONS.
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**4th Floor Jessie Hotel**

**680 MISSION  
THIRD AND MISSION  
RESIDENTIAL / MIXED-USE  
SAN FRANCISCO, CALIFORNIA**

**KWAN HENMI  
ARCHITECTS, INC.**

1000 California Street, Suite 1000  
San Francisco, CA 94109  
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Fax: 415.774.1101  
www.kwanhenmi.com

**Architect**  
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**Structural Engineer**  
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**Mechanical Engineer**  
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**Electrical Engineer**  
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**Fire Protection Engineer**  
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**Interior Designer**  
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**Historic Preservation Consultant**  
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**Landmark Preservation Consultant**  
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**Anti-Slump Consultant**  
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**Air Quality Consultant**  
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**Water Resources Consultant**  
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**Waste Management Consultant**  
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**Oceanography and Marine Research Consultant**  
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**Geography and Surveying Consultant**  
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**Aerospace Consultant**  
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**Transportation Consultant**  
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**Infrastructure Consultant**  
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**Energy Efficiency Consultant**  
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**Sustainable Building Consultant**  
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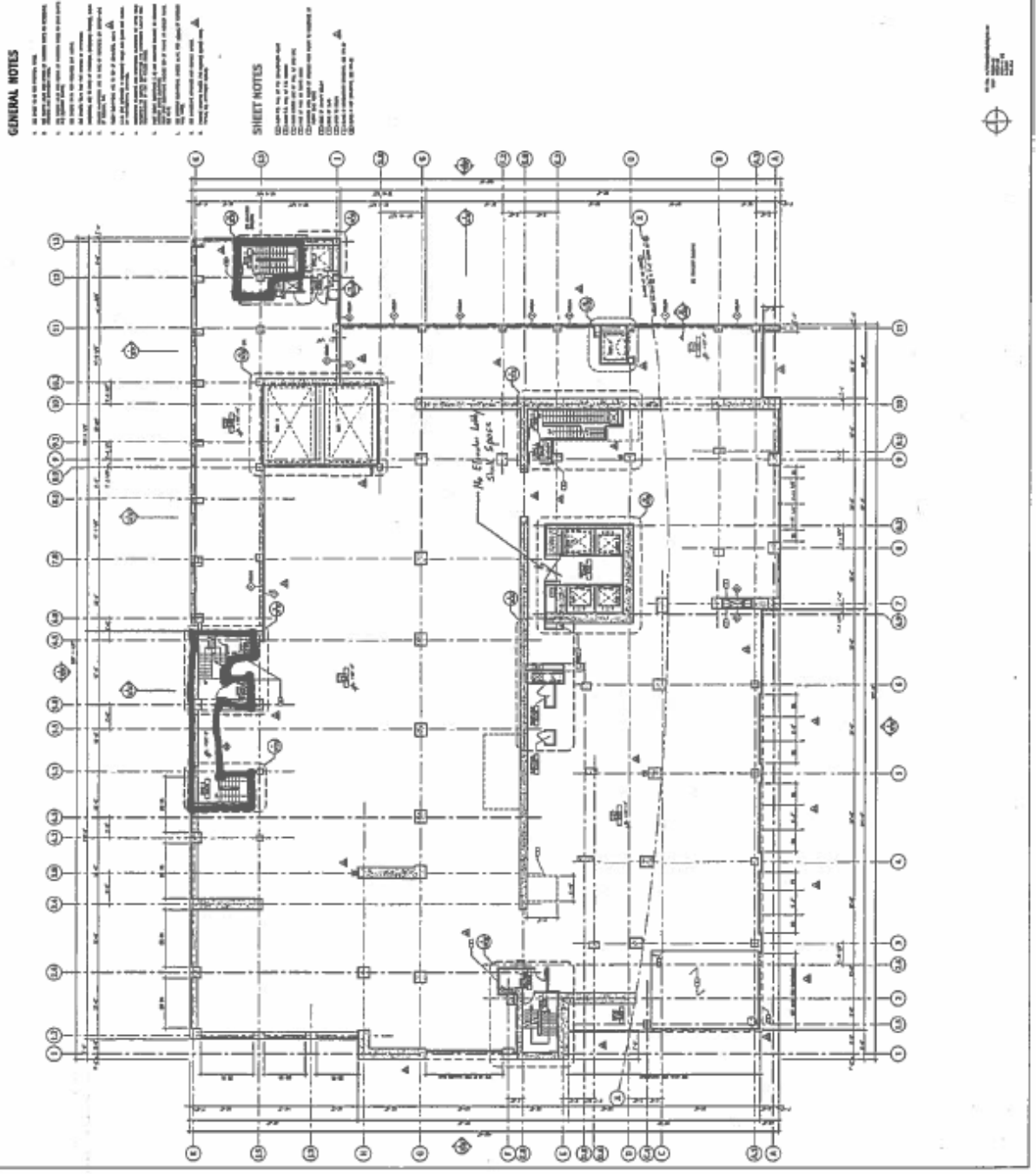
**680 MISSION**  
**MISSION**  
**RENOVATION / IMPROVEMENT**  
 SAN FRANCISCO, CALIFORNIA

