

AMENDMENT TO LEASE

THIS AMENDMENT TO LEASE (the "Amendment"), dated for reference purposes only as of _____, 2016, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission") and COIT TOWER LLC, a California limited liability company ("Lessee").

RECITALS

A. City and Lessee entered into that certain lease, dated for reference purposes as of February 1, 2014 (the "Lease"), for the lease and management of the elevator and bookstore operations at Coit Tower in San Francisco, California.

B. The murals in Coit Tower constitute the most important asset of the building and must be adequately protected at all times. Lessee's Management Plan for the operation and management of Coit Tower, attached to the Lease as Exhibit D, proposed that Lessee would employ one full time and one part time tour guide to act as docents, and that when the docent tours were not running, these tour guides would serve as docents for the main gallery. After analyzing Lessee's first year of operations in the Premises, Department staff and Lessee have determined that it would be optimal for Lessee to engage additional staff to provide enhanced mural protection, visitor engagement and visitor education regarding the building and the murals, beyond the staffing levels that Lessee initially projected would be required for such purposes. Under Section 5.3 of the Lease, City provides a partial rent credit of up to \$40,000 per annum (\$3,333.33 per month) for each full calendar month in which Lessee provides docent service in the Premises in the manner and during the hours described in the Lease. City is willing to provide an additional partial rent credit in exchange for Lessee's agreement to provide additional staffing for the lobby for mural protection, on the terms and conditions set forth below.

C. Section 7.2(i) of the Lease provides that Department staff will explore the demand and desire for food and beverage service at or adjacent to Coit Tower. The Department has concluded its review, and has identified an area near the Premises shown outlined and labeled "Proposed Additional Premises" on the attached Exhibit A-1 (the "Proposed Additional Premises") as a desirable location for light food and beverage service. The Proposed Additional Premises are presently part of Greenwich Street. City is considering whether to vacate for public street purposes that portion of Greenwich Street comprising the Proposed Additional Premises. Any such vacation will be made at the sole discretion of City's Board of Supervisors following completion of the requisite environmental review process and only if the Board of Supervisors in its sole discretion makes the findings required for summary vacation required by the California Street and Highways Code and in accordance with the provisions of San Francisco Public Works Code Section 787 and such rules and conditions adopted by the Board of Supervisors (the "Vacation Action"). Department staff anticipates that in connection with any Vacation Action, jurisdiction of the Proposed Additional Premises would be transferred to the Commission (the "Jurisdictional Transfer Action"). Lessee has agreed that if the Board of Supervisors take the Vacation Action and Jurisdictional Transfer Action, Lessee will provide food and beverage service operations on the Proposed Additional Premises, and Lessee and City presently desire to amend the Lease to add the Proposed Additional Premises to the Premises under the Lease following the Vacation Action and Jurisdictional Transfer Action, if any, and to set forth the terms and conditions applicable to food and beverage service on the Proposed Additional Premises. To account for the adverse impact on Lessee's business operations resulting from the delay in confirming the desire for food and beverage service and identifying a location on which such service can be provided, City has agreed to provide a partial rent credit in the amount of Five Thousand Dollars (\$5,000) per month for the period commencing on December 1, 2014 and ending on the date immediately preceding the effective date of this Amendment and in the amount of Seven Thousand Dollars (\$7,000) per month for the period commencing on the effective date of this Amendment and ending on the earlier of July 31, 2016, sixty (60) days after the

Additional Premises Commencement Date, or the first day of Lessee’s sales from the Proposed Additional Premises.

D. Lessee must pay certain fees associated with elevator tickets purchased by visitors with credit cards. Since Lessee pays Percentage Rent at the rate of 90% on the Gross Receipts from elevator ticket sales, the credit card service fee represents a disproportionate percentage of the 10% of elevator ticket sale Gross Receipts retained by Lessee after the payment of Percentage Rent. In consideration of such fact, City agrees to provide Lessee with a credit against Rent payable under the Lease in the amount of the credit card fees attributable to elevator ticket, commencing retroactively as of July 1, 2014.

E. In order to improve operational efficiency and offer additional tickets during off peak times to better regulate guest flow, Lessee agrees to institute a program of online elevator ticket and mural tour sales, and City agrees to allow Lessee to impose a service charge on online elevator ticket and mural tour sales in the amount specified below, and to exclude such online ticket and tour sales service charge from the definition of Gross Receipts, on the terms and conditions set forth below. Further, in order to encourage Lessee to offer visitors the convenience of purchasing postage stamps for post cards, City agrees to exclude from the definition of Gross Receipts the revenue from postage stamp sales.

