



Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

LEASE

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

Coit Tower LLC, Lessee

For the Lease and Management of the

Book store and Elevator operations

at

**COIT TOWER
One Telegraph Hill Blvd.
San Francisco, California**

February 1, 2014

**CITY AND COUNTY OF SAN FRANCISCO
Edwin M. Lee, Mayor**

**SAN FRANCISCO RECREATION and PARK COMMISSION
Mark Buell, President
Allan Low, Vice President
Gloria Bonilla, Commissioner
Tom Harrison, Commissioner
Meagan Levitan, Commissioner
Eric McDonnell, Commissioner**

Philip A. Ginsburg, General Manager



RECREATION AND PARK DEPARTMENT

Coit Tower Lease

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RECREATION AND PARK DEPARTMENT

LEASE

THIS LEASE (this "Lease") dated for reference purposes only as of February 1, 2014, 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").

City and Lessee 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 set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	February 1, 2014
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Lessee:	COIT TOWER LLC, a California limited liability company
Premises (Section 3.1):	A portion of Coit Tower, located in San Francisco, California, owned by City and under the jurisdiction of its Recreation and Park Department (the "Department"), as more fully described in Section 3.1 and depicted on Exhibit A .
Term (Section 4):	The initial term of this Lease shall be five (5) years, as described in Section 4.1 , subject to Lessee's conditional option to extend as set forth in Section 4.2 . Estimated Commencement Date: April 1, 2014. Expiration Date: The date immediately preceding the five (5) year anniversary of the Commencement Date.
Early Entry Period (Section 4.6):	City shall use reasonable efforts to allow Lessee to access the Premises for the performance of Proposed Improvements up to sixty (60) days and not less than forty-five (45) days prior to the date the Premises are delivered to Lessee for the commencement of the Term, on the terms and conditions set forth in Section 4.6 .
Option to Extend (Section 4.2):	Subject to the approval of the Commission in its sole discretion, Lessee shall have the option to extend the term of this Lease for one three (3)-year extension period, commencing on the date immediately following the Expiration Date, on the terms and conditions set forth in Section 4.2 .
Rent (Section 5)	Lessee shall pay the greater of monthly Base Rent or monthly Percentage Rent, as such terms are defined below.
Base Rent Adjustment Dates (Section 5.2):	Beginning on the first anniversary of the Commencement Date of this Lease and continuing on each subsequent anniversary date (each, an "Adjustment Date"), the annual and monthly Base Rent payable hereunder shall increase according to Section 5.2 .

Base Rent; Base Rent
Commencement Date
(Section 5.1):

Annual Base Rent: \$662,400 per year, payable in monthly
installments in the following respective amounts:

<u>Months</u>	<u>Monthly Base Rent</u>
April – October	\$66,950
November – March	\$38,750

Monthly Base Rent shall be \$0 (zero dollars) for the three (3)
month period commencing on the Commencement Date. The date
that is three (3) months after the Commencement Date is referred to
herein as the “Base Rent Commencement Date.”

Base Rent Abatement or Credit:
(Section 5.11)

Lessee shall receive a one-time credit in the amount of \$65,000
against the Base Rent and Percentage Rent payable under this
Lease. See **Section 5.11**

Percentage Rent (Section 5.1 and
Section 5.5):

In addition to the monthly Base Rent specified above, Lessee shall
pay a monthly Percentage Rent for each month in which the
Percentage Rent exceeds the Base Rent for such calendar month.
See **Section 5.1** and **Section 5.5**

Percentage Rent shall be the aggregate of the following percentages
of the respective categories of Gross Receipts:

<u>Type of Sale</u>	<u>Percentage</u>
Merchandise sales	20%
Audio tours and binocular rentals	10%
Telescopic viewers	50%
Student or Docent led tours	10%
Admission Receipts	90%

Rent Credit for Docent Program
(Section 5.3):

Up to \$40,000 per annum (\$3,333.33 per month), as provided in
Section 5.3.

Use (Section 7.1):

Operation of Coit Tower book store and elevator operation, as more
particularly described in **Section 7.1.**

Security Deposit/Letter of Credit
Amount (Section 23):

\$50,000

Notice Address of City (Section
27.1):

Recreation and Park Department
Property Management
McLaren Lodge Annex
Re: Coit Tower

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attn: Real Estate/Finance Team

Key Contact for City:

Cassandra Costello

Telephone No.:

(415) 831-2791

Address for Lessee (Section 27.1):

589 Adobe Canyon Road
Kenwood California 95452

Key Contact for Lessee:	Terry Grimm
Telephone No.:	(707) 266-8015
Brokers (Section 27.8):	None
Other Noteworthy Provisions:	
Protection of Murals (Section 7.7, Exhibit E):	Special provisions regarding the protection of the murals at Coit Tower are set forth in Section 7.7 and Exhibit E .
Anticipated City Work (Section 26.1):	City anticipates performing mural restoration work and certain repairs and upgrades to portions of the Premises, as described in Section 26.1 .

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Additional Charges**" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by Lessee under this Lease.

"**Adjustment Date**" means the annual date for adjusting Base Rent as specified in **Section 5.2** hereof.

"**Adjustment Index**" means the Index which is published most immediately preceding a particular Adjustment Date.

"**Admission Receipts**" means Gross Receipts from admission to the tower or elevator.

"**Affiliate of Lessee**" means any person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under the common control with, Lessee. As used above, the words "control," "controlled" and "controls" mean the right and power, directly or indirectly through one or more intermediaries, to direct or cause the direction of substantially all of the management and policies of a person or entity through ownership of voting securities or by contract, including, but not limited to, the right to fifty percent (50%) or more of the capital or earnings of a partnership or, alternatively, ownership of fifty percent (50%) or more of the voting stock of a corporation.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Anniversary Date**" means the annual anniversaries of the Commencement Date.

"**Assignment**" has the meaning given in **Section 16.1** hereof.

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

"**Base Index**" means the Index published most immediately preceding the Commencement Date.

"Base Rent" means the annual Base Rent specified in the Basic Lease Information and described in **Section 5.1** hereof.

"Basic Lease Information" means the information with respect to this Lease summarized in **Article 1** hereof.

"Capital Upgrade Work" has the meaning given in **Section 26.1** hereof.

"City" means the City and County of San Francisco, a municipal corporation.

"Commencement Date" means the date on which the Term of this Lease commences as described in **Section 4.1** hereof, subject to the provisions of **Section 4.3** and **Section 4.4**.

"Commission" means the City and County of San Francisco Recreation and Park Commission or its successor.

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

"Department" means City's Recreation and Park Department.

"Department Facilities" means any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks, plazas and street improvements, but excluding Coit Tower and the binocular viewing machines located along the perimeter of the parking lot.

"Effective Date" means the date on which this Lease becomes effective pursuant to **Section 4.5** hereof.

"Encumber" means create any Encumbrance; **"Encumbrance"** means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"Encumbrancer" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"Event of Default" has the meaning set forth in **Section 16.1** hereof.

"Expiration Date" means the date on which the Term of this Lease terminates as described in **Section 4.1** hereof.

"General Manager" means the General Manager of the Recreation and Park Department.

"Gross Receipts" means all amounts received and receivable from all sales and business conducted in, from or attributable to the Premises by Lessee, or by any other person, firm, partnership or corporation conducting sales or performing services of any sort in, upon, or from any part of the Premises as a sublessee, licensee, concessionaire, contractor or subcontractor of Lessee, including amounts received from orders or bookings for rental or sales of merchandise made by telephone, mail or online or through tour operators or third parties, except as provided below. The following items shall be excluded from Gross Receipts for purposes of calculating the Percentage Rent: (a) returns and refunds, (b) the amount of any sales tax, parking tax, or similar tax or imposition, imposed on all sales or charges where such sales tax, similar tax or imposition is billed to the purchaser as a special item, (c) sales of trade fixtures,

machinery and equipment after the use of same in the conduct of Lessee's business and which are not part of inventory or stock in trade, and (d) insurance proceeds. Gross Receipts shall be calculated separately for each category of receipts.

“**Guidelines**” means the San Francisco Arts Commission Guidelines for Coit Tower Usage, dated August 14, 2012, attached to this Lease as **Exhibit E**, together with any updates thereto or substitution thereof after Lessee is given written notice of such updates or substitution.

"Hazardous Material" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 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 any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Lessee, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

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

"Improvements" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of Lessee pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping.

"Indemnify" means indemnify, protect, defend and hold harmless forever.

"Indemnified Parties" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"Index" means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"Interruption Periods" has the meaning given in **Section 26.1** hereof.

"Investigation" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"Invitees" when used with respect to Lessee means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of Lessee.

"Landlord" means the City and County of San Francisco.

"Law" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"Lease" means this Lease as it may be amended in accordance with its terms.

"Lease Year" shall be determined as follows: the first "Lease Year" shall be the period commencing on the Commencement Date and ending on the last day of the twelfth (12th) full calendar month thereafter. and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

"Lessee" means the Party identified as Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Lessee shall also refer to the successors and assigns of Lessee's interests under this Lease, provided that the rights and obligations of Lessee's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"Lessee's Personal Property" means the personal property of Lessee described in **Section 8.3** hereof.

"Losses" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"Management Plan" shall have the meaning set forth in **Section 7.2**.

"Official Records" means the official records of the county(ies) in which the Premises are located.

"Party" means City or Lessee; **"Parties"** means both City and Lessee.

"Percentage Rent" means a sum equal to the stated percentage of Lessee's Gross Receipts for the stated categories made from or upon the Premises during each calendar month of the Term in the respective percentage amount set forth in the Basic Lease Information.

"Premises" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"Proposed Improvements" has the meaning given in **Section 8.4** hereof.

"Release" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Lessee, or in, on, under or about the Premises or Department Facilities or any portion thereof.

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

"Rent" means the Base Rent, as adjusted pursuant to the provisions of **Section 5.2**, together with any and all Percentage Rent and Additional Charges, whether or not any such amounts are specifically characterized as rent

"Special Events" shall be defined as any assembly of persons using or occupying the Coit Tower facility outside of normal public visiting hours, including, but not limited to, weddings and wedding receptions, parties, celebratory events and community events.

"Sublease" has the meaning given in **Section 16.1** hereof.

"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.

"Term" means the term of this Lease as determined under **Article 4** hereof.

"Transfer" means any Assignment or Sublease.

"Transferee" means any recognized assignee of any part of Lessee's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 16** hereof.

"Unmatured Event of Default" means any default by Lessee under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

3. PREMISES

3.1 Leased Premises. Subject to the terms, covenants and conditions of this Lease, City leases to Lessee and Lessee leases from City, those portions of the real property shown delineated on **Exhibit A** attached hereto, located in the City and County of San Francisco, State of California, together with portions of the Improvements thereon, commonly known as the "Coit Tower," including the lobby, book store and public restrooms; the elevator; the observation deck; the apartment (subject to certain use restrictions described in **Section 7.1(i)** below); and the areas outside of the tower structure as shown within the delineated area on **Exhibit A** attached hereto, including the area comprising the perimeter of the parking lot where binocular viewing machines are located.

3.2 Rights Reserved to City. Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water

rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

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

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks, provided that any such easement or right-of-way shall not materially interfere with Lessee's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to Lessee for damage to its property that Lessee may sustain hereunder as a result of the grantee's use of such easement or right of way; and

(g) All rights of access provided for in **Article 20** below.

3.3 Subject to Public and Municipal Uses and Rules. Lessee acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. Lessee's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of Lessee outstanding hereunder and subject to the terms and conditions of this Lease, City shall use its best efforts to avoid interfering with Lessee's quiet use and enjoyment of the Premises. Lessee shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit B**.

3.4 As Is Condition of Premises.

(a) **Inspection of Premises.** Lessee represents and warrants that Lessee has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Lessee's own choosing, of the Premises and the suitability of the Premises for Lessee's intended use. Lessee is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Lessee acknowledges and agrees that the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without

representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Lessee acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Lessee's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Lessee's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, subject, however, to City's maintenance and repair obligations under **Section 9.2** below.

(c) **Accessibility Inspection Disclosure.** California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("CASp") to determine whether the property meets all applicable construction-related accessibility requirements. The law does not require landlords to have the inspections performed. Lessee is hereby advised that the Premises have not been inspected by a CASp.