**DESIGNER:** PERKINS+WILL  
**ARCHITECT:** PERKINS+WILL  
**DATE:** 11/15/11  
**PROJECT NO.:** 110000000  
**SHEET NO.:** A2.02  
**TITLE:** 2ND FLOOR PLAN

**REVISIONS:**  
 1. 11/15/11: INITIAL DESIGN  
 2. 11/15/11: REVISIONS  
 3. 11/15/11: REVISIONS  
 4. 11/15/11: REVISIONS

**PROJECT INFORMATION:**  
 680 MISSION  
 2ND FLOOR PLAN  
 SHEET NO. A2.02

**A2.02**



**GENERAL NOTES**

- 1. SEE ALL NOTES ON SHEETS A2.01 THROUGH A2.04.
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**680 MISSION  
THIRD AND MISSION  
RESIDENTIAL / MIXED-USE  
SAN FRANCISCO, CALIFORNIA**

**JEAN HERRM**  
ARCHITECTS, INC.

Project: 680 MISSION, THIRD AND MISSION, SAN FRANCISCO, CALIFORNIA  
 Date: 12/15/11  
 Scale: AS SHOWN  
 Drawing No: A2.03-P1  
 Revision: 1  
 Author: JH  
 Checker: JH  
 Title: 3RD FLOOR AND P1 FRAMING PLAN

Notes:  
 1. ALL DIMENSIONS UNLESS OTHERWISE NOTED.  
 2. ALL DIMENSIONS TO FACE UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS TO CENTERLINE UNLESS OTHERWISE NOTED.  
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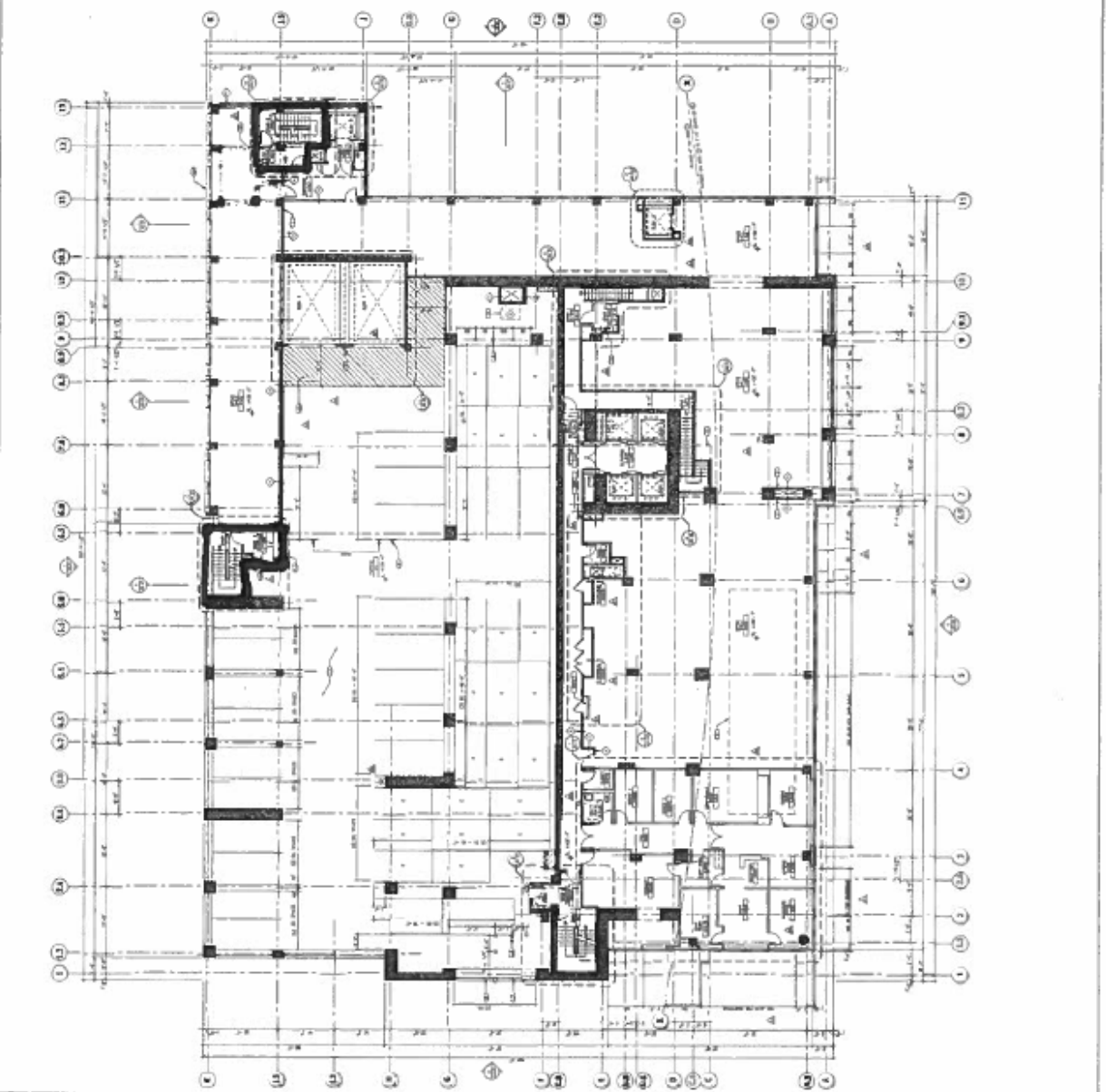
**A2.03-P1**