F. Accordingly, City and Lessee presently desire to amend the Lease to (i) provide a partial rent credit for additional staffing for mural protection and visitor education, (ii) add the Proposed Additional Premises to Premises under the Lease following the Vacation Action and Jurisdictional Transfer Action, if applicable, (iii) set forth the terms and conditions for food and beverage service on the Proposed Additional Premises, (iv) provide a short-term partial rent credit in consideration of the delay in allowing food and beverage service under the Lease, in the amount and for the period specified below, (v) provide for a credit against Rent payable under the Lease on account of the credit card service fee payable by Lessee on elevator ticket sales commencing retroactively as of July 1, 2014, (vi) provide for certain exclusions from Gross Receipts, and (vii) revise the Lease in certain other respects, all on the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, City and Lessee hereby agree as follows:

1. Defined Terms. Unless otherwise specified, each capitalized term contained herein shall have the same meaning as set forth in the Lease.

2. Effective Date. This Amendment shall be effective of the date (the “Effective Date”) upon which (i) the Board of Supervisors passes a resolution approving this Lease, and the Mayor signs such resolution, and (ii) the Parties hereto have duly executed and delivered this Amendment.

3. Protection of Murals; Credit for Docent Program and Enhanced Mural Protection Staffing.

a. Basic Lease Information. Effective as of the Effective Date, the following provision shall be added to section of Section 1 (Basic Lease Information) of the following the “Rent Credit for Docent Program” section:

Rent Credit for Enhanced Mural Protection Staffing (Section 5.3A):	Up to \$114,000 per annum (\$9,500.00 per month) for Enhanced Mural Protection Staffing, as provided in Section 5.3A , for the period specified therein.
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b. Enhanced Mural Protection Staffing. Effective as of the Effective Date the following provision shall be added to the Lease as Section 7.1(j):

“(j) Enhanced Mural Protection Staffing. As of the Effective Date of the First Amendment to this Lease, Lessee sells more than 250,000 Coit Tower elevator tickets annually, and annual visitors exceed 500,000. As a result, Coit Tower and its mural gallery are often crowded and in need of crowd management to protect the murals and inform guests of the mural guidelines. Effective as of the Effective Date of the First Amendment to this Lease, Lessee shall provide “Enhanced Mural Protection Staffing” at the Premises. As used herein, “Enhanced Mural Protection Staffing” means that in addition to management, Lessee’s accountant, the staff required to operate the Café Kiosk, and the mural Docents, Lessee shall employ (1) a cashier to sell tickets to the elevator, docent tours of the murals, and merchandise in the bookstore; (2) an elevator operator to ensure the safe and efficient transport of guests to the top of Coit Tower; (3) an elevator loader/crowd manager to ensure that the safe number of guests are entering the elevator, to keep guests in an orderly and efficient line and to remind guests of the mural guidelines as they wait in line for the elevator; (4) a staff person in the Observation Deck to greet guests as they get to the top of the Tower, inform guests of the local landmarks, answer questions about the history of the building and murals, and take photos of guests, at the guests’ request, to enhance their experience; (5) a staff person to greet guests upon their entry to Coit Tower, inform them of the mural guidelines, and inform them of what to expect at Coit Tower; (6) a staff person to provide relief breaks to other employees and to “float” in the gallery to ensure the mural guidelines are being observed, answer questions about the murals and the history of the building and perform as needed janitorial functions when not providing relief; and (7) a second “float” staff person during the peak season of March-October.

c. Rent Credit for Enhanced Mural Protection Staffing. Effective as of the Effective Date, the following provisions shall be added to the Lease following Section 5.3 as, respectively, a new Section 5.3A and a new Section 5.3B:

“5.3A Rent Credit for Enhanced Mural Protection Staffing.