(d) **Utilities.** City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Premises. Lessee has the sole responsibility to locate any utilities and must take reasonable care to protect them from damage.

4. TERM; OPTION TO EXTEND; EARLY ENTRY PERIOD

4.1 Term of Lease; Commencement Date and Expiration Date. The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date (the "Estimated Commencement Date"), or such earlier or later date upon which City delivers and Lessee accepts possession of the Premises, subject to the provisions of **Section 4.3** (Delay in Delivery of Possession) and **Section 4.4** (Delays Caused by Lessee) below. The date on which the Term commences is referred to as the "Commencement Date." The Term of this Lease shall expire on the day immediately preceding the five (5) year anniversary of the Commencement Date (the "Expiration Date"), unless sooner terminated or extended pursuant to the provisions of this Lease.

4.2 Option to Extend. City grants to Lessee a one-time option (the "Extension Option") to extend the Term of this Lease (the "Extension Option") for an additional three (3) years (the "Extension Term"), commencing upon the date immediately following the Expiration Date, upon the following terms and conditions. Lessee may exercise the Extension Option at any time during the Term but if it determines to do so it must give written notice to City thereof not less than one (1) year prior to the Expiration Date. Lessee's exercise of the Extension Option shall be subject to obtaining approval of such extension by the Commission. Such approval by the Commission shall not be unreasonably withheld provided that Lessee is not then in default of any its obligations under this Lease. Any such exercise notice by Lessee shall be irrevocable by Lessee. If any event of default by Lessee is outstanding hereunder either at the time of Lessee's exercise of the Extension Option or at any time prior to the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then City may elect by notice to Lessee to reject Lessee's exercise of the Extension Option, whereupon the Extension Option shall be null and void. City shall also have the right to void Lessee's Extension Option if Lessee has assigned its interest hereunder or sublet any portion of the Premises, except as allowed under **Section 16.1** below. If Lessee elects to exercise the Extension Option, then the lease for the Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

4.3 Delay in Delivery of Possession. If City is unable to deliver possession of the Premises to Lessee on or before the Estimated Commencement Date, then the validity of this Lease shall not be affected thereby and City shall not be liable to Lessee for any Losses resulting there from. Lessee waives all provisions of any Laws to the contrary. In the event of any such delay in delivery of possession, the Term and regular payments of Base Rent and Additional Charges shall not commence until City delivers possession of the Premises. If the Term commences later or earlier than the Estimated Commencement Date in accordance with the terms hereof, this Lease shall nevertheless expire on the Expiration Date (determined in accordance with **Section 4.1** above), unless sooner terminated or extended pursuant to the provisions of this Lease.

4.4 Delays Caused by Lessee. Notwithstanding anything to the contrary above, if City's ability to deliver possession of the Premises is delayed as a result of the acts or omissions of Lessee or any of Lessee's Agents, then the Base Rent and Additional Charges payable by Lessee hereunder shall commence on the date when City would have delivered possession of the Premises but for such acts or omissions.

4.5 Effective Date. This Lease shall become effective on the date (the "Effective Date") upon which (i) the Board of Supervisors passes a resolution approving this Lease, and the Mayor signs such resolution, (ii) the Parties hereto have duly executed and delivered this Lease, (iii) Lessee delivers a certified certificate of status issued by the State of California and evidencing that Lessee is a duly formed limited liability company in good standing and authorized to conduct business in the State of California, and (iv) Lessee has delivered the certificates described in **Section 19.3** hereof to City. The conditions set forth in item (iii) above may be waived by City in writing at the sole election of the General Manager.

4.6 Early Access for Performance of Proposed Improvements. City shall use reasonable, good faith efforts to provide Lessee with access to the Premises for the performance of the Proposed Improvements described in **Section 8.4** below up to sixty (60) days and not less than forty-five (45) days prior to the date the Premises are delivered to Lessee for the commencement of the Term. Lessee acknowledges that the provisions of **Sections 8, 11, 18 and 19** below shall apply in full during the period of any such early entry, as shall any other provision of this Lease required to enforce City's rights under such Sections, and Lessee shall (i) provide certificates of insurance evidencing the existence and amounts of liability insurance carried by Lessee and its agents and contractors, reasonably satisfactory to City, prior to such early entry, and (ii) comply with all applicable laws, regulations, permits and other approvals applicable to such early entry work in the Premises. Lessee further acknowledges that if the General Manager elects to cause part or all of the Capital Upgrade Work to be performed during such early access period, the provisions of **Section 26.1** below shall apply. Lessee shall use good faith efforts to cause the work performed on Lessee's behalf during the early access period to be performed in such manner as to minimize, to the extent possible, disturbance of other construction or activities in the Premises.

5. RENT; OTHER CONSIDERATION

5.1 Monthly Payments of Base Rent or Percentage Rent. On or before the tenth (10th) day of each month during the Term of this Lease, commencing on the tenth (10th) day of the calendar month following the month in which the Term commences and ending on the tenth (10) day of the calendar month immediately following the calendar month in which the Term expires or this Lease is terminated, Lessee shall pay to City, the *greater of* (A) the monthly Base Rent, or (B) Percentage Rent calculated using the applicable percentages of Gross Receipts specified in the Basic Lease Information for the various sources of Gross Receipts for such month. Base Rent or Percentage Rent shall be payable monthly, for the previous month's business operations. For the purpose of the foregoing calculations, the monthly Base Rent for the three (3) month period prior to the Base Rent Commencement Date shall be zero.

5.2 Adjustments in Base Rent. On the Anniversary Date each year (each, an "Adjustment Date"), Base Rent payable by Lessee shall be adjusted in the following manner. The Adjustment Index shall be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after such Adjustment Date shall be set by multiplying the Base Rent by a fraction (the "CPI Adjustment Fraction"), the numerator of which is the Adjustment Index and the denominator of which is the Base Index. Notwithstanding the foregoing, in no event shall the Base Rent on or after the Adjustment Date be less than the Base Rent in effect immediately prior to the Adjustment Date or more than one hundred five percent (105%) of the Base Rent in effect immediately prior to the Adjustment Date.

5.3 Rent Credit for Docent Program. In consideration of Lessee's agreement to hire or otherwise engage one or more Docents to provide the services described in **Section 7.1(d)** below, Lessee shall receive a credit against the monthly Base Rent or monthly Percentage Rent payable hereunder in the amount of \$3,333.33 (the "Monthly Docent Credit"), adjusted as provided below, for each full calendar month in which Lessee provides Docent service in the Premises in the manner and during the hours described in **Section 7.1(d)** below. 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 and otherwise in form satisfactory to City (the "Docent Program Statement"), showing (i) the number of days during the previous month that one or more Docents provided the required Docent service at the Premises in accordance with the requirements of **Section 7.1(d)**, and (ii) the number of days on which tours were offered by the Docents during such month. The monthly Docent Credit shall be prorated based on the number of days in such calendar month on which the minimum Docent service was provided. Such credit shall not reduce the Rent payable in any month below zero. On each Adjustment Date the Monthly Docent Credit shall be adjusted by multiplying the initial Monthly Docent Credit amount of \$3,333.33 by the CPI Adjustment Fraction. Lessee shall keep accurate books and records of the days and hours worked by Docents and the dates on which tours are offered and shall make such books and records available to City to audit.

5.4 Payment. Rent shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing.

If the Base Rent Commencement Date occurs on a day other than the first day of a calendar month, or if the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

City reserves the right to direct Lessee, upon thirty (30) days written notice, to deposit all payments required under this Lease from Lessee's account into the City designated revenue account by bank or wire transfer.

5.5 Monthly Gross Receipts Statements; Determination of Percentage Rent Payable. On or before the tenth (10th) day of each full calendar month of the Lease Term and the of the calendar month immediately following the expiration or termination of this Lease, Lessee shall deliver to City a statement certified as correct by an officer or owner of Lessee and otherwise in form satisfactory to City, showing the Gross Receipts during the last preceding calendar month broken down by the categories listed in the Basic Lease Information, as required to determine the Percentage Rent payable for such calendar month (a "Monthly Gross Receipts Statement"). Percentage Rent (as shown in the Basic Lease Information) shall be calculated for such calendar month based on the Percentage Rent Statement and, if the amount so calculated exceeds the monthly Base Rent, such Percentage Rent shall be payable in accordance with **Section 5.1** above. In the event this Lease terminates during a month at no fault of Lessee, payment of the Percentage Rent for that portion of the month during which sales are made on the Premises shall be determined and reported by Lessee to City within ten (10) days after Lessee ceases to

make sales on the Premises, but in the event this Lease terminates as a result of Lessee's default, including insolvency thereof, any amounts due hereunder shall be payable forthwith.

5.6 Cash Register and Ticket Machine Requirements. Lessee shall install on the Premises at least one cash register, and Lessee may, at Lessee's election, install an automatic ticket machine to dispense tickets for elevator admissions. For each transaction at the Premises Lessee shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by the General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Gross Receipts (other than Admission Receipts, to the extent Lessee installs an approved automatic ticket machine for elevator admissions). Any automatic ticket machine used on the Premises shall be of a type approved by the General Manager in writing and shall register elevator admission ticket other than those registered on the cash register. The tape or digital record of each such cash register and automatic ticket machine shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of Lessee's business at the Premises, and City shall not perform such inspection unless a manager of Lessee's business is present. Lessee shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises (other than Admission Receipts, to the extent Lessee installs an approved automatic ticket machine for elevator admissions) and be no more subject to tampering than mechanical cash register(s).

Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and Lessee shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include Lessee's identification thereon. Each cash register or automatic ticket machine (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by the General Manager. At the General Manager's request, Lessee must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by the General Manager and, with respect to automatic ticket machines, a statement verifying that appropriate safeguards against tampering have been followed.

Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) or ticket machine used on the Premises, Lessee must immediately furnish to the General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) or ticket machine (including computerized cash registers or other similar electronic devices). Any repair contractor employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) or ticket machine on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used) or ticket machine.

5.7 Reporting; Books and Records; Audits

(a) **Monthly Reporting.** Along with each monthly Rent payment, Lessee shall submit via email to the City contact listed in the Basic Lease Information section a copy of the "Concessionaires' Payment Statement", detailing a true and factual accounting of all Gross Receipts, taxes paid and rent figures calculated for that month.

(b) **Books and Records.** Lessee agrees to keep accurate books and records according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents Lessee utilizes in its business operations. Lessee shall not co-mingle personal funds with business funds.

(c) **Annual Gross Receipts Report; Annual Income and Operations Report.** On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City a statement (the "Annual Gross Receipts Statement"), certified as correct by an officer or owner of Lessee, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Statement shall set forth the Gross Receipts, as defined above and shown on Lessee's books, for the Lease Year just concluded broken down by category. Further, on or before the date which is ninety (90) days following the close of each fiscal year during the Term and ninety (90) days following the end of the Term, Lessee shall deliver to City an itemized income and operations statement for such year, certified as correct by an officer or owner of Lessee, with (i) supporting tables that include Gross Receipts by department, distributed departmental expenses and undistributed expenses, and (ii) a cash flow table that itemizes all expenditures, and with respect to expenditures for improvements and personal property, indicates which of the improvements and acquisitions represent replacements.

(d) **Audit.** Lessee agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "City representative"), for the purpose of examining said books and records to determine the accuracy of Lessee's earnings from Lessee's business. Said books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts; except that, if an audit is made within said four-year period and City claims that errors or omissions have occurred, the books and records shall be retained and made available until those matters are resolved. If an audit reveals that Lessee has understated its Gross Receipts or mischaracterized its Gross Receipts such that Gross Receipts should have been allocated to a category which would have resulted in higher Percentage Rent payment, Lessee shall pay City, promptly upon demand, the difference between the amount Lessee has paid and the amount it should have paid to City. If Lessee understates or mischaracterizes its Gross Receipts by three percent (3%) or more, the cost of the audit shall be borne by Lessee. If Lessee understates or mischaracterizes its Gross Receipts with knowledge of such understatement or mischaracterization or by reason of gross negligence, then, in addition to paying for the cost of the audit, on the first such occasion Lessee shall pay City five (5) times the amount of the difference between the amount City should have received and amount City actually received. A second such understatement or mischaracterization made with knowledge of or by reason of gross negligence shall be considered an Event of Default.

