

OFFICE LEASE

between

BARAK D. & TALY L. JOLISH LIVING TRUST, ZEPPORAH GLASS TRUST AND ODED  
SCHWARTZ & RUTH ROSENTHAL TRUST,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
2712 Mission Street  
San Francisco, California

January 2022

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- EXHIBIT C — Rules and Regulations
- EXHIBIT D — Standards For Utilities And Services
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- EXHIBIT H — Form of Memorandum of Lease

## OFFICE LEASE

THIS OFFICE LEASE (this “**Lease**”), dated for reference purposes only as of January 12, 2022, is by and between BARAK D. & TALY L. JOLISH LIVING TRUST, ZEPPORAH GLASS TRUST AND ODED SCHWARTZ & RUTH ROSENTHAL TRUST (together, the “**Landlord**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**” or “**Tenant**”).

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

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

Landlord:	Barak D. & Taly L. Jolish Living Trust, Zepporah Glass Trust and Oded Schwartz & Ruth Rosenthal Trust
Tenant:	City and County of San Francisco
Building ( <u>Section 2.1</u> ):	A two-story brick building with basement, commonly known as 2712 Mission Street
Premises ( <u>Section 2.1</u> ):	The building on the land on which it is located and any other improvements on such land, commonly known as APN Block 3643, Lot 3, 2712 Mission Street, San Francisco, California
Rentable Area of Premises ( <u>Section 2.1</u> ):	Approximately 32,000 rentable square feet
Term ( <u>Section 3</u> ):	Commencement Date: March 26, 2022 Expiration date: March 25, 2032
Extension Option ( <u>Section 3.4</u> ):	One additional term of five (5) years, exercisable by City by notice to Landlord given not less than 270 days in advance and not more than 365 days in advance, following the terms and conditions set forth in Section 4.3.
Base Rent ( <u>Section 4.1</u> ):	Annual Base Rent: \$795,200 (\$24.85 per sq. ft.) Monthly payments: \$66,266.67 (\$2.07 per sq. ft.)
Base Rent Adjustment; Adjustment Dates ( <u>Section 4.2</u> ):	On each anniversary of the Commencement Date (“ <b>Adjustment Date</b> ”), the Base Rent will be adjusted by the amount equal to any increase in the Index; provided however any such amount shall never be lower than 3% nor exceed 5% of the Base Rent payable by City for the last

full month immediately preceding such Adjustment Date.

City's Percentage Share:

100%

Use (Section 5.1):

The Premises shall be used for Medical Service, as defined in Section 790.114 of the San Francisco Planning Code, for ancillary office use and any other legal use.

Utilities (Section 9.1):

Landlord has provided all utility connections to the Premises at its sole cost, and City shall pay for all utility services used by City at the Premises

Services (Section 9.2):

City shall pay for all janitorial and debris services used by City at the Premises.

Notice Address of Landlord (Section 24.1):

Barak Jolish  
270 Castenada Avenue  
San Francisco, CA 94116  
Re: 2712 Mission Street

Landlord's Key Contact:

Barak Jolish

Landlord Contact Telephone No.:

415-640-4468

Tenant's Notice Address (Section 24.1):

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 2712 Mission Street

with a copy to:

Department of Public Health  
101 Grove Street  
San Francisco, California 94102-4682  
Attn: Director  
Re: 2712 Mission Street

and to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate & Finance Team  
Re: 2712 Mission Street  
Fax No.: (415) 554-4757

Tenant's Key Contact:

Jeff Sues

Tenant Contact Telephone No.:

415-554-9873

Tenant's Alternate Contact:

David Borgognoni

Alternate Contact Telephone No.:

415-255-3405



Brokers (Section 24.8):

N/A

City Right of First Offer to Purchase (Section 22.1):

City shall have a right of first offer to purchase the Premises on the terms and conditions set forth in Section 22.1.

## 2. PREMISES

### 2.1 Lease Premises

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the “**Building**”) and shown on the floor plan(s) attached as **Exhibit A** (the “**Premises**”). The Premises contain the rentable area of the Building specified in the Basic Lease Information. The Building, the land on which the Building is located, and all other improvements on or appurtenances to the land are referred to collectively as the “Property.”

### 2.2 Intentionally Omitted

### 2.3 Intentionally Omitted

### 2.4 Disability Access

California Civil Code Section 1938 requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist (“**CASp**”) to determine whether the property meets all applicable construction-related accessibility requirements.

City is advised that as of the date hereof the Premises have not been inspected by a CASp. The law does not require landlords to have the inspections performed, but Landlord may not prohibit City from obtaining a CASp inspection of the Premises for its occupancy or potential occupancy if requested by City. If City elects to obtain an inspection, City and Landlord will mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the CASp inspection fee, and the cost of any repairs necessary to correct violations of construction-related accessibility standards.

## 3. TERM

### 3.1 Term of Lease

The Premises are leased for a term (the “Term”) commencing on March 26, 2022. The Term will end on the expiration date specified in the Basic Lease Information, or the date that this Lease is earlier terminated under the provisions of this Lease, unless City extends the Term pursuant to Section 3.4 (Extension Option), below. City is currently in possession of the Premises pursuant to the terms of that certain lease dated January 6, 2012, between Landlord (as successor in interest to Redwood Mortgage Investors VIII) and City (the “**Existing Lease**”). As of the date hereof, City shall be deemed to have accepted possession of the Premises in its “as-is” condition and configuration pursuant to this Lease.

### 3.2 Commencement Date and Expiration Date

The dates that the Term commences and expires under this Lease are the “**Commencement Date**” and the “**Expiration Date**.”

### 3.3 Intentionally Omitted

### 3.4 Extension Option

Landlord grants City the right to extend the Term (the “**Extension Option**”) for the additional term specified in the Basic Lease Information (the “**Extended Term**”). The Extended Term will be on all of the terms and conditions contained in this Lease. City may exercise an Extension Option, if at all, by giving written notice (the “**Extension Notice**”) to Landlord no later than ninety two hundred seventy (270) days before expiration of the Term to be extended and no earlier than three hundred sixty-five (365) days before expiration of the Term to be extended; provided, however, if there is an uncured Event of Default on the date City gives an Exercise Notice, then Landlord may reject City’s Exercise Notice if City fails to cure the Event of Default within ten (10) days after Landlord’s written demand for City to cure the Event of Default. If City extends the Term as provided in this Section, then the word “Term” will mean and include the Extended Term. The Director of Property may exercise the Extension Option, in consultation with City’s Director of Health, but without Board of Supervisors approval, so long as the prevailing market rent for the Extended Term does not exceed fair market value as determined by independent appraisal and agreed to by the Director of Property, and subject to the appropriation of funds.

## 4. RENT

### 4.1 Base Rent

City will pay to Landlord the annual Base Rent specified in the Basic Lease Information (the “**Base Rent**”). The Base Rent is payable in equal monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or other place as Landlord may designate in writing on not less than thirty (30) days’ advance notice. City will pay the Base Rent without notice and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for the fractional month will be prorated based on a thirty (30)-day month.

### 4.2 Adjustments in Base Rent

On each Adjustment Date, the Base Rent payable under Section 4.1 (Base Rent) will be adjusted as follows:

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 (the “**Index**”) published most immediately preceding the Adjustment Date (the “**Adjustment Index**”), will be compared with the Index published for the same month the prior year (the “**Base Index**”).

If the Adjustment Index has increased over the Base Index, then the Base Rent payable on and after the Adjustment Date will be set by multiplying the Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index. In no event will the monthly Base Rent on or after the Adjustment Date be less than three percent (3%) or more than five percent (5%) of the monthly Base Rent in effect for the last full month immediately before the Adjustment Date.