(a) Rent Credit for Enhanced Mural Protection Staffing; Adjustment of Credit for Increased Visitorship. As used in this **Section 5.3A**, “Enhanced Mural Protection Staffing” means additional staffing provided by Lessee during Lessee’s hours of operation for enhanced mural protection and visitor education, beyond the staffing levels that Lessee initially projected would be required to protect the murals and educate the public about the murals. Lessee commits to staffing operations at the Premises as described in **Section 7.1(j)** below (“Enhanced Mural Protection Staffing”). In consideration of Lessee’s Enhanced Mural Protection Staffing, Lessee shall receive monthly in arrears a credit against the monthly Base Rent or monthly Percentage Rent payable hereunder an amount of up to \$9,500.00 (adjusted as provided in **Section 5.3B** and, if applicable, as provided below) for each full calendar month in which Lessee provides Enhanced Mural Protection Staffing in the Premises in the manner and during the hours described in **Section 7.1(d)** and **Section 7.1(j)** below (the “Monthly Enhanced Mural Protection Staffing Credit”). If as a result of a significant increase in visitorship or docent tours of the murals, Lessee reasonably determines that Lessee must provide additional staffing beyond the Monthly Enhanced Mural Protection Staffing for mural protection, Lessee may request a reasonable adjustment in the amount of the Monthly Enhanced Mural Protection Staffing Credit by written request to the General Manager, which request shall provide sufficient rational and justification for such request. The General Manager, at his or her sole discretion, shall seek approval from City’s Board of Supervisors for the requested adjustment to such credit following such request, and such adjustment shall be made only if approved by City’s Board of Supervisors. Under no circumstances will the General Manager seek a modification of the Monthly Enhanced Mural Protection Staff Credit

that provides for an increase in the credit in excess of Lessee's cost of employing a staff person for the additional hours or additional position required for the mural protection, at market wage rates for the types of duties performed. Without limiting the foregoing, in no event shall the increased credit be attributable to additional staffing required for management, Lessee's accountant, operation of the museum shop, or staff required to operate the Café Kiosk.

(b) Monthly Reporting and Calculation of Rent Credits. On or before the tenth (10th) day of each full calendar month of the Lease Term Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee verifying that the minimum staffing described in **Section 7.1(j)** below was employed for the previous calendar month. If Lessee fails to provide the full minimum Enhanced Mural Protection Staffing in any month, the amount of the credit for such month will be prorated based on the staff provided. If the General Manager disputes Lessee's calculation of the amount of the Enhanced Mural Protection Staffing Credit for any month, the General Manager or his or her designee shall notify Lessee of such dispute and the parties shall use reasonable good faith efforts to resolve such dispute. The Monthly Enhanced Mural Protection Staffing Credit shall not reduce the Rent payable in any month below zero.

(c) Books and Records. Lessee shall keep accurate books and records of the staffing levels and positions staffed each day, and shall make such books and records available to City to audit. If an audit reveals that Lessee has overstated the Enhanced Mural Protection Staffing Credit, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee paid in Rent and the amount Lessee should have paid to City, had the rent credit been properly calculated."

"5.3B Annual Adjustment to Rent Credits. On each Adjustment Date the Docent Credit and the Enhanced Mural Protection Staffing Credit shall be adjusted by multiplying, respectively, the initial Docent Credit amount and the initial Enhanced Mural Protection Staffing Credit amount by the CPI Adjustment Fraction."

4. Additional Premises; Food and Beverage Service.

a. Additional Premises. If and only if City's Board of Supervisors, in its sole discretion, takes the Vacation Action and the Jurisdictional Transfer Action, (A) City shall deliver the Proposed Additional Premises to Lessee on the latest to occur of: (i) the Effective Date; or (ii) the date on which the Vacation Action and the Jurisdictional Transfer Action shall have become effective and the period for any challenge thereto shall have passed without any pending or threatened challenge (which date shall be referred to as the "Additional Premises Commencement Date"), and (B) the balance of this Section 4 shall apply. Effective as of the Additional Premises Commencement Date (A) Exhibit A-1 attached to this Amendment shall be added to the Lease as Exhibit A-1, (B) the Proposed Additional Premises shall be added to the "Premises" under the Lease, and (C) references in the Lease to "Exhibit A" shall be deemed to refer to Exhibit A and Exhibit A-1 and references in the Lease to "Premises" shall be deemed to refer to the original Premises under the Lease and the Proposed Additional Premises. If City's Board of Supervisors does not take the Vacation Action and the Jurisdictional Transfer Action, then Department staff and Lessee shall continue to explore possible locations for food and beverage service in the vicinity, and the General Manager may elect, by written notice to Lessee, to substitute other space as the location of the Café Kiosk (defined in Section 4.c.(iii) below), which notice shall designate the proposed substitute space. The General Manager would not designate any substitute space unless and until any required environmental review of the proposed substitute space has been conducted in compliance with the California Environmental Quality Act. Lessee shall approve or disapprove the proposed substitute location in writing within ten (10) days of receipt of the General Manager's notice. If Lessee approves the substitute space, such space shall be the location for the Café Kiosk. If the substitute

location is not a part of the existing Premises, such substitute location shall thereafter be the “Proposed Additional Premises” for the purposes of the Lease and this Amendment. If the substitute location is a part of the existing Premises, then for the purposes of this Amendment the “Additional Premises Commencement Date” shall be the date Lessee confirms approval of the substitute location.