(e) **Patrons Audit.** Lessee shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and Lessee.

5.8 Late Charge; Late Submittal of Monthly Gross Receipts Statement.

(a) Late Charge. If Lessee fails to pay any Rent by the date the same is due, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the amount due, in each instance (provided that such charge shall be imposed with respect to the first two occurrences of such a delinquency in any calendar year only if Lessee fails to pay such Rent within five (5) days after the date such sum is due). The late payment charge has been agreed upon by City and Lessee, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Lessee, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and Lessee shall promptly pay such charge to City together with such unpaid amount.

(b) Late Submittal of Monthly Gross Receipts Statement. If City receives the Rent payment but does not receive the Monthly Percentage Rent Statement when due, such failure, until cured, shall be treated as a late payment of Rent for such month, subject to a Late Charge, until City receives the applicable Monthly Gross Receipts Statement. Additionally, if Lessee shall fail to deliver any Monthly Gross Receipts Statement when due (irrespective of whether any Percentage Rent is actually due or paid) and such failure shall continue for three (3) days after the date Lessee receives (or refuses receipt of) written notice of such failure from City, City shall have the right, among its other remedies under this Lease, to employ a certified public accountant to make such examination of Lessee's books and records as may be necessary to certify the amount of Lessee's Gross Receipts for the period in question and the certification so made shall be binding upon Lessee and Lessee shall promptly pay to City the total cost of the examination, together with the full amount of Percentage Rent due and payable for the period in question, including any Late Charge.

5.9 Default Interest. If any Rent is not paid on the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%) per year or, if a higher rate is legally permissible, at the highest rate an individual is permitted to charge under Law. However, interest shall not be payable on late charges incurred by Lessee nor on any amounts on which late charges are paid by Lessee to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Lessee.

5.10 Net Lease. This Lease is a "net lease." Accordingly, Lessee shall pay to City all Rent (including Base Rent, Percentage Rent, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to Lessee's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, Lessee shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of its estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Lessee from any of its obligations under this Lease, or shall give Lessee any right to terminate this Lease in whole or in part. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation.

5.11 Rent Credit. Lessee shall receive a credit against the Base Rent and Percentage Rent payable hereunder in the amount set forth in the Basic Lease Information, provided that (i) such credit shall apply to the Base Rent and Percentage Rent first payable after Lessee has completed Proposed Improvements, (ii) the credit applicable during any calendar month 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, and (iii) 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 this Lease.

6. TAXES, ASSESSMENTS AND OTHER EXPENSES

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

(a) **Payment Responsibility.** Lessee shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Lessee's Personal Property, the leasehold estate or any subleasehold estate, or Lessee's use of the Premises or any Improvements. Lessee shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to Lessee's right to contest the validity of such charge pursuant to **Section 6.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, Lessee shall reimburse City for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Lessee recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Lessee may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Lessee shall not allow or suffer a lien for any taxes payable by Lessee hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. Lessee may have a reasonable opportunity to contest the validity of any such taxes provided Lessee, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should Lessee be unsuccessful in any such contest. Lessee shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) **Reporting Requirement.** Lessee agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

6.2 Other Expenses. Except as specifically provided in this Lease, Lessee shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon, including, without limitation, the cost of any utilities or services necessary for Lessee's use.

6.3 Evidence of Payment. Lessee shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

7. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

7.1 Lessee's Permitted Uses.

(a) **Generally.** Lessee shall continuously use the Premises and Improvements for the following uses (collectively the "Permitted Uses"), in accordance with the terms and conditions of this Lease and with the Arts Commission Guidelines, and for no other use or purpose:

- (i) Sell tickets and collect money for elevator rides to the upper observation deck of the tower.
- (ii) Operate a book store in the Premises, subject to the provisions of **Section 7.1(e)** below.
- (iii) Establish and operate a viewing machine concession.
- (iv) Rent audio tour headsets and similar devices.
- (v) Provide rotating exhibits of historical artifacts or other materials and provide explanatory material for elements of Coit Tower of interest to visitors, provided that such exhibits and explanatory materials shall be subject to the prior written approval of the Department and the Arts Commission.
- (vi) Provide guided tours in accordance with the provisions of **Section 7.1(d)** below.
- (vii) At Lessee's election use that portion of the Premises located on the second (2nd) floor of the tower known as the "Caretaker's Apartment" or the "Keeper's Quarters" for general office purposes directly related to the operation of Lessee's business in the Premises, subject to the restrictions set forth in **Section 7.1(g)**.

(b) **Mural Protection and Guidelines.** Lessee shall at all times comply with the provisions of **Section 7.7** below regarding mural protection. Without limiting the generality of the foregoing, Lessee shall ensure that all of Lessee's staff, contractors and volunteers undergo training on the Arts Commission Guidelines attached here as **Exhibit E** (the "Arts Commission Guidelines"), as mandated by the Arts Commission Guidelines, prior to providing services at or to the Premises.

(c) **Elevator Operations.** Lessee shall sell tickets for the elevator at the rates set forth in **Section 7.4** below and operate the elevator during the hours set forth in **Section 7.3** below. Ticket sales shall be recorded by a cash register or ticket machine satisfying the requirements of **Section 5.6** above. Lessee shall provide a uniformed attendant to operate the elevator during all hours that Lessee is open for business in the Premises. The elevator operator shall receive the training mandated by the Arts Commission Guidelines and shall be knowledgeable about the tower and the main attractions visible from the observation deck, and shall politely and professionally answer visitors' questions regarding such matters. On the return trip from the observation deck the elevator operator shall remind visitors of the importance of protecting the artwork in the lobby, and shall remind them of the rules regarding backpacks and other personal property.

(d) **Docents, Guided Tours and Student Tours.** Commencing on the Commencement Date and continuing throughout the Term of this Lease, Lessee shall employ or engage one or more employees, contractors, or volunteers to act as a docent in the lobby of Coit Tower (each, a "Docent"), and at least one such Docent shall be on duty in the lobby of the Premises throughout Lessee's hours of operation set forth in **Section 7.3** below. The Docents shall be professional and knowledgeable about the history of Coit Tower, the murals, and the muralists, and shall be uniformed or otherwise readily identifiable by the public. Lessee shall cause the Docent on duty to greet visitors, inform guests about rules governing mural viewing, give a brief summary of the art and history of Coit Tower, provide directions and answer questions about the murals and Coit Tower, and observe visitors in the lobby and remind them of the viewing rules (backpacks and other items to be carried in front, no food or drink, no

touching, etc.) as required. At Lessee's election, Lessee may institute an internship program with one or more of the local universities and colleges that would provide student Docents during some or all of Lessee's hours of operation, provided that the terms and conditions of such program shall be subject to the prior written approval of the General Manager, or his or her designee, and the Arts Commission. All Docents shall receive the training mandated by the Arts Commission Guidelines. Lessee shall offer a minimum of one Docent-led tour of the murals each day of the Lease Term. Tours shall be scheduled to avoid conflict with the tours offered by CityGuides. Tours shall be conducted in accordance with the requirements of the Arts Commission Guidelines. The fee for Docent-led tours shall be subject to the written approval of the General Manager, or his or her designee, as provided in **Section 7.4** below.

(e) **Book store.** The general appearance of the book store, including advertising matter, signs, merchandise and fixtures, and the arrangement thereof, shall be attractive, dignified and uncluttered and shall be maintained in a first-class manner in keeping with the character and standards of the Building. In order to appeal to a wide range of visitors, Lessee shall offer merchandise in a range of prices, and shall focus on souvenirs that are exclusively designed for Coit Tower, are locally produced, or depict Coit Tower, the City of San Francisco or the region, such as postcards, artwork and books, and may offer items designed to enhance the visitor experience at Coit Tower, such as batteries and memory cards for digital cameras. Items with Logos and Works, as such terms are defined in **Section 7.5** below, shall be subject to the terms of and conditions of **Section 7.5** of this Lease. No food or beverage shall be sold from the book store due to the prohibition of food and beverages in the mural room. Items sold from the book store shall be subject to the approval or disapproval of the General Manager.

(f) **No Special Events.** Lessee acknowledges that there shall be no Special Events as defined in this Lease permitted hereunder.

(g) **Use of Caretaker Apartment.** That portion of the Premises known as the Caretaker Apartment or Keeper's Quarters shall be used for the purpose set forth in **Section 7.1(a)(vii)** above and for no other use or purpose. Use of the Caretaker Apartment shall comply with the requirements of the Arts Commission Guidelines. Without limiting the generality of the foregoing, the Caretaker Apartment shall not be used for storage or lodging. Lessee shall provide City with not less than five (5) business days advance notice of the dates Lessee desires to move any office furnishings or equipment into or out of the Caretaker Apartment, and shall coordinate the date and time of any such moves with Department staff. Such move shall be conducted with utmost care for the murals, and City may elect to have a Department representative present for any such move.

(h) **Compliance with Management Plan.** The Permitted Uses shall be generally conducted in accordance with the description of such Permitted Uses set forth in Lessee's Management Plan attached to this Lease as **Exhibit C**. If Lessee desires to engage in an additional use not enumerated above, or desires to materially change the manner in which Lessee conducts a Permitted Use from the manner described in the Management Plan, Lessee shall request such additional use or modification in writing, and such addition or modification shall be subject to the approval of the General Manager, which may be withheld in his or her sole discretion.

(i) **Food Service.** City and Lessee acknowledge that historic monuments such as Coit Tower often offer amenities such as food and beverage service to their guests. Many historic monuments and landmarks in the United States such as the Statue of Liberty and the Golden Gate Bridge and monuments and memorials of the National Mall provide onsite food and beverage service options for the convenience and pleasure of their patrons. Food service is not presently permitted under this Lease. It is the desire of the Department and Lessee to work diligently to provide a food and beverage service amenity at Coit Tower. The General Manager shall cause Department staff to explore the demand and desire for food and beverage service at or adjacent to Coit Tower, from a kiosk or a mobile food facility, or by other means. Prior to the initiation of any food and beverage service, the General Manager shall cause Department staff to engage in a community outreach process to ensure that surrounding neighbors and community groups are aware of any proposed food and beverage plans. If, following such exploratory process, it is the mutual desire of Lessee and the General Manager to amend this Lease to

provide for food and beverage service, and if Lessee and Department staff thereafter negotiate a mutually acceptable amendment to this Lease setting forth the applicable terms and conditions regarding the proposed food and beverage service, including, without limitation, the location, type of service, associated seating area, if any, revised Annual Base Rent, applicable Percentage Rent, operating hours, menu, and the like, then the General Manager shall cause Department staff to seek the approval of the Commission and the Board of Supervisors for an amendment to this Lease to allow for such operations. Lessee acknowledges that neither the General Manager nor any other officer or employee of the City has authority to commit the City to such an amendment unless and until an appropriate resolution of the Board of Supervisors has been duly passed approving the transaction based upon information produced from the environmental review (CEQA) process and upon other public review and hearing processes and subject to all applicable governmental approvals.

7.2 Appropriate Operations, Goods, and Services; Correction of Deficiencies in Operations. Lessee has developed the Management Plan attached to this Lease as **Exhibit C** (the “Management Plan”), as Lessee's proposed manner to market, promote and manage the concessions at the Premises, and the Department approves the Management Plan for such purpose, except to the extent inconsistent with the Permitted Uses or other provisions of this Lease. Upon written notice from the Department that the operations, goods or services provided at the concessions at the Premises are not in keeping with the approved Management Plan and the Department’s vision outlined in the 2011 Request for Proposals, Lessee shall attempt in good faith to correct such deficiency within thirty (30) calendar days of such notice. If the deficiency cannot be corrected within the 30-day period, Lessee shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the original notice from City. Lessee’s proposal shall be subject to approval by the Department at Department's sole and absolute discretion. If the deficiency is not corrected by the end of the 30-day period, or if the Department has not accepted Lessee’s plan for cure by such date, the Lessee shall be in default of this Lease. The foregoing opportunity to correct deficiencies in operation shall not apply to failure to operate the elevator, failure to open for business in the Premises during the minimum hours of operation required hereunder, failure to follow the Arts Commission Guidelines, or failure to comply with any other specific obligation under this Lease.