If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index will 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, another government index or computation that replaces it will be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

#### **4.3 Determination of Base Rent for the Extended Term**

(a) At the commencement of the Extended Term, the Base Rent will be adjusted to equal the prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location, and quality to the Building (“**Comparable Space**”) situated within the Mission District area of San Francisco (“**Reference Area**”); provided, however, in no event will the Base Rent be reduced below the Base Rent for the twelve (12)-month period before the Extended Term. As used in this Section, “**prevailing market rate**” means the base rent for Comparable Space, taking into account (i) any additional rent and all other payments and escalations payable under this Lease, (ii) floor location and size of the premises covered by leases of the Comparable Space, (iii) the duration of Extended Term under this Lease and the term of the leases for Comparable Space, (iv) free rent and any other tenant concessions given under the leases for Comparable Space, and (v) tenant improvement allowances and other allowances given under the leases for Comparable Space.

(b) Within thirty (30) days after City’s exercise of the Extension Option, Landlord will notify City of Landlord’s determination of the prevailing market rate for the Premises, together with reasonable supporting documentation. If City disputes Landlord’s determination of the prevailing market rate, City will notify Landlord within fourteen (14) days after Landlord’s notice to City of the prevailing market rate and the dispute will be resolved as follows:

(i) Within thirty (30) days after Landlord’s notice to City of the prevailing market rate, Landlord and City will attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve the disagreement;

(ii) If within that thirty (30)-day period Landlord and City cannot agree on the prevailing market rate, then each will select one appraiser to determine the prevailing market rate. Within thirty (30) days after the expiration of the thirty (30)-day consultation period, each party will cause its appraiser to prepare and complete an appraisal report determining the prevailing market rate and submit the report to Landlord and City;

(iii) If only one appraisal report is submitted within that thirty (30)-day period, then the prevailing market rate determined in that appraisal report will be used to establish the Base Rent for the Extended Term. If both appraisal reports are submitted within the thirty (30)-day period, and if the prevailing market rates determined in the two appraisal reports differ by less than ten percent (10%) of the higher of the two, then the average of the two will be the prevailing market rate. If the prevailing market rates in the two appraisal reports differ by more than ten percent (10%) of the higher of the two, then the two appraisers will immediately select a third appraiser. Within ten (10) days after selection, the third appraiser will determine which of the first two appraisal reports specified a value closest to the actual fair market value, which will be the prevailing market rate. The determination of the third appraiser will be final and binding on the parties;

(iv) Notwithstanding the last sentence of subsection (iii) above, if City’s Director of Property does not approve the prevailing market rate as determined by the appraisal procedure specified above, the Director of Property may revoke City’s exercise of the Extension Option by providing written notice to Landlord within thirty (30) days after Landlord’s notice to City of the prevailing market rate;

(v) All appraisers must be “MAI” designated members of the Appraisal Institute with not less than five (5) years’ recent experience appraising leases of commercial properties similar to the Premises in the Reference Area. Landlord and City will pay the cost of the appraiser it selects and one-half of the cost of the third appraiser; and

(vi) The parties shall share equally in the costs of the appraisers and of any experts retained by the appraiser.

#### **4.4 Additional Charges**

City will pay to Landlord any charges or other amounts required under this Lease as additional rent (“**Additional Charges**”), including the charges for Real Estate Taxes and Operating Costs, as provided below. All Additional Charges are payable to Landlord at the place where the Base Rent is payable. The Base Rent and Additional Charges are sometimes collectively referred to “**Rent**.”

#### **4.5 Intentionally Omitted**

#### **4.6 Definitions**

“**City’s Percentage Share**” means the percentage specified in the Basic Lease Information.

“**Expense Year**” means each calendar year commencing January 1st of each year during the Term, including any partial year in which this Lease commences. By advance written notice to City, Landlord may change the Expense Year to any other twelve (12) consecutive month period, and, in the event of a change, City’s Percentage Share of Operating Costs will be equitably adjusted for the Expense Years involved in the change.

“**Operating Costs**” means the total reasonable and prudent costs and expenses actually paid or incurred by Landlord in connection with the management, operation, maintenance, and repair of the Property, including: (1) the cost of air conditioning, electricity, steam, water, sewer, heating, mechanical, telephone, ventilating, escalator, and elevator systems and all other utilities, (2) the cost of general maintenance, cleaning, and service contracts, including all supplies, tools, and equipment for that maintenance, cleaning, and service, (3) the cost incurred by Landlord for all insurance and deductibles required to be carried on the Building; (4) wages, salaries, payroll taxes (not including payroll expense taxes under Article 12-A of the San Francisco Business and Tax Regulations Code), and other labor costs and employee benefits relating to Landlord’s employees or its Agents (defined in Section 24.4 (Parties and Their Agents, Approvals) below) engaged in the operation, repair, or maintenance, of the Building, allocated in proportion to the percentage of that person’s working time actually spent working in connection with the Building, (5) reasonable management fees, (6) fees, charges, and other costs of all independent contractors engaged by Landlord, allocated in proportion to the percentage of that person’s working time actually spent working in connection with the Building, (7) accounting and legal expenses, (8) depreciation on personal property, including carpeting in public corridors and common areas and window coverings provided by Landlord, (9) the fair market rental value of offices in the Building for the property manager, and (10) costs of capital repairs, capital improvements, and equipment (A) required by applicable Laws enacted on or after the date of the Existing Lease amortized over the useful life of the improvement and/or equipment, together with interest at the actual interest rate incurred by Landlord in connection those capital repairs, improvements, or equipment, unless caused by Landlord’s deliberate or negligent violation of applicable Laws, and except to the extent the improvements are attributable to or are made for the primary benefit of a tenant or occupant other than City, (B) acquired to cause, in Landlord’s good faith judgment, an immediate (i.e., commencing within the first year after completion of the repairs or improvements or installation of equipment) reduction in other Operating Costs, or (C) reasonably necessary for

keeping the Building Systems in good working order and repair, in each case amortized over the useful life of the repairs, improvements, or equipment at an annual rate reasonably calculated to equal the amount of Operating Costs to be saved in each calendar year throughout the Term (as determined at the time Landlord elected to proceed with the capital repair or improvement or acquisition of the capital equipment to reduce Operating Costs), together with interest at the actual interest rate incurred by Landlord.

“**Operating Costs**” expressly do not include the following:

(i) Costs of capital repairs, capital improvements, capital equipment, and capital tools, and rental payments and other related expenses incurred in leasing air conditioning systems, elevators, or other equipment ordinarily considered to be of a capital nature, except as expressly permitted under clause (10) above;

(ii) Rentals and other related expenses for items (except when needed in connection with normal repairs and maintenance of permanent systems) that, if purchased rather than rented, would constitute a capital improvement that is specifically excluded in item (i) above (excluding, however, equipment not affixed to the Building that is used in providing janitorial or similar services);

(iii) Depreciation, amortization, and interest payments (including interest, principal, points, and fees on debt or amortization payment on any mortgages, deeds of trust, or other debt instruments) except to the extent permitted under clause (10) above and except on materials, tools, supplies, and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where the depreciation, amortization, and interest payments would otherwise have been included in the charge for the third party’s services, all as determined in accordance with sound real estate accounting principles, consistently applied.