b. Modification of Percentage Rent Provision to Include Food and Beverage Sales. Effective as of the Additional Premises Commencement Date the following shall be added to the list of types of sales and Percentage Rent rates in the Percentage Rent Section of Section 1 (Basic Lease Information) of the Lease: “Food and beverage 10%:”

c. Use of Additional Premises; Hours of Operation; Maintenance. Effective as of the Additional Premises Commencement Date, the Lease shall be modified as follows:

(i) The “Use” section of Section 1 (Basic Lease Information) of the Lease shall be deleted and the following shall be substituted therefor:

Use (Section 7.1):	Operation of Coit Tower bookstore, food and beverage operations and elevator operation, as more particularly described in Section 7.1
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(ii) The following shall be added to the end of Section 7.1(a) of the Lease: “**(viii)** Operate a food and beverage concession in accordance with the terms and conditions set forth in **Section 7.1(i)** below.”

(iii) Section 7.1(i) of the Lease shall be deleted and the following provision shall be substituted therefor:

“(i) **Food Service.** Commencing promptly after the Additional Premises Commencement Date, Lessee shall install, operate, maintain and manage a food and beverage concession (the “Café Kiosk”) at the location shown on **Exhibit A-1** (the “Café Kiosk Site”) during the minimum days and hours set forth in **Section 7.3**, except as otherwise approved by the General Manager in writing. The design of the structure to be used for the Café Kiosk shall be subject to the prior written approval of the General Manager. Lessee shall operate the Café Kiosk in compliance with all applicable rules, regulations and codes including, without limitation, San Francisco Department of Public Health and San Francisco Planning Department regulations. Lessee shall operate the Café Kiosk in a manner which offers quality food and beverage to the public, serving menu items approved in advance by the General Manager or his or her designee. Any changes to the minimum hours of operation, the menu or pricing, or location of the Café Kiosk must be approved in advance by the General Manager. City is not responsible for security or any damage to the Café Kiosk or the equipment, accessories, or inventory. Lessee shall carefully supervise and control the operation of its business in the Café Kiosk, and shall employ a competent and adequate staff therefor, all of whom shall be Lessee's employees and none of whom shall be deemed for any purpose whatsoever to be City's employees. Lessee shall keep the Café Kiosk Site free of food and debris and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving the Café Kiosk Site. The power source for providing power to the Café Kiosk during Lessee's hours of operation shall be subject to the prior written approval of the General Manager or his or her designee. Prior to any installations on the Café Kiosk Site, Lessee shall provide City with a copy of the specifications (including design, make and model) for Lessee's proposed power source for providing power to the Café Kiosk during Lessee's hours of operation.

The General Manager shall review such submittal and shall promptly notify Lessee in writing of the General Manager's approval or disapproval of the proposed power source. If such power source is disapproved, Lessee shall use diligent efforts to identify an acceptable power source at the earliest possible date. Lessee shall not provide power to Café Kiosk by means of a generator. Lessee shall operate any power source in accordance with any required health and safety permits and shall comply with any safety warnings published by the manufacturer or supplier of the power source. Lessee acknowledges and agrees that there will be no tables, chairs, or other seating in the Café Kiosk Site. Lessee further acknowledges that Coit Tower is an iconic San Francisco landmark, accordingly, the equipment and fixtures used at the Premises must maintain and complement the park surroundings and will require City's prior written approval for any garbage receptacles, fixtures and equipment used in the Café Kiosk Site, and such approval shall be at City's sole discretion. Lessee shall not do anything in the Café Kiosk Site which will conflict with any law, and shall not use the Café Kiosk Site in a manner which has been identified in writing as being unsafe by Lessee's or City's insurance carrier. During Lessee's hours of operation of the Café Kiosk, Lessee shall keep the Café Kiosk Site and the immediately surrounding area free of food, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage, compost and recycling receptacles serving such area. If Lessee fails to maintain the Café Kiosk Site in the condition required hereunder, the City may provide written or oral notice to the manager or senior employee then on duty, describing such deficiency (the "Cleaning Default"), and Lessee shall promptly correct the deficiency. Failure to comply with this Section shall constitute a breach of this Lease. Lessee acknowledges that the area around the food and beverage cart in the Café Kiosk Site is open to the public, and Lessee cannot limit use of such area to Lessee's customers, and cannot prohibit the consumption of outside food and beverages in such area. Lessee shall abide by requirements of **Section 27.42** concerning food service waste reduction and the requirements of **Section 31** regarding sustainable foods. Lessee shall, at its sole expense, remove the Café Kiosk at the end of the Term, unless otherwise directed by the General Manager in writing, and shall return the Café Kiosk Site to its condition immediately prior to any installations on the site by Lessee."