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, book store, and Mobile Café, 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 and retail concessions 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.

7.4 Rates and Charges. Lessee shall charge rates for elevator rides and admission to the observation deck of the tower as approved by City’s Board of Supervisors. Prior to the Commencement Date Lessee shall provide written notice to City of the proposed fee or fees for Docent-led tours, and the amount of such fee or fees shall be subject to the prior written approval of the General Manager, or his or her designee, and thereafter all changes to the approved fee or fees for Docent-led tours shall be subject to the approval of the General Manager, or his or her designee. The rates and charges for other goods sold and services offered shall be reasonable and competitively priced with similar businesses in San Francisco. The Department reserves the right to review and approve any increases in rates and charges.

As of the date of the Lease the elevator rates approved by City’s Board of Supervisors are as follows:

Age Category	San Francisco Resident	Non-Resident
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Adult	\$5.00	\$7.00
Senior (65+)	\$3.00	\$5.00
Youth (12—17 years)	\$3.00	\$5.00
Child (5—11 years)	\$1.50	\$2.00
Child (4 years and under)	\$0	\$0

Permits and reservations for Pioneer Park outside the tower itself will continue to be handled by the Recreation and Park Department. Permits for filming and other relevant activities will continued to be handled by the Recreation and Parks Department or other appropriate agency.

7.5 Logos, Website, Merchandise and Branded Products.

The City and Lessee have a mutual interest in the public's enjoyment, recognition, and appreciation of Coit Tower and its amenities. In furtherance of this purpose and to promote Coit Tower, the Lessee, at the Lessee's expense, shall work with a Department approved designer to develop or create artwork, logos, trademarks or service marks, related to Coit Tower, or Lessee's services or operations in or for Coit Tower or on the Premises, or similar related mark or logo, artworks and/or words (collectively "Logo" or "Logos"), subject to the following conditions:

The Department must pre-approve the Logo. In addition, the Logo and any other original works of authorship or designs (including any domain names or website designs, source code, and content) related to Coit Tower, or Lessee's services or operations in or for Coit Tower ("Works") shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property. If the Department or Lessee's use of the Logo or Works creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an exclusive and irrevocable right in such trademark, service mark, or trade dress. If any Logo or Works created by Lessee or its subcontractors under this Lease are not works for hire under federal law, the Lessee hereby assigns all copyrights to such Logo and Works to the City and further agrees to provide any material and execute any documents necessary to effectuate such assignment.

Lessee may, at Lessee's expense, and with Department's consent, develop and sell products including, but not limited to clothing, calendars, post cards, mugs, bags, and other printed materials, that are "branded" with the Logo or Logos created by Lessee under this Agreement. In addition to the Department's right to pre-approve all merchandise under **Section 7.1(e)** and **Section 7.2** of this Lease, the Department retains the right to pre-approve all products that are to receive the Logo, including the use and placement of such Logo on the products.

7.6 Covenants Regarding Use. As a material inducement to City to enter into this Lease, Lessee covenants with City as follows:

(a) No Unlawful Uses or Nuisances. Lessee shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. Lessee shall take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(b) Covenant Against Waste. Lessee shall not cause or permit any waste, damage or injury to the Premises.

(c) Covenant to Protect Premises and Department Facilities. At all times during the Term of this Lease, Lessee shall protect the Premises and the Department Facilities, if any, from any damage, injury or disturbance. If Lessee or any of its Agents or Invitees damages, injures or disturbs any of the Premises or the Department Facilities, or any portion thereof, Lessee shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair the Department Facilities at Lessee's sole expense, and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at Lessee's sole expense. Lessee shall promptly, upon City's request, remove or alter to City's satisfaction and at Lessee's sole cost, any Improvements, Alterations or Lessee's Personal Property placed on the Premises by or on behalf of Lessee as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at Landlord's sole cost if the applicable Improvements or Alterations were approved by Landlord in writing pursuant to the terms of this Lease. City may adopt from time to time such rules and regulations with regard to Lessee's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Department Facilities and City's interests in the Premises. Lessee shall comply with all such rules and regulations upon receipt of a copy thereof.

(d) Covenant Against Dumping; Waste Disposal. Lessee shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. Lessee shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(e) Covenant to Protect Trees or Other Native Vegetation. Lessee shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(f) No Tree Planting. Lessee shall not plant any trees on the Premises, nor shall Lessee plant any other vegetation on the Premises without the prior written approval of the General Manager.

(g) Covenant Against Hunting. Lessee shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. Lessee shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may Lessee use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(h) Pesticides Prohibition. Lessee shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Lessee to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Lessee may need to apply to the Premises during the terms of this Lease, (b) describes the steps Lessee will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Lessee's primary IPM contact person with the City. In addition, Lessee shall comply with the

requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(i) **Weed Control.** Lessee shall not introduce any noxious weeds on or about the Premises. Lessee shall control noxious weeds, provided that Lessee may use chemical herbicides only if such use complies with the requirements of **Section 7.2(h)** above.

(j) **Covenant Against Burning.** Lessee shall not burn any weeds, debris or other substances on or about the Premises.

(k) **Sewerage System.** The toilet rooms, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown therein. Lessee shall not permit any waste, sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary for the existing drains and sewage system.

(l) **Soil Erosion.** Lessee shall not cause any material erosion of soil on or around the Premises. Lessee shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall Lessee engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(m) **Operating Covenants.** Lessee shall use the Premises continuously for the permitted use specified in the Basic Lease Information and shall not allow the Premises to remain unoccupied or unused without Landlord's prior written consent, which Landlord may give or withhold in its sole discretion. Lessee shall use and operate its business on the Premises in a first class and professional manner, and shall take all commercially reasonable steps to maximize revenue (and Percentage Rent) from its operations on the Premises.

(n) **Recycling and Resource Conservation.** The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation in the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see **Section 27.42**) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessee." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities and while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a).

Lessee shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical, if food sales are permitted from the Premises. Lessee shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining their progress toward meeting the recycling and composting goals described above and their success toward a zero waste goal.

7.7 Special Provisions Regarding Murals; Condition, Maintenance and Protection.

The murals in Coit Tower constitute the most important asset of the building and as such require the imposition of adequate safeguards for their protection. The murals are fragile and the surfaces of the murals can be easily defaced and damaged. The design is weak and cannot withstand any rubbing or other cleaning efforts, and the porous character of the murals permits all pollutants, smoke and grease to be absorbed into the pores of the plaster.

It is Lessee's responsibility to make sure at all times that the murals are adequately protected and to comply with the display and conservation requirements for the murals established from time to time by the City's Arts Commission or by the Department. The Art Commission's requirements as of the date of this Lease are attached hereto as **Exhibit E**. The accessibility of the murals to the public, risk of handling, vandalism, mechanical damage, damage by food and beverage, and damage by smoke or other pollutants all pose a serious hazard to the murals.

Lessee shall employ reasonable security measures to safeguard the murals, provided that such measures shall not include walling off, covering, or otherwise obscuring the murals. Without limiting the foregoing, Lessee shall post signs in the lobby alerting guests to not touch any of the murals, regularly monitor the lobby murals via closed circuit surveillance during business hours, and provide after hours monitoring of the lobby murals.

The stairway murals are not open to the public as of the date of this Lease, except through approved tours, and shall not be open to the public, except through tours conducted by CityGuides or by the Docent(s) engaged by Lessee in accordance with the provisions of **Section 7.1(d)** above or by other such approved tour guide, without the advance written approval of the General Manager, which approval shall be granted or denied in the General Manager's sole discretion and may be conditioned on the implementation of such security measures as the General Manager may establish in his or her sole discretion.

Lessee shall ensure that all activities on the Premises shall be conducted in a manner which is designed to minimize the chance the murals will be damaged by smoke, grease, steam or other pollutants or substances. No chlorine based products shall be used in the vicinity of the murals, including in the restrooms, because chlorine vapors damage the murals. Lessee shall take precautions against damage to the murals during cleaning, and shall ensure that the parties performing janitorial service do not splash water on the murals or the terra cotta wall surface between the floor tile molding and the murals and never lean a broom or mop handle against the mural surface.

Lessee shall not clean or otherwise maintain the murals. If the murals need to be maintained, conserved or restored, such work shall be performed by persons selected by the San Francisco Arts Commission.

8. IMPROVEMENTS

8.1 Construction of Improvements. Lessee shall not construct or install any Improvements nor make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in its sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at Lessee's sole expense (i) in strict accordance with plans and specifications approved in advance by the General Manager in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, including, to the extent required, Laws requiring the performance of improvements to effect compliance with Title III of the Americans with Disabilities Act or fire codes that are triggered by Lessee's Alterations, and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to Landlord. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work

on the Premises to construct any permitted Improvements or make any permitted Alterations, Lessee, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Landlord. No material change from the plans and specifications approved by Landlord may be made without Landlord's prior written consent. Landlord and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, Lessee shall furnish Landlord with a complete set of final as-built plans and specifications. Lessee shall require from each contractor and subcontractor performing any work on or about the Premises a policy of general public liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars (\$1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 19.2**.

Except for those matters that are the responsibility of Lessee pursuant to the preceding paragraph, City shall be responsible for causing the Premises to comply with Title III of the Americans with Disabilities Act and fire codes as of the date of delivery of the Premises to Lessee, except to the extent triggered by Lessee's Alterations or installations.

8.2 Improvements Become Property of the City. Any alterations, additions, improvements and repairs which may be affixed to the Premises shall become the property of the Landlord, and shall remain upon and be surrendered with the Premises upon expiration or sooner termination of this Lease, except that Lessee shall retain ownership and shall have the right to remove all trade fixtures, furniture, furnishings and personal property used by Lessee in the operation of the Premises which were purchased or added by Lessee and which can be removed from the Premises without damage to the walls, floors or other appurtenances.

8.3 Lessee's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Lessee that can be removed without structural or other material damage to the Premises (all of which are herein called "Lessee's Personal Property") shall be and remain the property of Lessee and may be removed by it subject to the provisions of **Section 22.1** hereof. At least ten (10) days prior to delinquency, Lessee shall pay all taxes levied or assessed upon Lessee's Personal Property and shall deliver satisfactory evidence of such payment to City.

8.4 Proposed Improvements. Upon delivery of the Premises to Tenant under **Section 4.1** or **Section 4.6** of this Lease, Lessee shall promptly commence and diligently pursue to completion the specific Improvements and Alterations detailed in **Exhibit D** (the "Proposed Improvements"), subject to the provisions of **Section 12.2** below and in accordance with the provisions of **Section 8.1** above. The Proposed Improvements, first anticipated by Lessee in the Request for Proposals, are the final result of negotiations between Lessee and Landlord. Landlord and Lessee understand, acknowledge and agree that prior to commencing the Proposed Improvements, Lessee shall be required to obtain the approval of the Commission and any other regulatory agency that may have jurisdiction. Lessee and City agree that any such work shall in all events be completed within three (3) months of the Commencement Date.

8.5 Historic Preservation Guidelines. Lessee recognizes the historic importance of Coit Tower. Any alterations to Coit Tower shall be in keeping with the historic character of the building. Any alterations are subject to the approval of the Commission and any other regulatory agency that may have jurisdiction.

8.6 Notice to Proceed with Improvements. Lessee agrees that the alterations, improvements and repairs to be made by Lessee pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by the Board of Supervisors of the City and County of San Francisco and the Lessee obtains from City written approval to proceed. All alterations, improvements and repairs shall be in conformity with the general architectural requirements of the City and County of San Francisco and shall meet all health, disabled access and building codes and ordinances

as well as applicable local, State and federal regulations. Lessee agrees that prior to making any alterations or improvements, permits shall be obtained after plans have been submitted to the Landlord for approval and not take such action until ten (10) days thereafter, in order that Commission may post appropriate notices of nonresponsibility. Lessee will at all times permit such notices to be posted and remain posted for the time required by law.

8.7 Failure to Make Improvements. If Lessee does not complete each and every Proposed Improvement to be done by Lessee pursuant to **Section 8.4** of this Lease within six (6) months following the Commencement Date and in the manner provided therein, such failure shall constitute a breach of the Lease.