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**680 MISSION  
THIRD AND  
MISSION  
RESIDENTIAL / ANEXA-2X  
SAN FRANCISCO, CALIFORNIA**

**KIM HALL ARCHITECTS, INC.**  
ARCHITECTS

1000 CALIFORNIA STREET, SUITE 200  
SAN FRANCISCO, CA 94109  
TEL: 415.774.2200  
WWW.KIMHALLARCHITECTS.COM

PROJECT NO. 120100000  
SHEET NO. A2.04-P2

DATE: 08/14/2012

PROJECT: 680 MISSION  
THIRD AND MISSION  
RESIDENTIAL / ANEXA-2X

ARCHITECT: KIM HALL ARCHITECTS, INC.  
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DATE: 08/14/2012

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THIRD AND MISSION  
RESIDENTIAL / ANEXA-2X

ARCHITECT: KIM HALL ARCHITECTS, INC.  
1000 CALIFORNIA STREET, SUITE 200  
SAN FRANCISCO, CA 94109  
TEL: 415.774.2200  
WWW.KIMHALLARCHITECTS.COM

DATE: 08/14/2012

PROJECT: 680 MISSION  
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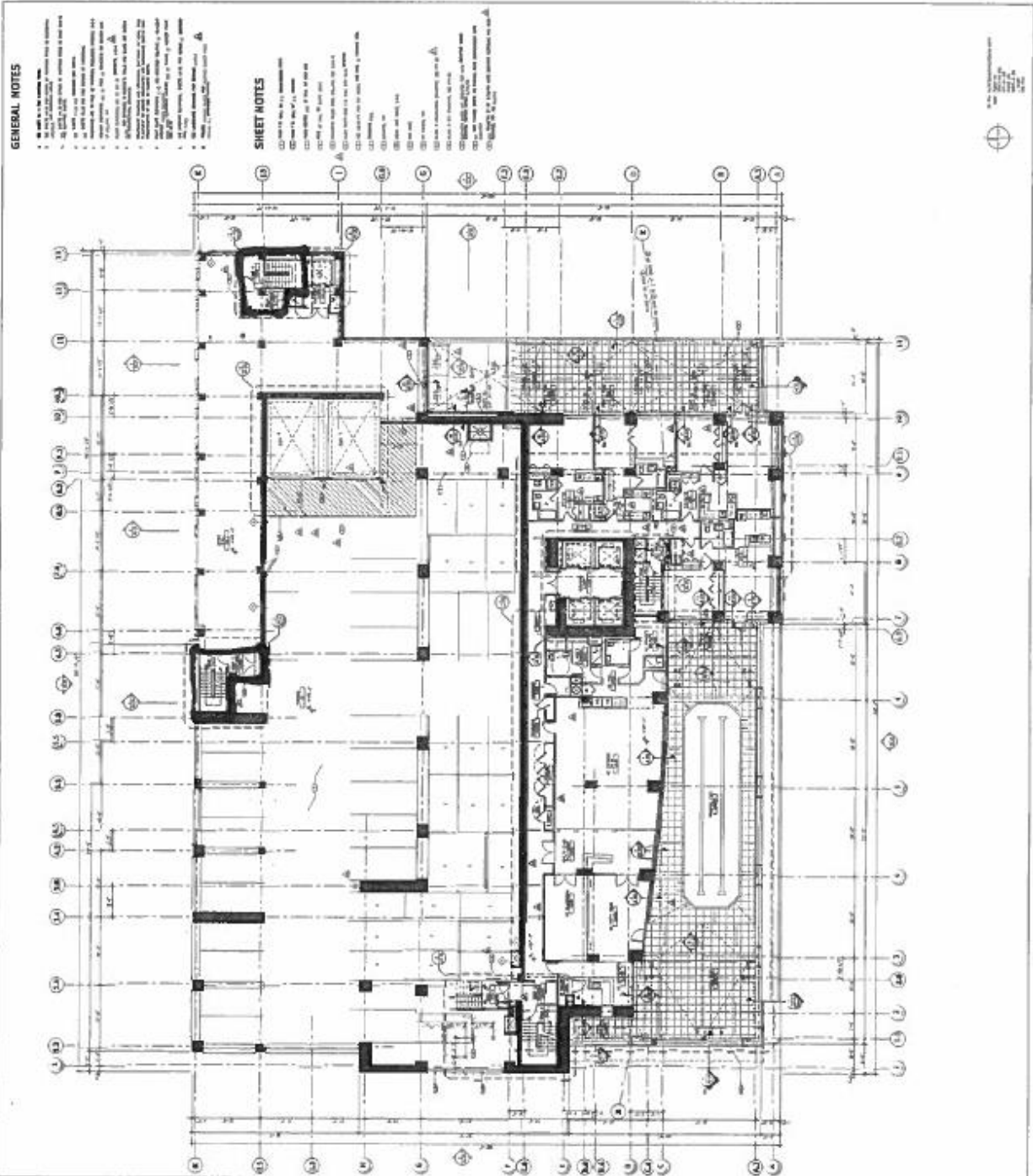
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**GENERAL NOTES**