(iii) Section 7.3 of the Lease shall be deleted and the following provision shall be substituted therefor:

"7.3 Days and Hours of Operation. Lessee shall actively operate the Premises and use its best business efforts to further the operations thereof and maximize its potential revenue and to serve the public throughout the Term of this Lease. The hours of operation of the Premises, including the lobby, elevator, bookstore, and Café Kiosk (if applicable), shall be as follows:

Daily, 10:00 AM - 6:00 PM, April – October

Daily, 10:00 AM – 5:00 PM, November - March

Holiday closures: Thanksgiving Day, Christmas Day, New Year's Day

The elevator, food and beverage-and retail concessions, including the Café Kiosk, if applicable,-shall be open to the public seven (7) days a week. The hours and days of operation are set by the Commission and can only be adjusted with approval by the Commission. Lessee should insure that the Café Kiosk is prepared to operate in inclement weather. In case of rain lasting for more than one hour, Lessee may at its election close the Café Kiosk for the balance of the day. Rent payable hereunder shall not be abated for Café Kiosk closures due to rain.

Notwithstanding the foregoing, at Lessee's election Lessee may offer docent tours to any of the following groups (the "Accepted Groups") as early as 9:00 AM:

- Non profit youth enrichment programs
- Non profit senior programs
- Kindergarten through twelfth grade students

However, prior to offering any such tour, the Lessee shall provide notice of the tour in the following manner including the the name of the Accepted Group to receive the tour and the date and time of the tour, and stating whether the Accepted Group is a nonprofit for youth enrichment program, nonprofit senior program, or kindergarten through twelfth grade students:

- (a) by email to the General Manager or his/her designee at an address to be provided by the City in writing;
- (b) by posting on the bulletin board outside of Coit Tower;
- (c) by email to the Protect Coit Tower community group at an address to be provided by the City in writing; and
- (d) by email to the District Three Supervisor at an address to be provided by the City in writing.

The City may inform Lessee of any changes to an email address required for notice by writing submitted to Lessee at least 48 hours before the change. Failure by Lessee to give the notice required above by this Section before providing a tour shall constitute a breach of the Lease."

(iv) The following provision shall be added to the Lease as Section 9.1(e):

"(e) During the hours Lessee is open for business, Lessee shall keep the food service areas, if any, and surrounding area free of food, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area."

5. Intentionally omitted.

6. Additional Rent Credits.

a. Short-Term Rent Credit on Account of Delay in Identifying Food Service Premises. Lessee shall receive a credit against the Base Rent and Percentage Rent payable under the Lease in the amount of (i) \$5,000 per month for the period commencing on December 1, 2014 and ending on the date immediately preceding the Effective Date of this Amendment and (ii) \$7,000 per month for the period commencing on the Effective Date of this Amendment and ending on the earlier of July 31, 2016, sixty (60) days after the Additional Premises Commencement Date, or the first day of Lessee's sales from the Proposed Additional Premises, in each case prorated for any partial months. Such credit applicable during any calendar month, when taken together with all other credits provided under the Lease or this Amendment, shall not exceed the monthly Base Rent and Percentage Rent payable under this Lease for such calendar month, but any remaining credit shall be carried over to subsequent months as necessary to ensure that the entire credit is received. Notwithstanding the foregoing, Lessee shall not be entitled to receive all or any portion of the rent credit during any period in which Lessee is in default under the Lease.

b. One-Time and On-going Rent Credit on Account of Credit Card Fees Attributable to Elevator Ticket Sales. Lessee shall receive on a monthly basis a credit against Rent payable under the Lease in the amount of the credit card service fees attributable to elevator ticket sales for such month, commencing retroactively as of July 1, 2014. The Parties acknowledge that prior to the date of this Amendment Lessee has received a credit in the total amount of \$18,576.91 for the credit card fees attributable to elevator ticket sales. Following the Effective Date of this Amendment Lessee shall receive a one-time credit against Rent in the amount of \$11,150.45 for the remaining credit for credit card fees attributable to elevator ticket sales for the period commencing July 1, 2014, and ending September 30, 2015. The monthly credit for the period commencing October 1, 2015, shall be calculated in the same manner as the prior credits, that is, in a manner that reasonably estimates the credit card service fee attributable to elevator ticket sales. The credit applicable under this Section during any calendar month, when taken together with all other credits provided under the Lease or this Amendment, shall not exceed the monthly Base Rent and Percentage Rent payable under this Lease for such calendar month, but any remaining credit shall be carried over to subsequent months as necessary to ensure that the entire credit is received. Notwithstanding the foregoing, Lessee shall not be entitled to receive all or any portion of the rent credit during any period in which Lessee is in default under the Lease.