8.8 City Not Responsible for Proposed Improvements or Alterations. City shall not under any circumstances be responsible for the performance of Proposed Improvements or any other Alteration or Improvement proposed by Lessee and approved by the Commission, or for the cost thereof.

9. REPAIRS AND MAINTENANCE

9.1 Lessee Responsibility for Maintenance and Repair. City shall not under any circumstances be responsible for the operation or maintenance of the Premises, except as provided in **Section 9.2** below.

(a) Lessee shall maintain the Premises and any existing and all Improvements and Alterations made by or on behalf of Lessee or the prior tenant of the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction, except to the extent such repair and maintenance is City's responsibility pursuant to **Section 9.2** below. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by Lessee or its Agents or Invitees hereunder, Lessee shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

(b) Lessee shall be responsible for janitorial services to the interior areas of Coit Tower (including the public restrooms described in **Section 9.1(d)** below) and, if applicable, the area of any food service operation, and shall keep such areas in a clean and neat condition. Lessee shall remove all waste, trash, rubbish, papers, cartons and refuse from the interior areas, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by Lessee that are large enough to adequately serve the needs of the Premises. Lessee shall provide a dumpster and shall keep it in clean and orderly condition.

(c) Lessee shall be responsible for the care and maintenance of the flag at Coit Tower. This includes ensuring that the flag is in good condition at all times and replacing the flag on an as needed basis. Lessee shall be responsible for the costs of replacing or repairing the flag.

(d) Lessee shall be responsible for the regular cleaning of the public restrooms located on the main floor of Coit Tower. The restrooms shall be open to the public at all times Coit Tower is open to the public. The restrooms shall be kept clean, neat, orderly and functioning properly at all times. Lessee, at its own expense, shall provide all necessary items for the restrooms including, but limited to, toilet tissue, paper towels, seat covers and hand soap. Lessee shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restrooms in the condition as described above. Restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day Coit Tower is open to the public.

9.2 City's Maintenance and Repair Obligations. Other than the janitorial, trash removal, and other obligations described in **Section 9.1**, City shall have responsibility, at City's sole cost and expense, for the maintenance, repair, landscaping, and cleaning of the Premises and any permitted

Alterations and any adjoining property under the jurisdiction of the Commission (including, without limitation, access roads, the elevator, utilities, the HVAC system, and the sewerage system and other infrastructure serving the Premises) from and after the Commencement Date through the expiration of the Term, and for causing the Premises to comply with Title III of the Americans with Disabilities Act (to the extent required as a matter of Law), except to the extent triggered by Lessee's Alterations or installations. Lessee shall provide City with prompt written notice of any required repair or maintenance item for those conditions that are not known to City.

9.3 No Right to Repair and Deduct. Lessee expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Lessee to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of Lessee's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, Lessee expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Lessee to terminate this Lease and with respect to any obligations of City for Lessee ability of the Premises and any right of Lessee to make repairs or replacements and deduct the cost thereof from Rent.

10. UTILITIES

10.1 Utilities and Services. City shall pay for water, gas and electricity to the Premises. If Lessee desires any upgrades to water, gas or electricity services in connection with the operation of Lessee's business at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at Lessee's sole cost and expense. Lessee shall pay for sewer charges billed to Lessee by the Water Department, charges for garbage and recycling disposal and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.

10.2 Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Lessee, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Lessee. Lessee hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

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

10.4 Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City.

11. LIENS

Lessee shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for Lessee. In the event Lessee does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by Lessee upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. Lessee shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, Lessee shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Lessee has failed to do so within ten (10) days after final determination of the validity thereof. Lessee shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

12. COMPLIANCE WITH LAWS

12.1. Compliance with Laws. Lessee shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and Lessee's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. The Parties acknowledge and agree that Lessee's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease.). Notwithstanding the foregoing, however, Lessee shall not be required to perform (or pay for) any structural changes to the Premises or life safety, fire sprinkler, or seismic retrofit or other building code requirements in order to comply with Laws unless such changes or retrofits are related to or affected or triggered by (i) Lessee's Alterations or Improvements, (ii) Lessee's food service operations (if any), or (iii) Lessee's particular use of the Premises, such as the configuration of the book store. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Lessee from its obligations hereunder, or shall give Lessee any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Lessee waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

12.2. Regulatory Approvals

(a) Responsible Party. Lessee understands and agrees that Lessee's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Lessee shall be solely responsible for obtaining any and all such

regulatory approvals. Lessee shall not seek any regulatory approval without first obtaining the written consent of the General Manager. Lessee shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Lessee's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Lessee, and City shall have no liability, monetary or otherwise, for any such fines or penalties. Lessee shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with Lessee's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. Lessee further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way Lessee's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting Lessee's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

12.3. Compliance with City's Risk Management Requirements. Lessee shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. Lessee shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

12.4. Reports. Lessee shall submit a report and provide such documentation to City as City may from time to time request regarding Lessee's operations and evidencing compliance thereof with this Lease and all Laws. In the event that Lessee prepares or obtains any report or other informational document relating to the Premises or any Improvements thereon, Lessee shall promptly deliver a copy of such report or document to City.

13. FINANCING; ENCUMBRANCES; SUBORDINATION

13.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of Lessee to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) Encumbrance By Lessee. Lessee shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

13.2. Leasehold Encumbrances. Without limiting **Article 15** hereof, Lessee shall not Encumber this Lease or Lessee's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

14. DAMAGE OR DESTRUCTION

14.1. Damage or Destruction to Premises or Improvements. If the Premises or the Improvements are damaged by fire or other casualty, then City shall repair the same (subject to the provisions of **Section 14.2** below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that Lessee shall be entitled to a proportionate reduction of Base Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Lessee's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of Lessee or its Agents). City shall use good faith efforts to notify Lessee within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Lessee. If City determines that such repairs cannot be made within the Repair Period, City shall have the option to notify Lessee of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent shall be reduced as provided herein; or (b) City's election to terminate this Lease as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent shall be reduced as provided above, and Lessee shall pay such reduced Base Rent up to the date of termination. If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Improvements are damaged or destroyed, then either City or Lessee may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, Lessee may terminate only if such damage or destruction substantially impairs its of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice

14.2. Lessee's Obligations. Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Improvements in the event the damage or destruction is attributable to any act or omission of Lessee or its Agents. In no event shall City be required to repair any damage to Lessee's Personal Property or any Improvements or Alterations installed or made on the Premises by or at the expense of Lessee. With respect to any damage to or destruction by fire or any other casualty to any Alterations or Improvements permitted hereunder made by or on behalf of Lessee during the Term hereof, Lessee shall, at its sole cost, restore, repair, replace or rebuild such Alterations or Improvements to the condition such Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 8.1** above, unless this Lease is terminated as provided in **Section 14.1** above. If this Lease is terminated as provided in **Section 14.1** above, then at City's written request Lessee shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of Lessee and remove them (including all debris) from the Premises in compliance with the provisions of **Section 22.1** below.

14.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and Lessee each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

15. EMINENT DOMAIN

15.1. General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and Lessee intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

15.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

15.3. Partial Taking; Election to Terminate.

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

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property and such Taking materially or substantially impairs the operation of business in the Premises or access thereto, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 15** 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 day after such written notice is given or the Date of Taking.

15.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 15.3** above, then: (i) Lessee'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 15.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Lessee shall have no claim against City for the value of any unexpired term of this Lease, provided that Lessee may make a separate claim for compensation, and Lessee shall receive any Award made specifically to Lessee, for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 15.3** 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: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Lessee shall have no claim against City for the value of any unexpired Term of this Lease, provided that Lessee may make a separate claim for compensation. Lessee shall retain any

Award made specifically to Lessee for Lessee's relocation expenses or the interruption of or damage to Lessee's business or damage to Lessee's Personal Property.

15.6. Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and Lessee 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, Lessee 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 Lessee for the period of the Taking, and City shall be entitled to receive the balance of any Award.

16. ASSIGNMENT AND SUBLETTING

16.1. Restriction on Assignment and Subletting.

(a) Lessee shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Lessee), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon. (collectively, "Sublease") without the prior written consent of the Commission, which the Commission may withhold at its sole discretion. Any Assignment or Sublease entered into without the consent of the Commission shall be voidable at the option of the City in its sole and absolute discretion; and the General Manager shall have the right to terminate immediately this Lease by sending written notice to Lessee. Notwithstanding the foregoing, the Commission shall not unreasonably withhold consent to an Assignment or Sublease to any partnership, corporation or other entity which controls, is controlled by, or is under common control with Lessee (control being defined for such purposes as ownership of at least 50% of the equity interests in, or the power to direct the management of, the relevant entity) or to any partnership, corporation or other entity resulting from a merger or consolidation with Lessee or Lessee's parent, or to any person or entity which acquires substantially all the assets of Lessee as a going concern (collectively, an "Affiliate"), provided that (i) City receives prior written notice of an assignment or subletting, (ii) the Affiliate's net worth is sufficient, in the General Manager's sole but good faith judgment, to satisfy the Department's then existing financial criteria for Leases such as this, (iii) the Affiliate has proven experience in the operation of a first-class business of a type consistent with the operations required hereunder, (iv) the Affiliate remains an Affiliate for the duration of the subletting or the balance of the term in the event of an Assignment, (v) the Affiliate assumes (in the event of an assignment) in writing all of Lessee's obligations under this Lease, (vi) City receives a fully executed copy of an assignment or sublease agreement between Lessee and the Affiliate, and (vii) in the case of an Assignment, the essential purpose of such Assignment is to transfer an active, ongoing business with substantial assets in addition to this Lease, and in the case of an Assignment or Sublease the transaction is for legitimate business purposes unrelated to this Lease and the transaction is not a subterfuge by Lessee to avoid its obligations under this Lease or the restrictions on assignment and subletting contained herein.

(b) Lessee further agrees and understands that the intent and purpose of this Lease is to allow for the use or uses as provided in the Basic Lease Information, and not for the purpose of creating an investment in property.

16.2. Notice of Proposed Transfer. If Lessee desires to enter into an Assignment or a Sublease, it shall give written notice (a "Notice of Proposed Transfer") to City of its intention to do so. The Notice of Proposed Transfer shall identify the proposed subtenant or assignee ("Transferee") and state the terms and conditions of the proposed Assignment or Sublease. Lessee shall deliver to City with its request for City's consent the current financial statements of the proposed Transferee and, if available,

the proposed Assignment or Sublease, and promptly upon City's request for same, any additional documents or information reasonably related to the proposed transaction or Transferee.

16.3. City's Response. Following City's receipt of the Notice of Proposed Transfer City may elect, by written notice to Lessee, to: (a) sublease the portion of the Premises specified in the Notice of Proposed Transfer on the terms and conditions set forth in such notice, except as otherwise provided in **Section 16.5** below, or (b) terminate this Lease as to the portion (including all) of the Premises that is specified in the Notice of Proposed Transfer, with an equitable reduction in Base Rent (a "Recapture"), or (c) decline to consent to the proposed Sublease or Assignment, or (d) consent to the proposed Sublease or Assignment.

16.4. Approval of Form of Assignment or Sublease; Excess Consideration . If City indicates that City will consent to the proposed Assignment or Sublease, Lessee shall have ninety (90) days to enter into such Assignment or Sublease, subject to City's prior written approval of the final form of the Sublease or Assignment agreement. However, one hundred percent (100%) of any rent or other consideration realized by Lessee under any such Assignment or Sublease in excess of the Rent payable hereunder (or the amount thereof attributable to the portion of the Premises subject to such Sublease) shall be paid to City, after Lessee has recovered any customary and reasonable brokers' commissions and legal fees actually paid by Lessee and the reasonable cost of any leasehold improvements that Lessee has actually incurred in connection with such Sublease or Assignment, provided that, as a condition to Lessee recapturing the assignment or subletting costs, Lessee shall provide to City a detailed accounting of the assignment or subletting costs and supporting documents, such as receipts and construction invoices.