(iv) Costs incurred by Landlord because of fire, windstorm, or other casualty or by the exercise of the right of eminent domain to the extent Landlord is entitled to be compensated through proceeds or insurance or condemnation awards, or would have been reimbursed if Landlord had in force all of the insurance required to be carried by Landlord under this Lease,

(v) Costs incurred by Landlord if any portion of the Building is made untenable by fire or other casualty required to be insured against under the terms of the Lease and cost of earthquake repairs in excess of one hundred thousand dollars (\$100,000) per earthquake (for this purpose, an earthquake is defined collectively as the initial earthquake and the aftershocks that relate to the initial earthquake);

(vi) Costs for which the Landlord is entitled to be reimbursed (other than as a reimbursement of Operating Costs) under any warranty, or by any other tenant or occupant of the Building, or by insurance by its carrier or any tenant’s carrier, or by anyone else;

(vii) Costs, including permit, license, and inspection costs, incurred for the installation of improvements made for other tenants or occupants of the Building or incurred in renovating or otherwise improving, decorating, painting, or redecorating vacant space for tenants or occupants in the Building;

(viii) Leasing commissions, attorneys’ and other professionals’ fees, space planning costs, and all other costs and expenses in connection with negotiations with present or prospective tenants or other occupants in the Building or any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building;

**(ix)** Leasing commissions, attorneys' fees, costs, and disbursements and other expenses incurred in connection with negotiations or disputes with tenants or other occupants or prospective tenants or other occupants, or associated with the enforcement of any leases or costs of the defense of Landlord's title to the Building or the Property;

**(x)** Expenses in connection with services or other benefits that are not offered to City or for which City is charged directly but that Landlord provides to another tenant or occupant of the Building;

**(xi)** Costs incurred by Landlord resulting from any dispute under the terms and conditions of any lease, ground lease, mortgage, or deed of trust, or covenants, conditions, or restrictions encumbering the Building or Property, or any violation of applicable Laws by Landlord or any other tenant or occupant of the Building;

**(xii)** Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes (including costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act, as amended, Title 24 of the California Code of Regulations (or its successor), the San Francisco Sprinkler Ordinance and the San Francisco Unreinforced Masonry Building Ordinance) to the extent such laws were in effect and enforced before January 6, 2012;

**(xiii)** Payments for management or other services in or to the Building, or for supplies or other materials to Landlord's subsidiaries or affiliates, to the extent that the costs of the services, supplies, or materials exceed the costs that would have been paid had the services, supplies, or materials been provided by parties unaffiliated with the Landlord on a competitive basis;

**(xiv)** Costs for which Landlord has been compensated by a management fee, and any management fees in excess of an amount equal to three percent (3%) of the Property's revenue;

**(xv)** Any ground lease rental or rental under any other underlying leases;

**(xvi)** Except as specifically permitted under clause (10) above, interest, principal, points, and fees on debts or amortization on any mortgage, deed of trust, or any other debt instrument encumbering any of the Building or the Property;

**(xvii)** Any compensation paid to clerks, attendants, or other persons in commercial concessions operated by Landlord or in any parking facility at or for the Building;

**(xviii)** All items and services for which City, any other tenant or occupant of the Building or anyone else reimburses Landlord (other than through a party's proportionate share of Operating Costs), or that Landlord provides selectively to one or more other tenants or occupants without reimbursement, or that are not provided in reasonable proportion to the Premises but that Landlord provides to another tenant or other occupant of the Building;

**(xix)** Advertising or promotional expenditures, and the costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any tenant or occupant of the Building;

**(xx)** Costs of any electric power used by any tenant in the Building for which the tenant directly contracts with the local public service company or of which any tenant is separately metered or submetered and pays Landlord directly (and if any tenant in the Building contracts directly for electric power service or is separately metered or submetered during any portion of the relevant period, the total electric power costs for the Building must be "grossed up")

to reflect what those costs would have been had each tenant in the Building used a commercially reasonable, standard amount of electric power;

(xxi) Services provided, taxes attributable to, and costs incurred in connection with the operation of retail, restaurant, and garage operations in the Building;

(xxii) “in-house” legal or accounting fees;

(xxiii) Real Estate Taxes and any tax penalties incurred as a result of Landlord’s negligence or Landlord’s inability or unwillingness to make tax payments when due;

(xxiv) Fines, costs, penalties, or interest resulting from the negligence or fault of other tenants or of the Landlord or their Agents;

(xxv) Costs arising from the presence of Hazardous Material in, under, or about the Building including groundwater or soil conditions;

(xxvi) Costs, fees, dues, contributions, or similar expenses for or related to charitable or political causes or candidates;

(xxvii) Costs as a result of repairs of latent defects in the design or original construction of the Building, or improvements made or installed by Landlord or any previous owner, or in the Building Systems;

(xxviii) Costs for sculpture, paintings, or other objects of art;

(xxix) Costs arising from claims, disputes, or potential disputes, including tax disputes where the tenants of the Building would receive benefits if Landlord prevails, in connection with potential or actual claims, litigation, or arbitrations pertaining to Landlord or the Building, including all attorneys’ fees and costs of settlement, judgments, and other similar payments;

(xxx) All direct cost of refinancing, selling, exchanging, or otherwise transferring ownership of any portion of the Building or the Property or any interest in any portion of the Property, including broker commissions, attorney’s fees, and closing costs;

(xxxi) Reserves for bad debts, rent loss, capital items, future improvements, repairs, or additions, Real Estate Taxes, or Operating Costs;

(xxxii) The wages and benefits of any employee who does not devote substantially all of his or her employed time to the Building unless the wages and benefits are prorated to reflect time spent on operating and managing the Building vis-a-vis time spent on matters unrelated to operating and managing the Building;

(xxxiii) Landlord’s general corporate overhead and general and administrative expenses and all costs associated with the operation of the business of the ownership or entity that constitutes “Landlord,” as distinguished from the costs of Building operations, management, maintenance or repair; and

(xxxiv) Any other expense that under sound real estate accounting principles would not be considered a maintenance or operating expense by landlord of comparable buildings in San Francisco.

“**Real Estate Taxes**” means all taxes, assessments, and charges levied assessed or imposed on or with respect to the portion of the Building owned by Landlord, or Landlord’s interest in the

Building. Real Estate Taxes include all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services, service payments in lieu of taxes that are now or later levied or assessed against Landlord by the federal, state, or local government, district or public corporation, and will also include any other tax, fee, or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. Real Estate Taxes expressly do not include: (1) franchise, transfer, inheritance, gross receipts, business registration, payroll expense, or capital stock taxes, or income taxes of Landlord from all sources unless, due to a change in the method of taxation, any of those taxes are levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest, or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes, (3) any personal property taxes payable by City or by any other tenant or occupant of the Building, (4) any increase in Real Estate Taxes due to any reassessment due to improvements to the Building or the Property or a transfer of any of Landlord's interest in the Building or the Property, or (5) any Commercial Rent Tax for Childcare and Early Education (Prop. C) (gross receipts received from leases to government entities are exempt from this tax).

(b) "Tax Year" means each calendar year during the Term, including any partial year during which this Lease commences; provided that, by notice to City, Landlord may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of that change, City's Percentage Share of Real Estate Taxes will be equitably adjusted for the Tax Year during the change.

**4.7 Intentionally Omitted**

**4.8 Intentionally Omitted**

**4.9 Intentionally Omitted**

**4.10 Intentionally Omitted**

**4.11 Calculation and Payment of Percentage Share of Operating Costs**

(a) Intentionally Omitted

(b) The computation of Operating Costs will be made in accordance with sound real estate accounting principles. With respect to the costs of capital repairs, improvements, or equipment included in Operating Costs under clause (10) of the definition of Operating Costs, those costs will be included in Operating Costs only after the capital Improvement is completed and put into service and will be amortized over the useful life of the capital improvements, together with interest on the unamortized balance at a rate per annum equal to three percent (3%) over the Treasury Rate charged at the time the capital improvement is constructed, but not more than the maximum rate permitted by law at the time the capital improvement is constructed. Landlord will not collect or be entitled to collect Operating Costs from all of its tenants in the Building an amount that is more than 100% of the Operating Costs actually paid or incurred by Landlord in connection with the Building.