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.
- 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA MECHANICAL, ELECTRICAL AND PLUMBING CODES AND ALL APPLICABLE REGULATIONS.
- 3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA FIRE AND SAFETY CODES AND ALL APPLICABLE REGULATIONS.
- 4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT AND ALL APPLICABLE REGULATIONS.
- 5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA HISTORIC PRESERVATION ACT AND ALL APPLICABLE REGULATIONS.
- 6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA LANDMARK PRESERVATION ACT AND ALL APPLICABLE REGULATIONS.
- 7. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ANTI-SLUMP ACT AND ALL APPLICABLE REGULATIONS.
- 8. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ANTI-TRIGGER ACT AND ALL APPLICABLE REGULATIONS.
- 9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ANTI-RENT CONTROL ACT AND ALL APPLICABLE REGULATIONS.
- 10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA ANTI-RENT STABILIZATION ACT AND ALL APPLICABLE REGULATIONS.

**SHEET NOTES**

- 1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA BUILDING CODES AND ALL APPLICABLE REGULATIONS.
- 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE CALIFORNIA MECHANICAL, ELECTRICAL AND PLUMBING CODES AND ALL APPLICABLE REGULATIONS.
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**A2.04-P2**

**EXHIBIT C**

**DISABILITY ACCESS OBLIGATIONS NOTICE TO PROSPECTIVE TENANT**

**DISABILITY ACCESS OBLIGATIONS UNDER  
SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 38**

Before you, as the Tenant, enter into a lease with us, the Landlord, for the following property: The leasable area of that portion of the third and fourth floors commonly known as the “Jessie Hotel” portion of that building located at 167 Jessie Street, San Francisco, California, commonly known as “The Paramount” (the “**Property**”), please be aware of the following important information about the lease:

**You May Be Held Liable For Disability Access Violations On The Property.** Even though you are not the owner of the Property, you, as the tenant, as well as the Property owner, may still be subject to legal and financial liabilities if the leased Property does not comply with applicable Federal and State disability access laws. You may wish to consult with an attorney prior to entering into this lease to make sure that you understand your obligations under Federal and State disability access laws. The Landlord must provide you with a copy of the Small Business Commission Access Information Notice under Section 38.6 of the Administrative Code in your requested language. For more information about disability access laws applicable to small businesses, you may wish to visit the website of the San Francisco Office of Small Business or call 415-554-6134.

**The Lease Must Specify Who Is Responsible for Making Any Required Disability Access Improvements to the Property.** Under City law, the lease must include a provision in which you, the Tenant, and the Landlord agree upon your respective obligations and liabilities for making and paying for required disability access improvements on the leased Property. The lease must also require you and the Landlord to use reasonable efforts to notify each other if they make alterations to the leased Property that might impact accessibility under federal and state disability access laws. You may wish to review these provisions with your attorney prior to entering into this lease to make sure you understand your obligations under the lease.

PLEASE NOTE: The Property may not currently meet all applicable construction-related accessibility standards, including standards for public restrooms and ground floor entrances and exits (Note to Landlord: This paragraph can be deleted if the Property does currently meet all said standards).

By signing below, I confirm that I have read and understood this Disability Access Obligations Notice.

Signed: \_\_\_\_\_  
Tenant

Signed: \_\_\_\_\_  
Landlord