16.5. City's Rights Following Election to Sublease or Recapture. In the event City elects either of the options provided in clauses (a) or (b) of **Section 16.3**, City shall be entitled to enter into a lease, sublease or assignment agreement with respect to the Premises (or portion thereof specified in such Notice of Proposed Transfer) with the proposed Transferee identified in Lessee's notice or any other party. If City elects to sublease or Recapture from Lessee as described in **Section 16.3** the following shall apply:

(a) In the case of a Sublease by City, (i) City shall have the right to use the portion of the Premises covered by the Notice of Proposed Transfer (the "Sublease Space") for any legal purpose, (ii) the rent payable by City to Lessee shall be the lesser of (A) the amount in the Notice of Proposed Transfer or (B) the Rent payable by Lessee under this Lease at the time of the Sublease (or the amount thereof reasonably attributable to the Sublease Space if for less than the entire Premises), (iii) City may make alterations and improvements to the Sublease Space and may remove any such alterations or improvements, in whole or in part, prior to or upon the expiration of the Sublease, provided that City shall repair any damage or injury to the Sublease Space caused by such removal, and (iv) City shall have the right to further sublease or assign the Sublease Space to any party, without the consent of Lessee.

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

16.6. Assumption by Transferee. Each Transferee (other than City) shall assume all obligations of Lessee under this Lease and shall be liable jointly and severally with Lessee for the payment of the Rent, and for the performance of all the terms, covenants and conditions to be performed on Lessee's part hereunder. No Assignment shall be binding on City unless Lessee or Transferee has delivered to City a counterpart of the Assignment that contains a covenant of assumption by such

Transferee satisfactory in form and substance to City. However, the failure or refusal of such Transferee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above. Lessee shall reimburse City on demand for any reasonable costs that may be incurred by City in connection with any proposed Sublease or Assignment, including, without limitation, the costs of making investigations as to the acceptability of the proposed Transferee and legal costs incurred in connection with the granting of any requested consent.

16.7. Effect of Transfer. No Sublease or Assignment by Lessee shall relieve Lessee, or any guarantor, of any obligation to be performed by Lessee under this Lease. In the event of default by any Transferee, or any successor of Lessee, in the performance or observance of any of the terms of this Lease or any Sublease or Assignment agreement, City may proceed directly against Lessee without the necessity of exhausting remedies against such Transferee or successor. Any Sublease or Assignment entered into without the prior written consent of the Commission shall constitute a material Event of Default by Lessee under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of Lessee or other transferor to comply with this Section.

16.8. Indemnity for Relocation Benefits. Without limiting **Section 16.2**, Lessee shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Lessee shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

17. DEFAULT; REMEDIES

17.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by Lessee hereunder:

(a) **Rent.** Any failure to pay any Rent or other sums as and when due, provided Lessee shall have a period of three (3) days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding Lessee's failure to make such payments when due more than twice during any calendar year, and any such failure by Lessee after Lessee has received two such notices in any calendar year from City shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) failure by Lessee to deliver the Monthly Gross Receipts Statement, Annual Gross Receipts Statement or Annual Operating Statement when due and such default continues for a period of three (3) days following written notice from City., provided that notwithstanding the foregoing, City shall not be required to provide such notice more than twice during any twelve (12) month period, and any such failure by Lessee after Lessee has received two (2) such notices in such twelve (12) month period shall, at the option of City, constitute an Event of Default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(c) a second understatement by Lessee of its Gross Receipts for any audit period by five percent (5%) or more within any three (3) Lease Year period of the first such understatement; or

(d) failure to comply with Lessee's operating covenants set forth in **Article 7** of this Lease, as determined by City in its sole and absolute discretion, and such failure continues for a period of two (2) days following written notice from City; provided that notwithstanding the foregoing, City shall not be required to provide such notice with respect to any operating covenant more than twice during any twelve (12) month period, and any such failure by Lessee after Lessee has received two (2) such notices

in such twelve (12) month period shall, at the option of City, constitute an Event of Default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure; or

(e) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided Lessee shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, Lessee shall have a reasonable period to complete such cure if Lessee promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and Lessee uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence during the Term of two (2) defaults of the same obligation City shall not be required to provide any notice regarding Lessee's failure to perform such obligation, and any subsequent failure by Lessee after Lessee has received two (2) such notices shall constitute a default by Lessee hereunder without any requirement on the part of City to give Lessee notice of such failure or an opportunity to cure;

(f) **Vacation or Abandonment.** Any vacation or abandonment of the Premises for more than fourteen (14) consecutive days; and

(g) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Lessee, or an assignment by Lessee for the benefit of creditors, or any action taken or suffered by Lessee under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days.

17.2. Remedies. Upon the occurrence of an Event of Default by Lessee, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) **Terminate Lease and Recover Damages.** 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 Lessee's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Lessee proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by Lessee's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) **Continue Lease and Enforce Rights.** The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City 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 City does not terminate Lessee's right to possession, if Lessee has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of Lessee's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of Lessee specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to

the Premises. Upon each such subletting, Lessee shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 17.2(b)** shall be deemed a waiver of any default by Lessee and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) **Appointment of Receiver.** The right to have a receiver appointed for Lessee upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

17.3. City's Right to Cure Lessee's Defaults. If Lessee defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Lessee's account and at Lessee's expense. Lessee shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Lessee's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Lessee is obligated to perform under any provision of this Lease, and City's cure or attempted cure of Lessee's Event of Default shall not constitute a waiver of Lessee's Event of Default or any rights or remedies of City on account of such Event of Default.

18. WAIVER OF CLAIMS; INDEMNIFICATION

18.1. Waiver of Claims. Lessee covenants and agrees that City shall not be responsible for or liable to Lessee for, and, to the fullest extent allowed by Law, Lessee hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Lessee expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or Lessee's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and Lessee expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Lessee or other waivers contained in this Lease and as a material part of the consideration for this Lease, Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Lessee pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, Lessee acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

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

Lessee acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Lessee realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

18.2. Lessee's Indemnity. Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of Lessee, or loss of or damage to property (including, without limitation, the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises or any other City property; (b) any default by Lessee in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Lessee's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Lessee, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of Lessee, or Lessee's failure to properly repair or maintain any Improvements on the Premises; (e) any construction or other work undertaken by Lessee on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Lessee, its Agents or Invitees, or of any trespassers, in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease and further except only such Losses as are caused exclusively by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. Lessee specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Lessee by City and continues at all times thereafter. Lessee's obligations under this Section shall survive the expiration or sooner termination of the Lease.

19. INSURANCE

19.1. Lessee's Insurance. Lessee, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows

(i) Commercial general liability insurance with limits not less than Five Million Dollars (\$5,000,000) 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 Two Hundred Fifty Thousand Dollars (\$250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU) as applicable. If the operation of Lessee's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence. If the operation of Lessee's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars (\$1,000,000) each occurrence.

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

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

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if Lessee is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(v) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

19.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

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

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

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

Name Lessee as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

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

19.3. Proof of Insurance. Lessee shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Lessee shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of Lessee, and the cost thereof shall be paid to City within five (5) days after delivery to Lessee of bills therefor.

19.4. Review of Insurance Requirements. Lessee and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Lessee with respect to risks comparable to those associated with the Premises, then, at City's option, Lessee shall increase at its sole cost the amounts or coverages carried by Lessee to conform to such general commercial practice.

19.5. No Limitation on Indemnities. Lessee's compliance with the provisions of this Section shall in no way relieve or decrease Lessee's indemnification obligations under **Sections 18.2 and 23.2** hereof, or any of Lessee's other obligations or liabilities under this Lease.

19.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to Lessee.

19.7. Lessee's Personal Property and Alterations and Improvements. Lessee shall be responsible, at its expense, for separately insuring Lessee's Personal Property, Alterations, and Improvements made by or on behalf of Lessee.

19.8. City's Self Insurance. Lessee acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

19.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and Lessee each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City Property 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 such other party. If any policy of insurance relating to the Premises or other City property carried by Lessee does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Lessee shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

20. ACCESS BY CITY

20.1. Access to Premises by City.

(a) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to Lessee (except in the event of an emergency or as provided in **Section 20(c)** below) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether Lessee is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 17.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder, including, without limitation, the Capital Upgrade Work described in **Section 26.1** below; and

To show it to any prospective purchasers, brokers, Encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove Lessee's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Lessee from the Premises or any portion thereof.

(c) Caretaker's Apartment. City shall have the right to enter that portion of the Premises known as the Caretaker's Apartment from time to time, without prior notice to Lessee, to access the lighting panel.

(d) No Liability. City shall not be liable in any manner, and Lessee hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of Lessee, its Agents or Invitees.

(e) No Abatement. Except as specifically provided in **Section 26.1** below, Lessee shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(f) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Lessee's use hereunder.

20.2. Department Facilities and Utility Installations. Without limiting **Section 20.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of Lessee, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of Lessee's use of the Premises occasioned by any such facility installations or other activities.

20.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

20.4. Rights of Public. Lessee shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise approved by the General Manager in writing.

21. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

22. SURRENDER

22.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, Lessee shall surrender to City the Premises, in good condition, order and repair, free from debris and hazards, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Lessee. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, Lessee shall, at its sole cost, remove any and all of Lessee's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by City to be removed. In addition, Lessee shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, Lessee shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Lessee's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Lessee's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If Lessee fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, Lessee shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Lessee resulting from Lessee's failure to surrender the Premises.

22.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of Lessee or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, Lessee shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Lessee's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises.

23. HAZARDOUS MATERIALS

23.1. No Hazardous Materials. Lessee covenants and agrees that neither Lessee nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements. Lessee shall immediately notify City if and when Lessee learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request Lessee to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Lessee shall promptly provide all such information. Without limiting **Article 20** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Lessee (except in the event of an emergency).

23.2. Lessee's Environmental Indemnity. If Lessee breaches any of its obligations contained in **Section 23.1** above, or, if any act or omission or negligence of Lessee or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting Lessee's general Indemnity contained in **Section 18.2** above, Lessee, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if Lessee or any of Lessee's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or any other City property, Lessee shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Lessee shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Notwithstanding the foregoing, Lessee shall not be responsible for any Release of Hazardous Materials by Lessee's customers except to the extent such Release is caused by, arises from, or is exacerbated by the negligence or willful misconduct of Lessee or any agent, employee, licensee, contractor, vendor, or subtenant of Lessee.

24. SECURITY DEPOSIT; LETTER OF CREDIT

24.1. Security Deposit. Lessee shall pay to City upon execution of this Lease the sum specified for the security deposit in the Basic Lease Information as security for the faithful performance of all terms, covenants and conditions of this Lease. Lessee agrees that City may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises, the Improvements, or the Department Facilities (if any) caused by Lessee, its Agents or Invitees, or any failure of Lessee to perform any other terms, covenants or conditions contained in this Lease, without waiving any of City's other rights and remedies hereunder or at Law or in equity. Should City use any portion of the security deposit to cure any Event of Default by Lessee hereunder, Lessee shall immediately replenish the security deposit to the original amount, and Lessee's failure to do so within five (5) days of City's notice shall constitute a material Event of Default under this Lease. If the Base Rent is increased pursuant to any of the provisions of this Lease, Lessee shall increase the amount of the security deposit accordingly. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and

Lessee shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Lessee's liability for the performance of any of its obligations under this Lease.

24.2. Letter of Credit. In lieu of the security deposit described in **Section 24.1** above, Lessee may deliver to an unconditional, irrevocable standby letter of credit issued by a financial institution acceptable to the General Manager and in form approved by the City Attorney with an original term of no less than one year and automatic extensions through the end of the Term of this Lease and ninety (90) days thereafter. Any such letter of credit shall provide for payment to City upon the issuer's receipt of a sight draft from City together with City's certificate certifying that the requested sum is due and payable from Lessee and Lessee has failed to pay, and with no other conditions. Lessee shall keep such letter of credit, at its expense, in full force and effect until the ninetieth (90th) day after the Expiration Date or other termination hereof, to insure the faithful performance by Lessee of all of the covenants, terms and conditions of this Lease. Such letter of credit shall provide ninety (90) days' prior written notice to City of cancellation or material change thereof. Lessee shall provide evidence of renewal of the letter of credit to City at least sixty (60) days prior to the date the letter of credit expires. In the event of any nonextension of the letter of credit, Lessee shall replace such security with another form permitted hereunder at least sixty (60) days prior to expiration and if Lessee fails to do so City shall be entitled to present its written demand for payment of the entire face amount of such letter of credit and to hold the funds so obtained as the Security Deposit required hereunder. Any unused portion of the funds so obtained by City shall be returned to Lessee upon replacement of the letter of credit or deposit of cash security in the full amount required hereunder. If City draws on the letter of credit pursuant to the terms hereof, Lessee shall immediately replenish the letter of credit or provide City with an additional letter of credit conforming to the requirement of this Section so that the amount available to City from the letter(s) of credit provided hereunder is the amount specified in the Basic Lease Information.

25. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Sections 5.1 and 5.2** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by Lessee and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to the greater of one hundred fifty percent (150%) of the base Monthly Rent in effect at the end of the Term of this Lease or one hundred fifty percent (150%) of the Rent (including Percentage Rent) that was payable for the immediately prior month.

26. SPECIAL PROVISIONS; CITY'S MAJOR RENOVATIONS

26.1. City's Major Renovations. Without limiting the applicability of the provisions of **Section 3.4** of this Lease, Lessee acknowledges that City presently plans to perform certain renovations and improvement to the Premises, including improvements to the roof, restoration of certain elements of the lobby, renovations to the restrooms, accessibility upgrades, and mural restoration (the "Capital Upgrade Work"), which Capital Upgrade Work may commence in calendar year 2013 or later. Lessee acknowledges that certain elements of the Capital Upgrade Work may materially interfere with the operation of business in the Premises or with the performance of the Proposed Improvements. City, at the sole election of the General Manager, may elect to delay delivery of the Premises to Lessee until the completion of part or all of the Capital Upgrade Work, to perform part or all of the Capital Upgrade Work during the early access period described in **Section 4.6** above, or to perform part or all of the Capital Upgrade Work following the Commencement Date of this Lease. If City performs part or all of the

Capital Upgrade Work during the early access period described in **Section 4.6** above, City and Lessee shall use good faith efforts to cause their respective contractors to coordinate their work in a manner that minimizes interference with the work being performed on behalf of the other party, however if the General Manager in his or her sole discretion determines that the performance of the Proposed Improvements is interfering to an unacceptable degree with the performance of the Capital Upgrade Work, City may give Lessee notice of such interference and may require Lessee to suspend work on the Proposed Improvements or otherwise alter the construction schedule for the Proposed Improvements to reduce or eliminate such interference. Lessee acknowledges that if the Capital Upgrade Work is performed after the Commencement Date, the performance of such work may from time to time require the closure of portions of the Premises or otherwise disrupt the operation of Lessee's business in the Premises. Lessee further acknowledges that certain elements of the Capital Upgrade Work, such as portions of the mural restorations, may be conducted in the Premises without causing any material interference with the operation of Lessee's business in the Premises. Department staff shall use good faith efforts to keep Lessee informed regarding the projected scheduling of the Capital Upgrade Work and the likely impact on the early entry work, the Commencement Date or, if applicable, on Lessee's operations. During any periods following the Commencement Date in which the Capital Upgrade Work materially interferes with Lessee's operations in the Premises, as reasonably determined by the General Manager in consultation with Lessee (the "Interruption Periods"), the following provisions shall apply: (i) Lessee's obligation to conduct one or more aspects of Lessee's operations at the Premises shall be suspended or curtailed in the manner approved by the General Manager, (ii) the hours of operation set forth in **Section 7.3** shall be modified as reasonably approved by the General Manager, and (iii) the monthly Base Rent payable under this Lease shall be abated, provided that Lessee shall continue to pay monthly Percentage Rent during the Interruption Periods and the Base Rent so abated shall be deemed to be zero.

27. GENERAL PROVISIONS

27.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Lessee (i) at Lessee's address set forth in the Basic Lease Information, if sent prior to Lessee's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to Lessee's taking possession of the Premises, or (iii) at any place where Lessee or any Agent of Lessee may be found if sent subsequent to Lessee's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Lessee may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 27.1** and applicable Laws, shall be deemed receipt of such notice. 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 telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

27.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of Lessee under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a

surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve Lessee of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

27.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Lessee, and City's agreement may be made upon the sole approval of the General Manager of the Department provided such amendment or modification does not (i) decrease the amount of rental income payable by Lessee to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

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

27.5. Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on Lessee shall be joint and several.

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

27.7. Successors and Assigns. Subject to the provisions of **Article 16** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and Lessee and, except as otherwise provided herein, their personal

representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

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

27.9. 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 fullest extent permitted by Law.

27.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

27.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. 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 of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. Lessee hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Lessee by implication or otherwise unless expressly set forth herein.

27.12. Attorneys' Fees. In the event that either City or Lessee fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.

27.13. 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.

27.14. 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.

27.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers 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. Lessee specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, Lessee has an immediate and independent obligation to defend City and the other Indemnified Parties 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 Lessee by City and continues at all times thereafter.

27.16. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Lessee's business, or joint venturer or member in any joint enterprise with Lessee. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by Lessee on, in or relating to the Premises.

27.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and Lessee shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, Lessee shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of Lessee, with regard to any future sale or other disposition of the Premises, or any portion thereof.

27.18. Recording. Lessee agrees that it shall not record this Lease in the Official Records.

27.19. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to Lessee, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Lessee, its successors and assigns, or for any obligation of City under this Lease or otherwise.

27.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for Lessee shall be paid not less than the highest prevailing rate of wages, 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 the City and County of San Francisco. Lessee shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

27.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.C-4, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Individual engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Individuals engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.C. Lessee agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.C-4 and Section 21.C-7, including, without limitation, the payment of any penalties for

noncompliance and other remedies available to the City. The provisions of Administrative Code Section 21.C-4 and Section 21.C-7 are hereby incorporated by reference and made a part of this Lease. Lessee shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.C-4, including, without limitation, any investigation of noncompliance by Lessee or its Subcontractors. Lessee agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing Lessee's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. Lessee may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. Lessee acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that Lessee and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

27.22. Intellectual Property; Music Broadcasting Rights. Lessee shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to Lessee: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers (“ASCAP”) at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

27.23. Supervision of Minors.

(a) **Records Request.** If any person applies for employment or for a volunteer position with Lessee, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then Lessee, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) **Restriction on Hires for Recreational Sites.** If Lessee, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, “Recreational Site”), Lessee shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) **Notice Required for Sites Other Than Recreational Sites.** If Lessee, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then Lessee shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Lessee shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) **General Requirements.** Lessee shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of the Lease as a condition of its contract with the subcontractor. Lessee acknowledges and agrees that failure by Lessee or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default. Lessee further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from Lessee any amounts paid under

this Lease, and to withhold any future payments to Lessee. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

27.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The terms of the Ordinance are expressly incorporated herein by reference. To the extent Lessee or its successors or assigns employs employees in a hotel or restaurant in the Premises within the scope of the Ordinance, Lessee hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent Lessee's employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance. Lessee recognizes that, if the Ordinance applies to Lessee's operations on the Premises, Lessee must enter into a Card Check Agreement with a Labor Organization(s) as specified by the Ordinance before executing this Lease, and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this Lease.

27.25. Non-Discrimination in City Contracts and Benefits Ordinance.

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

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

(c) Non-Discrimination in Benefits. Lessee does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City 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) Condition to Lease. As a condition to this Lease, Lessee 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.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties

contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Lessee 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, Lessee understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Lessee and/or deducted from any payments due Lessee.

27.26. No Relocation Assistance; Waiver of Claims. Lessee acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Lessee fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

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

27.28. Conflicts of Interest. Through its execution of this Lease, Lessee 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 such provisions, and agrees that if Lessee becomes aware of any such fact during the term of this Lease Lessee shall immediately notify City.

27.29. Tropical Hardwood and Virgin Redwood Ban. Lessee shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product. In the event Lessee fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, Lessee shall be liable for liquidated damages for each violation in any amount equal to Lessee's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Lessee 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 Lessee from any contract with the City and County of San Francisco.

27.30. Tobacco Product Advertising Prohibition. Lessee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the property which is the subject of this Lease. This prohibition includes the placement of the name of a company producing, selling, or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

27.31. First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, Lessee shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. Lessee shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

27.32. 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.

27.33. Counterparts. This Lease may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

27.34. Vending Machine/Non-alcoholic Beverage Contract. Lessee hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

27.35. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

27.36. City's Inability to Perform. If City is unable to perform or is delayed in performing any of City's obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, acts of terrorism, demonstrations, inability to obtain utilities or materials or by any other reason beyond City's reasonable control, no such inability or delay shall constitute an eviction under this Lease, or impose any liability upon City or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with Lessee's business or use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

27.37. Notification of Limitations on Contributions. . Through its execution of this Lease, Lessee 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. Lessee 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. Lessee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Lessee's board of directors, and Lessee's chief executive officer, chief financial officer and chief operating officer; any

person with an ownership interest of more than twenty percent (20%) in Lessee; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Lessee. Additionally, Lessee acknowledges that Lessee must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Lessee further agrees to provide to City the name of the each person, entity or committee described above.

27.38. Public Transit Information. Lessee shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Lessee employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Lessee's sole expense.

27.39. Drug-Free Workplace. Lessee acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Lessee agrees that any violation of this prohibition by Lessee, its Agents or assigns shall be deemed a material breach of this Lease.

27.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, Lessee 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. Lessee 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 Lessee 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.

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

27.42. Food Service Waste Reduction Requirements. Lessee agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, Lessee agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Lessee agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Lessee's failure to comply with this provision.

27.43. No Smoking in City Parks. Lessee agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

27.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

27.45. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Lessee shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Lessee's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease.

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

28. QUALITY OF SERVICES AND PRODUCTS OFFERED.

Lessee hereby agrees that any food and refreshments offered for sale hereunder shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and Lessee shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

29. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM.

Lessee hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

30. SIGNS AND ADVERTISING.

Lessee hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining City's written consent in advance.

31. SUSTAINABLE FOODS.

Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

If food service is ever permitted from the Premises, Lessee shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of the business on the Premises. City encourages Lessee to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

Lessee shall also provide an annual report on each anniversary date of the date, if any, on which food service is permitted at the Premises, outlining how Lessee incorporated these sustainable food concepts into everyday operations of any food and beverage concession under this Lease and how Lessee informed customers and the youth employed by the Lessee, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

[No further text this page.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL A RESOLUTION OF THE BOARD OF SUPERVISORS SHALL HAVE BEEN DULY PASSED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON PASSAGE OF SUCH A RESOLUTION, AND THIS LEASE SHALL NOT BE EFFECTIVE UNLESS AND UNTIL THE BOARD OF SUPERVISORS APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS.

[No further text this page.]