(c) Commencing the first month of the Term, City will pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the Operating Costs for that Expense Year, as provided in this Section. City will make the payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City at least sixty (60) days before the first payment of City's' Percentage Share of Operating Costs is due. Landlord



may update its estimates of Operating Costs each Expense Year, but no revised estimates will be retroactive. Landlord must provide any revised estimates to City at least sixty (60) days before the commencement of the Expense Year. With reasonable promptness not to exceed sixty (60) days after the expiration of each Expense Year, Landlord will furnish City with a statement (“Landlord’s Expense Statement”), prepared by an independent certified public accountant, setting forth in reasonable detail the actual Operating Costs for the Expense Year and City’s Percentage Share. If City’s Percentage Share of the actual Operating Costs for the Expense Year exceeds the estimated Operating Costs paid by City for that Expense Year, City will pay to Landlord (whether or not this Lease has terminated) the difference between the amount of estimated Operating Costs paid by City and City’s Percentage Share of the actual Operating Costs within sixty (60) days after the receipt of Landlord’s Expense Statement. If the total amount paid by City for its Percentage Share of Operating Costs exceeds City’s Operating Costs Share of the actual Operating Costs for the Expense Year, the excess will be credited against the next installments of City’s Percentage Share of Operating Costs or refunded to City, at City’s option. Notwithstanding anything to the contrary contained in this Lease, in no event will any annual increase in City’s Percentage Share of Operating Costs for any Expense Year exceed five percent (5%), and the aggregate increase in City’s Percentage Share of Operating Costs over the Term will not exceed fifty percent (50%). In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Operating Costs in any Expense Year.

#### **4.12 Calculation and Payment of Percentage Share of Real Estate Taxes**

City will pay Landlord each month, as Additional Charges, one twelfth (1/12) of City’s Percentage Share of the Real Estate Taxes for each Tax Year, as provided in this Section. City will make those payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City at least sixty (60) days before the first payment of City’s Percentage Share of Real Estate Taxes is due. With reasonable promptness not to exceed thirty (30) days after Landlord has received the tax bills for any Tax Year, Landlord will furnish City with a statement (“**Landlord’s Tax Statement**”) setting forth the actual amount of Real Property Taxes for the Tax Year and City’s Percentage Share. If City’s Percentage Share of the actual Real Estate Taxes for the Tax Year exceeds the estimated Real Estate Taxes paid by City for that Tax Year, City will pay to Landlord (whether or not this Lease has terminated) City’s Percentage Share of the actual Real Estate Taxes within thirty (30) days after the receipt of Landlord’s Tax Statement. If the total amount of estimated Real Estate Taxes paid by City for the Tax Year exceeds City’s Percentage Share of the actual Real Estate Taxes, the excess will be credited against the next installments of City’s Percentage Share of Real Estate Taxes, or at City’s option, the excess will be refunded to City. In no event may Landlord be reimbursed for more than one hundred percent (100%) of the Real Estate Taxes in any Tax Year.

#### **4.13 Proration**

If the Commencement Date or Expiration Date occurred on a date other than the first or last day of a Tax Year or Expense Year, then City’s Percentage Share of Real Estate Taxes or Operating Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs, will be prorated based on a three hundred sixty-five (365)-day year.

#### **4.14 Audits**

After not less than fifteen (15) business days’ notice to Landlord and within one hundred twenty (120) days after receipt of Landlord’s Expense Statement (but in no event more often than once in any one (1) year period), City may audit the books and records of the Building related to Operating Costs and Real Estate Taxes on a non-contingency basis. If the audit discloses any discrepancies that would result in a reduction or increase of City’s Percentage Share of Operating Costs for any Expense Year, Landlord will immediately refund to City the amount of any overpayment by City or the City will immediately reimburse Landlord the amount of any

underpayment by City, as applicable. If City utilizes an independent accountant to perform such audit it shall be one of national or regional standing which is reasonably acceptable to Landlord and is not compensated on a contingency basis.. City will pay the cost of the audit, but if an audit discloses any discrepancies that result in a reduction of City's Percentage Share of Operating Costs and/or Real Estate Taxes by four percent (4%) or more for any Expense Year or Tax Year, then Landlord will pay the reasonable costs of the audit.

#### **4.15 Records**

Landlord will maintain at the Building, at its offices in San Francisco, or otherwise in its normal course of business, in a safe, complete and organized manner all of its records related to this Lease, Real Estate Taxes, Operating Costs, and any other charges paid by City under this Lease, for at least three (3) years after the Expiration Date or earlier termination of the Term. Landlord will maintain the records on a current basis and in sufficient detail to facilitate adequate review and audit. All books and records will be available for inspection, copying, and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.14 (Audits).

#### **4.16 Payments by City**

Landlord acknowledges that City cannot make any payments to Landlord unless Landlord is qualified as an approved vendor in City's financial and payment system. Therefore, City will not be in default of any monetary obligation under this Lease and no interest or late charge will apply, if Landlord is not an approved vendor with City. More information about being an approved vendor with City is available at <https://sfcitypartner.sfgov.org/Vendor/BecomeSupplier>. All Rent that has accrued while Landlord was not an approved vendor will be payable within twenty (20) after City receives Landlord's written notice and the Contract Monitoring Division confirms that Landlord has been approved as a City vendor.

#### **4.17 Landlord's Compliance with City Business and Tax Regulations Code**

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

#### **4.18 Additional Services**

City may request that Landlord provide or arrange for additional services for the Premises, which Landlord may provide or arrange in its reasonable discretion. If Landlord elects to provide the requested additional services and City has approved the cost and scope of those services in advance, then City will pay Landlord as Additional Charges the cost of those services. Landlord may not contract for or provide any additional services for the Premises (and City will not be obligated to pay for such services) without City's prior written approval of the cost of the additional services (which may be the known costs, or an hourly rate and maximum number of hours, or a cost estimate with a not-to-exceed maximum amount) in writing before Landlord incurs any costs. City will pay for the cost of the additional services within thirty (30) days after receipt of an invoice; provided, however, that City may elect to provide any deposit or other prepayment that City determines is appropriate given the nature of the requested services. Any additional terms for the additional services will be memorialized by a written agreement, which, upon execution by Landlord and City, will be considered a part of this Lease.

## 5. USE

### 5.1 Permitted Use

City may use the Premises for general office uses and any other uses specified in the Basic Lease Information, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

### 5.2 Observance of Rules and Regulations

City will observe the rules and regulations for the Building attached to this Lease as **Exhibit C** (the "**Rules and Regulations**"), but the provisions of this Lease will govern over any conflicting Rules and Regulations. Landlord may make reasonable changes to the Rules and Regulations, but all changes must be applicable to all other Building tenants and the changes may not **(a)** materially reduce Landlord's obligations under the Lease, **(b)** conflict with the provisions of this Lease (or if they do, the provisions of this Lease shall govern), **(c)** materially increase City's burdens or obligations, **(d)** impose a charge on City for services that this Lease expressly states are to be provided to City at no charge, or **(e)** materially adversely affect any permitted use of the Premises. The changes permitted under this Section will be binding on City within a reasonable implementation period after delivery of Landlord's written notice of the changes to City. Landlord will administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Building tenants to comply with them. Landlord will notify City of any waiver of or special dispensation under the Rules and Regulations granted by Landlord to any other tenant in the Building and on request, City will be entitled to the same waiver or special dispensation.