7. On-line Elevator Ticket Sales; Service Charge and Recordkeeping. Effective as of the Effective Date, the following provision shall be added to the Lease as Section 5.12:

“5.12. On-line Elevator Ticket Sales; Service Charge and Recordkeeping. In order to improve operational efficiency and offer additional tickets during off peak times to better regulate guest flow, Lessee shall institute a program of online elevator ticket and mural tour sales. Lessee may, at Lessee’s election charge a service charge starting at \$1.00 per ticket for online ticket or mural tour sale (the “Online Service Charge”), in addition to the rate specified in **Section 7.4** of this Lease. Any increase in the Online Service Charge shall be reasonable and competitively priced with service fees for online ticketing for similar attractions in San Francisco, and shall be subject to the prior written approval of the General Manager, or his or her designee. Prior to instituting any online ticket sale program that will not comply with the requirements of **Section 5.6** of this Lease for recording ticket sales, Lessee shall provide Department staff with a description of Lessee’s proposed online record-keeping and reporting requirement protocols for such sales, which shall be sufficient to allow for effective auditing by City and shall be subject to the written approval of the General Manager, and Lessee shall thereafter comply with such approved protocols.”

8. Exclusions from Gross Receipts; Reporting Sales and Credit Card Fees.

a. Exclusions from Gross Receipts. Effective as of the Effective Date, the following shall be added to the end of the definition of Gross Receipts in Section 2 (Definitions) of the Lease:

“In addition to the foregoing, there shall be excluded from Gross Receipts (i) the Online Service Charge for elevator admissions, and (ii) revenue from the sale of postage stamps.”

b. Reporting. Effective as of the Effective Date, the following shall be added to the end of Section 5.7(a) of the Lease: “Lessee shall submit monthly a verifiable statement of (i) the total credit card service charges sufficient to determine the amount of fees associated with the sale of elevator tickets for the prior month, (ii) the total revenue from the Online Service Charge for such month, and (iii) the total revenue from the sale of postage stamps for such month.”

9. Intentionally omitted.Public Relations and Press Inquiries. Effective as of the Effective Date, the following provision shall be added to the Lease as Section 32:

“32. PUBLIC RELATIONS AND PRESS INQUIRIES.-Nothing in this Lease shall prohibit City or Lessee from discussing this Lease in response to inquiries from the public or the press. Lessee and City shall use good faith efforts to cooperate on matters of public relations and media responses related to this Lease or any amendments to this Lease, including Lessee’s right to use the Premises and the Additional Premises”

10. Attorneys’ Fees. In the event that either City or Lessee fails to perform any of its obligations under this Amendment or in the event a dispute arises concerning the meaning or interpretation of any provision of this Amendment, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of City's Office of the City Attorney shall have the meaning set forth in Section 27.12 of the Lease.

11. Counterparts. This Amendment may be executed in counterparts, each of which shall constitute an original but all of which shall constitute one document.

12. Entire Agreement. This Amendment sets forth the entire understanding of the parties on the subject matter of this Amendment. There are no agreements between Landlord and Lessee relating to the Lease other than those set forth in writing and signed by the parties. Neither party has relied upon any understanding, representation or warranty not set forth herein, either oral or written, as an inducement to enter into this Amendment.

13. Lease in Full Force and Effect; Amendment Prevails. Except as amended hereby, the Lease remains unmodified and in full force and effect. To the extent the provisions of this Amendment conflict with the provisions of the Lease, this Amendment shall prevail.

[No further text this page.]

City and Lessee have executed this Amendment as of the date first written above.

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

By: _____
PHILIP A. GINSBURG, General Manager
Recreation and Park Department

LESSEE: COIT TOWER, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

**APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED: _____**

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM FOR CITY:

DENNIS HERRERA,
City Attorney

By: _____
Anita L. Wood
Deputy City Attorney