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

LESSEE:

COIT TOWER LLC,
a California limited liability company

By: _____

Its: _____

By: _____

Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

PHILIP GINSBURG, General Manager
Recreation and Park Department

APPROVED BY

RECREATION AND PARK COMMISSION

PURSUANT TO RESOLUTION NO. _____ DATED: _____

Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____

Anita L. Wood, Deputy City Attorney

Exhibit A: Premises

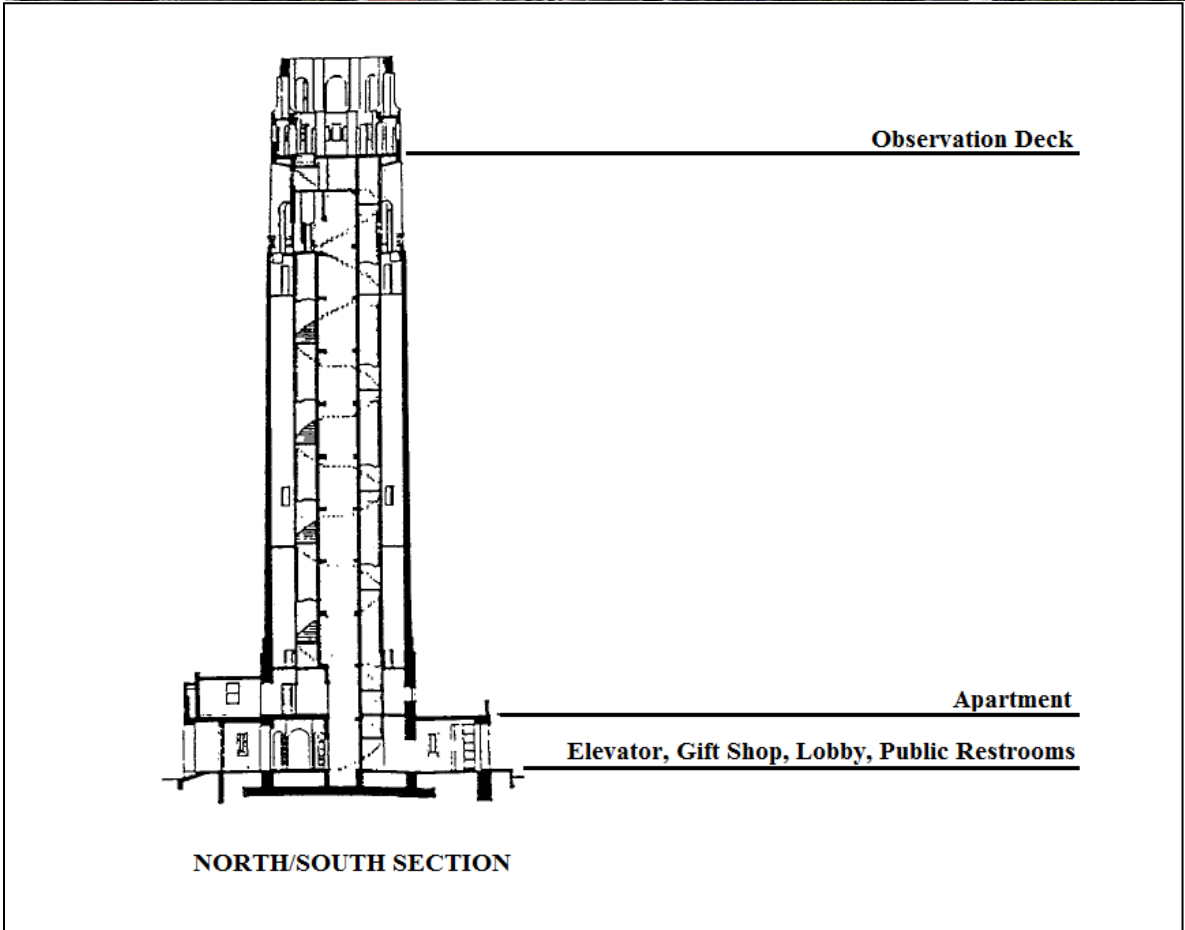


EXHIBIT B- DEPARTMENT RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code

<http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California>

EXHIBIT C-MANAGEMENT PLAN

HOURS OF OPERATION

Coit Tower will be open seven days a week. April through October, the hours of operation are 10:00 am to 6:00 pm. November through March, the hours of operation are 10:00 am to 5:00 pm.

ELEVATOR

Elevator tickets will be sold in the book store. A Point of Sale (POS) system will be used to permit daily audits. The POS system will also accept Visa, Master Card, and American Express credit cards.

In addition, a podium at the south door of the book store will sell elevator tickets. This podium should alleviate the current bottleneck during peak hours.

BOOK STORE

The book store will open at 10:00 am. Many products will be specifically designed for Coit Tower. The line of products will place particular emphasis on the Tower's history, its art, as well as Telegraph Hill and San Francisco in general.

TOURS

The Operator will employ professional guides to conduct docent tours. The docent tours will provide visitors with a complete tour of the Tower including the murals. The tours will be limited to an eight (8) person maximum. The length of the tour is expected to last approximately 30 - 40 minutes, yet not to exceed an hour.

Tour guides will be well-versed on the colorful history of Coit Tower and the murals. Visitors will learn about the Tower's inception, the Public Work of Art Projects' influence, and history of the twenty-six artists.

A fee will be charged for private tours.

DOCENTS

When the Tower doors open at 10:00 am, visitors will be greeted by a uniformed docent. The docent will inform visitors that backpacks, or anything potentially harmful to the murals, must be carried in front of the person or stored away. The docents will also provide visitors with a brief history lesson of the Tower and the art within.

ROLE OF OPERATOR

The Operator's role is to supervise, manage, and participate in all activities at the Tower. Given that the Tower will be open seven days a week, an assistant is required to act as a stand-in operator for one or two days a week. The main purpose of the stand-in operator is to maximize visitor enjoyment.

Historic Coit Tower both hosts a prized collection of art and serves as a San Francisco icon. The goal of the Operator is to provide visitors with the most pleasant, informative, and memorable experience during their visit.

STAFFING

a. Tours

One (1) full-time tour guide will be employed. In addition, one (1) part-time tour guide will be employed. When the docent tours are not running, these tour guides will serve as docents for the main gallery.

b. Book store

The book store will employ two (2) staff for store operations.

c. Maintenance

The Operator will ensure that one (1) maintenance staff will arrive each day at 8:30 am to sweep and hose-down the exterior terraces and stairways.

All employees will be required to maintain the interior grounds as a part of their daily duty. Restroom maintenance will be regularly scheduled.

At closing, the Operator will have the interior vacuumed and wet mopped. Further, the restrooms will be cleaned and stocked.

EXHIBIT D-PROPOSED IMPROVEMENTS

Interior

Tower viewing area:

Epoxy floor paint, non-slip step tread to be applied, wainscot painting to handrail.

Main Gallery floor grout:

Cleaned and Sealed

Book store:

Custom electric overhead, remove conduit and install new lighting.

New custom display cabinets and custom shelving units with lights.

Installation of two Point of Sale stations including printers and registers for retail and elevator ticket sales.

Interior painting including faux painting to depict cut stone.

Main Gallery:

Installation of a wireless security camera system

Exterior: Steam clean all exterior walkways and staircase

EXHIBIT E-ARTS COMMISSION GUIDELINES

Prepared by the San Francisco Arts Commission
for the San Francisco Recreation & Parks Department

Coit Tower is City Landmark number 165 and is listed on the National Register of Historic Places. The murals, which are an integral part of Coit Tower's history and significance, decorate the entire first and second floor public spaces of Coit Tower and are internationally recognized cultural assets. As such, the murals require adequate safeguards to ensure their long-term preservation. Painted by twenty-five different artists, the murals represent the largest assemblage of true frescoes on the western coast of the United States. The murals were commissioned after construction of Coit Tower was underway and were the first Public Works of Art Project in California. Accordingly, appropriate measures must be implemented to ensure the preservation of the murals.

The guidelines outlined in this document shall be followed by each visitor to Coit Tower, the Concessionaire, and any activity that may take place at Coit Tower. These guidelines shall serve as protocols for the protection and preservation of the historic murals at Coit Tower and to the extent that any information in this document conflicts with existing documents this document shall prevail.

Coit Tower was not originally designed to house and protect such prominent and delicate artwork. Close quarters within the public spaces are not conducive to large numbers of visitors and preservation of the murals is challenged by visitor traffic, special events, film and photography and maintenance crews.

Prevention is the best form of preservation for the murals. The fresco surfaces have integral color pigment in plaster that is very sensitive to damage from touching and abrasions. The porous aspects of the frescoes permit airborne pollutants, such as smoke and grease, to be absorbed into the pores of the plaster. When these agents become fixed into the plaster, it is extremely difficult to draw them out of the painting structure. Cleaning the surfaces can be costly and requires a high level of expertise by specialized mural conservators.

The Arts Commission and the Recreation & Parks Department therefore mandates the following guidelines be adhered to within the mural rooms at Coit Tower:

Restrictions

- No touching of wall surfaces.
- No smoking.
- No open flame, heat lamps or candles.
- No food/drink or food preparation.
- No posting of signs on walls or barrier system.
- No commercial or vending displays.
- No leaning or sitting on the barrier railing.

Requirements

- Backpacks, purses, tool belts or other bags must be carried on the front of the body.
- All maintenance work plans and protocols must be approved by the Arts Commission.
- All staff and volunteers (contractors, concessionaires, park rangers, city employees, etc.) must undergo training on these guidelines by Arts Commission staff before commencing with work at Coit Tower.

Special Events

Special events within Coit Tower are limited to the Observation Deck at the top of the tower. Guests at events may access the mural rooms only when escorted by park ranger or docent, and must be apprised of the restrictions outlined in this document (do not touch, no food or drinks, etc.) before entering the space.

Event Requirements

- The Arts Commission must be notified of the event calendar for events taking place inside Coit Tower, and provided with a specific description of each event plan.
- Event operator must receive and sign a copy of these guidelines. The guidelines must be appended to any event contract and referenced as a part of the contractual agreement.
- It is the responsibility of the event operator to ensure the condition of the murals. Costs for any damage to the murals, including any damages that were not previously documented, are the responsibility of the event operator.
- Special events are limited to the Observation Deck at the top of the tower.
- Events are limited to 49 guests, including staff, as dictated by the Fire Marshal.
- All persons preparing and attending the event must be apprised of rules and restrictions prior to entering the building.
- Guests, caterers and event staff and volunteers may access the mural rooms only when escorted by a park ranger or docent.
- Food and drink are only permitted at the top observation deck of the tower. Food and drink are not allowed in the mural rooms; this includes the carrying of drinks during guided tours.
- A Recreation and Parks ranger or other city staff must be stationed in all accessible mural spaces for the duration of the event.
- A Recreation and Parks ranger or other city staff must be on site during event setup and breakdown to insure that the event contract is followed as agreed.
- Access to the second floor murals is limited to groups of no more than six and must be guided by park ranger or docent.
- Movement of materials and equipment for special events must follow guidelines for “Equipment Movement” outlined below.
- Only the elevator can be used for access to the observation deck. Bringing materials through the staircase is prohibited.
- **Tours:** Tour guide operators must receive and sign a copy of these guidelines. The guidelines must be appended to any tour guide permit and references as part of the contractual agreement. Tour guide operators must be licensed and insured and abide with all City and State requirements.

Equipment Movement

Movement of materials and equipment through the building has caused repeated damage to the murals. One must always be mindful of one’s presence and movement around the murals. The walls are delicate and irreplaceable, and the space is narrow and difficult to navigate.

The following restrictions are intended for projects of short duration, one day or less. For projects of extended length, such as for building maintenance, repairs or construction, a mural protection plan is required for approval by the Arts Commission prior to commencement of work.

- The Arts Commission must be notified in advance of any activity in the mural spaces including, but not limited to, special events, elevator and building maintenance, and permitted activities such as photo and film shoots.
- It is the responsibility of the event operator, contractor, photographers, or any other party using the facility to ensure the condition of the murals. Costs for any damage to the murals, including any damages that were not previously documented, are the responsibility of the user.

- Storage of materials in the Keeper’s Quarters on the second floor or in the stairwells is strongly discouraged unless additional mural protection measures are put in place.
- Storage is to be limited to the first floor storage rooms.
- The elevator to the second floor is to be used at all times for the transport of equipment to and from the second floor landing and terrace. Under no circumstances are equipment, tools or materials to be brought up through the staircase.
- When accessing the second floor terrace, care must be taken in transporting equipment from the elevator to the terrace doorway. Materials in excess of 2-feet in length when carried horizontally must have a staff member at each end. For longer materials (ladders, scaffolding, etc.) a Recreation and Parks ranger or staff from the Arts Commission must act as a “spotter” to watch the path of travel and ensure that the ends of the equipment do not come into contact with the walls.
- Longer materials are to be blanket wrapped at the ends to further mitigate potential damage to the walls.
- Extra care must be taken when entering and exiting the elevator as the wall corners are especially vulnerable and unprotected.
- Tool belts are not allowed inside the mural spaces. Tool belts are to be carried, not worn, through the mural spaces.
- Backpacks, boxes and all other items are to be carried on the front of the person’s body.
- Carts must be pushed in front of the operator. It is preferable to have one person in front and one person in back of the cart.
- Mural rooms are not to be used as workshop, staging or storage spaces.
- No equipment, materials or tools are to remain overnight unless pre-approved by the Arts Commission.

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