### 5.3 Interference with Access

Landlord will provide to City uninterrupted access to the Building and the Premises twenty-four (24) hours per day, seven (7) days per week, including during any power outages affecting the Premises or any portion of the Building; but Landlord may, after consultation with City's Administrator, interrupt City's access to the Premises or the Building if there is an immediate threat that will render the Premises, the common areas, or any other portion of the Building unsafe for human occupancy. If City's use of any of the Premises or access to the Premises is interrupted because the Premises, or any other portion of the Building is unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord will immediately undertake all necessary steps to correct such condition. In the event such condition impairs City's ability to carry on its business in the Premises, the Rent payable hereunder will be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default continues for thirty (30) days or more after City's use is interrupted or impaired then, without limiting any of its other rights under this Lease, City may terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days after the date City's use was interrupted or impaired by a Service Failure, and City's full use is actually restored within that sixty (60)-day period. Nothing in this Section will limit City's rights with respect to any disruption due to casualty under Section 12 (Damage and Destruction).

## 6. INTENTIONALLY OMITTED

## 7. ALTERATIONS

### 7.1 Alterations by City

City may not make or permit any alterations, installations, additions, or improvements (collectively, “**Alterations**”) to the Premises without first obtaining Landlord’s written consent, which Landlord will not unreasonably withhold, condition, or delay. Installation of furnishings, fixtures, equipment, or decorative improvements that do not affect the Building Systems or structural integrity of the Building, and the repainting and recarpeting of the Premises shall require prior notice to Landlord, but shall not require Landlord’s consent. Any Alterations permitted under this Lease will be made at City’s cost in compliance with applicable Laws (as defined in Section 10.1 (Landlord’s Compliance with Laws)). Without cost or liability to Landlord, Landlord will reasonably cooperate with City in securing building and other permits and authorizations needed for any permitted Alterations. Landlord will not be entitled to any construction or other administrative fee in connection with any Alteration; provided, however, that City shall reimburse Landlord for any reasonable and actual out of pocket third party costs incurred by Landlord in connection with Landlord’s review and approval of the Alteration. City will not be required to remove any Alterations on the expiration or sooner termination of this Lease unless Landlord notifies City in writing at the time Landlord approves the Alterations that they must be removed. City is not required to remove any improvements not requiring Landlord’s consent.

### 7.2 Title to Improvements

Except for City’s Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions, and other property permanently installed in the Premises as of the Commencement Date or during the Term will be and will remain Landlord’s property. City may not remove Landlord’s property without Landlord’s written approval. Notwithstanding anything to the contrary contained herein, Landlord may require the City to remove any Specialty Alterations installed by or on behalf of the City following the date of this Lease. As used herein, “**Specialty Alterations**” shall mean alterations that are not standard office installations, including, without limitation and by way of example only, raised floors, specialized floor coverings, reinforced floor areas, kitchen facilities, server racks, dense filing systems, fitness facility, training rooms, showers, restrooms, washrooms or similar facilities in the Premises that are not part of the base Building, internal stairwells, telephone, data and telecommunications lines and facilities. Upon Landlord’s request, City, at City’s sole cost and expense, shall remove any Specialty Alterations on or before the expiration or earlier termination of this Lease, and repair any damage to the Premises and Building caused by such removal and return the affected portion(s) of the Premises to their condition existing prior to the installment of the Specialty Alterations.

### 7.3 City’s Personal Property

All furniture, furnishings, equipment, trade fixtures, and articles of movable personal property installed in the Premises by or for City and that can be removed without structural damage to the Premises (collectively, “**City’s Personal Property**”) are and will remain City’s property. At any time during the Term, City may remove any of City’s Personal Property, and City will repair any damage to the Premises resulting from that removal. On the expiration or earlier termination of this Lease, City will remove City’s Personal Property from the Premises in accordance with Section 20 (Surrender of Premises). Landlord acknowledges that some of City’s Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City (“**Secured Personal Property**”). Landlord recognizes the rights of any supplier, lessor, or lender who has an interest in any items of Secured Personal Property to enter the Premises and remove that Secured Personal Property at any time during the Term or within fifteen (15) days after the Expiration Date. On

City's reasonable request, Landlord will execute and deliver any document required by any supplier, lessor, or lender in connection with the installation of any items of Secured Personal Property in the Premises, under which Landlord waives any rights it may have or acquire with respect to the Secured Personal Property, so long as the supplier, equipment supplier, lessor, or lender agrees that it **(i)** will remove the Secured Personal Property from the Premises within fifteen (15) days after the Expiration Date (and if it does not remove the Secured Personal Property within that time the equipment supplier, lessor, or lender will have waived any rights it may have had to the Secured Personal Property), and **(ii)** will repair any damage caused by the removal of the Secured Personal Property.

#### **7.4 Alteration by Landlord**

Except in the case of an emergency, Landlord will use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions, or improvements to the Building, including any leasehold improvement work for other tenants in the Building. Landlord will use commercially reasonable efforts to promptly remedy any interference or disruption on receiving City's notice thereof.

### **8. REPAIRS AND MAINTENANCE**

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

At its cost, Landlord will repair and maintain the exterior and structural portions of the Building in first-class condition (ordinary wear and tear excepted), including, the roof, foundation, bearing and exterior walls, windows, exterior doors, door frames, demising walls, and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security, and other mechanical, electrical, and communications systems of the Building (collectively, the "**Building Systems**") and the common areas. Without limiting the foregoing, Landlord will maintain the exterior and structural portions of Building in a clean, safe, and attractive manner, will provide exterior graffiti removal with reasonable frequency. The costs in connection with the foregoing repair and maintenance, but not replacement, shall be included in Operating Costs pursuant to the terms of Section 4.

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

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's repair and maintenance obligations under this Lease, City will repair and maintain at its cost the interior portions of the Premises and will keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty or condemnation. City will make any required repairs and replacements to the interior of the Premises that Landlord specifies in writing **(a)** at City's cost, **(b)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(c)** so that the interior portions of the Premises will be at least substantially equal in quality, value, and utility to the original work or installation before the damage, **(d)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use, or occupation of the Building or the Building Systems, and **(e)** in compliance with all applicable Laws, including any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term, promptly after City's reasonable notice, Landlord will provide City and its Agents with access to those portions of the Building that are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

### **8.3 Liens**

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

## **9. UTILITIES AND SERVICES**

### **9.1 Landlord's Provision of Utilities**

Landlord will furnish the following utilities and services to the Premises: **(a)** heating, air conditioning, and ventilation in amounts required for City's comfortable use and occupancy of the Premises, during the period from 7:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; **(b)** electric current in amounts required for normal lighting and for the operation of personal computers and other normal office machines and equipment, on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"), subject to force majeure; **(c)** elevator service on a Daily Basis; and **(d)** water for lavatory, kitchen, and drinking purposes on a Daily Basis. Without limiting Landlord's obligations under this Section, subject to force majeure, Landlord will furnish all utilities and services required under this Lease in a manner consistent with utilities and services normally provided in other first class buildings similar to the Building in the San Francisco Mission District.

### **9.2 Services**

#### **(a) Janitorial Service**

City shall contract and pay directly for all janitorial and debris services City elects to obtain for the Premises and Landlord shall have no obligation to provide janitorial service.

#### **(b) Security Service**

City shall contract and pay directly for all security services City elects to obtain for the Premises and Landlord shall have no obligation to provide security service.

### **9.3 Conservation**

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms; provided, however, except to the extent required by Law, these measures shall not unreasonably interfere with City's use of the Premises.

### **9.4 Disruption in Essential Utilities or Services**

If any failure, stoppage, or interruption of any utilities or services to be furnished by Landlord occurs, City will immediately notify Landlord of the failure, stoppage, or interruption, and Landlord shall diligently attempt to restore service as promptly as possible and shall keep City apprised of its efforts. If Landlord is unable to supply any of the Building's sanitary, electrical, heating, air conditioning, water, elevator, fire protection and security, hazard detection and alarm, or other essential services serving the Premises (collectively, "**Essential Services**") and that inability of Landlord impairs City's ability to carry on its business in the Premises for five (5) or more consecutive days, and it is in Landlord's reasonable control to restore the Essential Services, then, commencing on the sixth (6<sup>th</sup>) consecutive day of such interruption, Rent will be abated based

to the extent that the lack of the Essential Services impairs City's ability to normally carry on its business in the Premises, or, alternatively at City's election, City may provide the Essential Services and offset the reasonable cost against the Rent next due under this Lease. The abatement or right to provide the Essential Services and offset against Rent will continue until the Essential Services have been restored so that the lack of any remaining Essential Services no longer materially impairs City's ability to carry on its business in the Premises. Landlord will use its commercially reasonable efforts to restore disrupted Essential Services as soon as possible. In the event there is a failure to provide Essential Services for thirty (30) of any sixty (60) day period and that failure interferes with City's ability to normally carry on its business in the Premises, then, without limiting any of its other rights or remedies under this Lease or at law or in equity, City may terminate this Lease on written notice to Landlord, unless Landlord supplies City with evidence reasonably satisfactory to City that the Essential Services will be reliably restored within sixty (60) days after the date City's use was first interrupted, and the Essential Services are actually restored and reliable within the sixty (60)-day period. City will not be entitled to any abatement of Rent or right to terminate if Landlord's inability to supply Essential Services to City results solely to the negligent acts or omissions of City and its Agents.

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

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

Subject to City's obligation under Section 8.2 (City's Repairs), City's obligations under Section 10.2 below, and further subject to the terms of Section 4 hereof, Landlord will at all times during the Term maintain, at its cost, the Property, Building, Common Areas, and the Building Systems in compliance with applicable present or future federal, state, local, and administrative laws, rules, regulations, orders, and requirements (collectively, "**Laws**"). Landlord represents and warrants to City, and covenants with City, as follows to the best of Landlord's knowledge: **(a)** the physical structure, fixtures, and permanent improvements of the Premises and all portions of the Property and the Building along the path of travel to the Premises (including the Building entrances, Common Areas, restrooms, elevators, lobbies, telephone banks, and drinking fountains) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990, California Code of Regulations Title 24, and all other applicable Laws intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); **(b)** the Building is not an unreinforced masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable Laws relating to seismic safety (collectively, "**Seismic Safety Laws**"); **(c)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable Laws relating to fire and life safety (including the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); **(d)** the Building, the Common Areas, and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable Laws; and **(e)** there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building, or the Building Systems that would materially adversely affect City's intended use of the Premises. Without limiting Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City against any and all Claims (defined in Section 16.1 (City's Indemnity) below) arising out of **(i)** any failure of the Property, Building, Common Areas, Building Systems (or any portion of any of them) to comply with applicable Laws; or **(ii)** any misrepresentation by Landlord under this Section.

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

City will use the Premises during the Term in compliance with applicable Laws, except that City will not be required to make any structural alterations, additions, or other modifications in order to comply with applicable Laws unless the modifications are necessary solely because of any Alterations to the Premises made by City under Section 7 (Alterations) and the modifications

are not otherwise Landlord's responsibility under this Lease. City will be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures, and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 (Premises Condition). Without limiting Section 16.1 (City's Indemnity), City will Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

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

City will not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located in the Building, **(b)** result in a refusal by casualty insurance companies of good standing to insure the Building or property in the Building in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the casualty insurance premium for the Building unless City agrees to pay the increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property solely because of the business operation conducted by City in the Premises; provided, however, Landlord will provide City with reasonable prior written notice of any applicable insurance requirements and no insurance requirements will materially and adversely interfere with City's normal business in the Premises.

## **11. SUBORDINATION**

**(a)** Subject to subsection (b) below, this Lease is subject and subordinate at all times to the following (each an "**Encumbrance**"): **(i)** any reciprocal easement agreements, ground leases, or other underlying leases that may later be executed affecting Landlord's interest in the Property (or any portion of it), and **(ii)** the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements, and extensions of any of the foregoing that may be executed by Landlord at any time in any amount for which any part of the Property, any ground lease, or underlying lease, or Landlord's interest or estate in them is subject. But, if the ground lessor, mortgagee, trustee, or holder of any mortgage or deed of trust (each an "**Encumbrancer**") elects to have City's interest in this Lease be superior to its Encumbrance, then, on City's receipt of a notice from the Encumbrancer, this Lease will be deemed superior, whether this Lease was executed before or after the date of the Encumbrance or the date of its recording. The provisions of this subsection (a) are self-operative and no further instrument will be required; however, City will enter into a subordination, non-disturbance, and attornment agreement ("**SNDA**") with Encumbrancer in a form reasonably acceptable to City and Encumbrancer evidencing the subordination or superiority of this Lease within ten (10) business days following Landlord's request therefor. City's covenant under this subsection (a) to subordinate this Lease to any Encumbrance is conditioned on each senior instrument containing the commitments in subsection (b) below.

**(b)** If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease or underlying lease to which this Lease is subordinate is terminated, then this Lease will not be barred, terminated, cut off, or foreclosed and the rights and possession of City under this Lease will not be disturbed unless an Event of Default has occurred and is continuing. City will attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of the succession and the name and address of the successor landlord. The provisions of this Section 11(b) are self-operative and no further instrument will be required. Landlord agrees, however, upon request by City and in a form reasonably acceptable to City, to use commercially reasonable efforts to cause any Encumbrancer to execute an SNDA evidencing



the foregoing non-disturbance provisions together with the priority or subordination of this Lease with respect to any such Encumbrance.

## **12. DAMAGE AND DESTRUCTION**

(a) If the Premises, the Building, or any Building Systems are damaged by fire or other casualty, Landlord will repair the same without delay (and if Landlord is then carrying insurance on the Leasehold Improvements or if, at its sole option, City makes sufficient funds available to Landlord, Landlord will also repair the Leasehold Improvements) so long as the repairs can be made under applicable Laws within sixty (60) days after Landlord obtains all necessary permits but not later than two hundred ten (210) days after the date of the damage (the “**Repair Period**”). If Landlord is obligated to repair as provided above, then this Lease will remain in full force and effect, except that City will be entitled to an abatement of Rent until the Premises are restored to their condition before the casualty. The abatement in Rent will be based on the extent to which the damage, the making of the repairs, and reoccupying the repaired Premises interferes with City’s use of the Premises. Landlord’s repairs will not include, and the Rent will not be abated as a result of, any damage by fire or other cause to City’s Personal Property or any damage caused by the negligence or willful misconduct of City or its Agents that is not covered by insurance.

(b) Within twenty (20) days after the date of the damage, Landlord will notify City whether, in Landlord’s reasonable judgment made in good faith, the repairs can be made within the Repair Period. If the repairs cannot be made within the Repair Period, then either party may terminate this Lease by giving written notice to the other given within thirty (30) days after the date of Landlord’s notice. The termination date will be the date specified in the termination notice, which date may be not less than thirty (30) or more than sixty (60) days after either party’s notice. If either party elects to terminate this Lease, then the Rent will be reduced by a proportionate amount based on the extent to which the damage interferes with the normal conduct of City’s business in the Premises, and City will pay the reduced Rent up to the date of termination. Landlord will refund to City any Rent previously paid for any period after the date of termination.

(c) Notwithstanding the foregoing, if the Premises are damaged or destroyed by flood or earthquake, and the damage or destruction is not fully covered by insurance proceeds payable under the insurance policies Landlord is required to carry under this Lease (excluding any deductible, for which Landlord is solely responsible), or in the event the holder of any indebtedness secured by a mortgage or deed of trust covering the Building requires that any insurance proceeds be applied to such indebtedness, then Landlord may terminate this Lease by written notice to City within thirty (30) days after the date Landlord receives written notice that the damage is not covered by insurance or the date Landlord receives notice from lender notifying Landlord that such insurance proceeds must be applied to such indebtedness. Landlord’s termination notice must include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease, then subsections (a) and (b) will apply.

(d) If during the last six (6) months of the Term there is substantial damage that Landlord would be required to repair under this Section, then within thirty (30) days after the date of the damage Landlord or City may, each at its option, terminate this Lease as of the date the damage occurred by giving written notice to the other party of its election to do so; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair the damage.

(e) The parties intend that the provisions of this Section fully govern their rights and obligations in the event of damage or destruction. Accordingly, Landlord and City each waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of

California or under any similar Law now or later in effect, to the extent those rights are inconsistent with the provisions of this Section.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

“**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.

“**Date of Taking**” means the earlier of **(a)** the date on which title to the portion of the Property taken passes to and vests in the condemnor or **(b)** the date on which City is dispossessed.

“**Award**” means all compensation, sums, or anything of value paid, awarded or received for a Taking, whether under any judgment, agreement, settlement, or otherwise.

#### **13.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or the Building or any interest in this Lease, the rights and obligations of the parties will be determined under this Section. City and Landlord intend that the provisions of this Section govern fully in the event of a Taking and accordingly, Landlord and City each waives any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar Law now or later in effect.

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

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

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

**(a)** If there is a Taking of any portion (but less than all) of the Premises, then this Lease will terminate in its entirety if all of the following exist: **(i)** the partial Taking, in City’s reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City’s normal operations in the Premises or access to the Premises, **(ii)** the condition rendering the Premises untenable or unsuitable or that materially adversely affects City’s normal operations or limits access to the Premises either is not curable or is curable but Landlord is unwilling or unable to cure the condition, and **(iii)** City elects to terminate.

**(b)** If a partial Taking of a substantial portion of the Building occurs, but subsection (a) above does not apply, then within thirty (30) days after the Date of Taking either City or Landlord may terminate this Lease by written notice to the other, provided that, as a condition to City’s right to terminate, the portion of the Building taken must, in City’s reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City’s normal operations in the Premises or access to the Premises.

**(c)** If either party elects to terminate this Lease under this Section, then this Lease will terminate on the later of the thirtieth (30<sup>th</sup>) day after the written notice is given or the Date of Taking.

### **13.5 Termination of Lease; Rent and Award**

On termination of this Lease in its entirety under Section 13.3 (Total Taking; Automatic Termination) or under Section 13.4 (Partial Taking; Continuation of Lease), then: **(a)** City's obligation to pay Rent will continue up until the date of termination and then will cease, and **(b)** Landlord will be entitled to the entire Award, except that City may make a separate claim for the unamortized cost of any leasehold improvements paid for by City and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property so long as such claim does not diminish the award available to Landlord and is payable separately to City.

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

If there is a partial Taking of the Premises and this Lease is not terminated in its entirety under Section 13.6 (Partial Taking; Continuation of Lease) above, then this Lease will terminate as to the portion of the Premises taken, but will remain in effect as to the portion not taken, and the rights and obligations of the parties will be as follows: **(a)** Rent will be equitably reduced depending on the configuration of the Premises and the portion taken (for instance, if the area of the Premises taken has no special or significant use, then the reduction may be by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises before the Date of Taking), and **(b)** Landlord will be entitled to the entire Award in connection therewith, provided that City will receive any portion of the Award for the unamortized cost of any leasehold improvements paid for by City in the portion of the Premises taken and any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking of the Premises occurs for sixty (60) consecutive days or fewer, this Lease will remain unaffected by the temporary Taking, and City will continue to pay Rent and to perform all of the terms, conditions, and covenants of this Lease. In the event of a temporary Taking, City will be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City and any out-of-pocket costs incurred by City due to the temporary Taking for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section, City may not directly or indirectly sell, assign, encumber, pledge, or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate created by this Lease or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which will not be unreasonably withheld, conditioned, or delayed. From time to time, on no less than thirty (30) days' prior notice to Landlord, but without Landlord's consent, City may permit the use and occupancy of all or any of the Premises to any department, commission, or agency of the City and County of San Francisco for uses permitted under this Lease. Upon any request to assign or sublet, City will pay to Landlord, on demand, a sum equal to all of Landlord's costs, including reasonable attorney's fees, incurred in investigating and considering any proposed or purported assignment or pledge of this Lease or sublease of any of the Premises. Fifty percent (50%) of any Rent or other consideration realized by City under any such sublease or assignment in excess of the Rent payable hereunder shall be paid to Landlord.

## **15. DEFAULT; REMEDIES**

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

Any of the following will constitute an “**Event of Default**” by City:

(a) After Landlord is qualified as an approved vendor as provided in Section 4.16 (Payments by City) above, City fails to make any timely payment of Rent and to cure the nonpayment within five (5) business days after receipt of written notice or nonpayment from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term and for the first monthly payment of Rent after the beginning of each new fiscal year for City or any Adjustment Date, City will have twenty (20) days after written notice from Landlord to cure any nonpayment.

(b) City’s abandons the Premises (within the meaning and under the requirements of California Civil Code Section 1951.3).

(c) City’s failure to perform any other of its covenants or obligations under this Lease (not involving the payment of money) and failure to cure the non-performance within thirty (30) days of the date of receipt of Landlord’s notice of the failure, provided that if more than thirty (30) days are reasonably required for the cure, no Event of Default will occur if City commences the cure within the thirty (30)-day period and diligently prosecutes the cure to completion.

### **15.2 Landlord’s Remedies**

On the occurrence and during the continuance of any Event of Default by City, Landlord will have all rights and remedies available under law or granted pursuant to this Lease, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate City’s right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed under subsection (b) of Section 1951.2.

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

(c) Upon the occurrence of a breach or default by City, Landlord may (but shall not be obligated to) cure such default at City’s sole expense if the default continues after ten (10) days after the date Landlord gives notice to City of Landlord’s intention to perform the cure. However, if a default occurs because of a cause beyond City’s control (excluding any financial inability to perform), and City cannot with due diligence cure the default within the ten (10)-day period, then the ten (10)-day period will be extended if, promptly on receipt of Landlord’s notice, City advises Landlord of City’s intention to take all steps required to cure the default, and City promptly commences the cure and diligently prosecutes the cure to completion. But if any default by City continues for sixty (60) days, then Landlord may terminate this Lease on written notice to City within thirty (30) days after the expiration of the sixty (60)-day period.

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

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease), at its sole option, City may cure the default at Landlord's expense if the default continues after ten (10) days after the date City gives notice to Landlord of City's intention to perform the cure. However, if a default occurs because of a cause beyond Landlord's control (excluding any financial inability to perform), and Landlord cannot with due diligence cure the default within the ten (10)-day period, then the ten (10)-day period will be extended if, promptly on receipt of City's notice, Landlord advises City of Landlord's intention to take all steps required to cure the default, and Landlord promptly commences the cure and diligently prosecutes the cure to completion. But if any default by Landlord continues for sixty (60) days and impairs City's ability to carry on its normal business in the Premises, then City may terminate this Lease on written notice to Landlord within thirty (30) days after the expiration of the sixty (60)-day period. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the ten (10)-day cure period provided above (as it may be extended as provided above), then, whether or not City elects to cure Landlord's default, the Rent will be abated based on the extent to which the default interferes with City's ability to carry on its normal business at the Premises. City's rights under this Section and under any other provisions of this Lease will not limit in any way any of its other rights and remedies under this Lease or at law or in equity.

## **16. INDEMNITIES**

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

City will indemnify, defend, and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on, or about the Premises or the Property; provided, however, City will not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents because of a Claim Indemnified by City under this Section, at its sole option, City may elect to defend the Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City will have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord will have the right, but not the obligation, to participate in the defense of the Claim at its sole cost. City's obligations under this Section will survive the termination of the Lease.

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

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

obligation, to participate in the defense of any Claim at its sole cost. Landlord's obligations under this Section will survive the termination of this Lease.

## **17. INSURANCE**

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

Landlord acknowledges that City maintains a program of self-insurance and City is not required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property, except for damage caused by Landlord or its Agents.

### **17.2 Landlord's Insurance**

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

(b) In addition, at no cost to City, Landlord will procure and keep in effect at all times during the Term insurance as follows: (i) commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse, and underground (XCU); and (ii) worker's compensation insurance in the amounts required by applicable Laws and employer's liability with limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required by this Lease to be maintained by Landlord must be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord and City (or, if such endorsement is not available from the insurer, Landlord will provide such notice to City).

### **17.3 Waiver of Subrogation**

Notwithstanding anything to the contrary in this Lease, Landlord waives any right of recovery against City for any loss or damage relating to the Building or the Premises or any operations or contents in the Building, whether or not the loss is caused by City's fault or negligence, to the extent the loss or damage is covered by Landlord insurance that is required under this Lease or any excess coverage otherwise held by Landlord or its Agents. Landlord will obtain a waiver of subrogation endorsement from applicable insurance carriers issuing policies relating to the Building or the Premises, but Landlord's failure to do so will not affect the above waiver.

## **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any of its designated Agents the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord will give any reasonable notice), after giving City at least twenty four (24) hours' advance written notice, to (a) inspect the Premises, (b) supply any service to be provided by Landlord under this Lease,

(c) show the Premises to any prospective purchasers, mortgagees or, during the last nine (9) months of the Term, tenants, (d) post notices of non-responsibility, and (e) alter, improve, or repair the Premises and any portion of the Building, and, for that purpose, Landlord may erect, use, and maintain necessary structures in and through the Premises where reasonably required by the work to be performed, provided that the entrance to the Premises may not be blocked. Except in the case of an emergency, Landlord shall exercise reasonable efforts in exercising the foregoing rights in a manner that is reasonably designed to minimize interference with the operation of City's use of the Premises.

## **19. ESTOPPEL CERTIFICATES**

From time to time during the Term, by not less than ten (10) days' prior written notice to the other party, either party may request the other party to execute, acknowledge, and deliver to the persons or entities designated by the other party a certificate stating: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), (c) that, to such party's knowledge, there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

## **20. SURRENDER OF PREMISES**

On the expiration or sooner termination of this Lease, City will surrender the Premises to Landlord in good order and condition, excepting reasonable use and wear and damage by fire or other casualty or condemnation. Within ten (10) days after the Expiration Date, City will remove from the Premises all of City's Personal Property, City's telecommunications, data, and computer facilities and any Alterations City desires or is required to remove from the Premises under the provisions of Section 7.1 (Alterations by City). City will repair or pay the cost of repairing any damage to the Premises or the Building resulting from that removal. Subject to Section 7.2 regarding future Specialty Alterations, City will not be required to demolish or remove from the Premises any of the leasehold improvements existing in the Premises as of the date of this Lease. City's obligations under this Section will survive the expiration or earlier termination of this Lease.

## **21. HAZARDOUS MATERIALS**

### **21.1 Definitions**

As used in this Lease, the following terms are defined below:

**"Environmental Laws"** means any Law relating to industrial hygiene, environmental conditions, or Hazardous Material, whether now in effect or later adopted.

**"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 any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the Superfund law), as amended (42 U.S.C. Section 9601 et seq.), or under California Health & Safety Code Section 25316; any "hazardous waste" listed under California Health & Safety Code Section 25140; any asbestos and asbestos containing materials whether or not those materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids.

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

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

Landlord represents and warrants to City that, to the best of Landlord’s knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date **(a)** the Property is not in violation of any Environmental Laws; **(b)** the Property is not now, and has not been, used for the manufacture, use, storage, discharge, deposit, transportation, or disposal of any Hazardous Material, except for the use of Hazardous Material in limited quantities as are customarily used in offices, which limited use is and has been in compliance with Environmental Laws; **(c)** the Property does not consist of any landfill or contain any underground storage tanks; **(d)** the Building does not contain any asbestos-containing materials or have building materials that contain any other Hazardous Material, and the Premises or the common areas of the Building do not contain any lead-based paints; **(e)** there is and has been no Release of any Hazardous Material in the Building or in, on, under, or about the Property; and **(f)** the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under, or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City’s obligations under this Section below, Landlord will maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety, and welfare of City’s employees or City’s use, occupancy, or enjoyment of the Premises for their intended purposes.

## **21.3 Landlord’s Environmental Indemnity**

Without limiting Landlord’s Indemnity in Section 16.2 (Landlord’s Indemnity), Landlord will Indemnify City and its Agents against any and all Claims arising during or after the Term **(a)** as a result of any breach of any of Landlord’s representations, warranties, or covenants in the preceding Section, or **(b)** in connection with any presence or Release of Hazardous Material in the Building or on, under, or about the Property, unless City or its Agents caused the Release.

## **21.4 City’s Covenants**

Neither City nor its Agents will cause any Hazardous Material to be brought on, kept, used, stored, generated, or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws.

## **21.5 City’s Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4 (City’s Covenants), or if City or its Agents cause the Release of Hazardous Material from, in, on, or about the Premises or the Property, then City will Indemnify Landlord against any and all Claims arising during or after the Term as a result of the Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity will not include any Claims resulting from the non-negligent aggravation by City, its Agents, or Invitees of physical conditions of the Premises, or other parts of the Property, existing before City’s occupancy.



## 22. SPECIAL PROVISIONS

### 22.1 City Right of First Offer to Purchase

(a) Sale Notification; City's Offer. So long as City is not in default under the terms and conditions of this Lease beyond any applicable notice and cure period and City has not assigned this Lease or sublet any or all of the Premises (other than an assignment or sublease to any department, commission, or agency of the City and County of San Francisco) if Landlord decides to sell the Property during the Term of this Lease (including any Extension Term), Landlord will first offer the Property to City at 100% of the purchase price that the Property will be offered to the real estate market (the "Sale Price"). Such Sale Price will be contained in a written notice ("Sale Notification") from Landlord to City and such Sale Price will be subject to adjustment as provided below. City will have thirty (30) days from receipt of the Sale Notification from Landlord to submit (i) an offer to purchase at the Sale Price or (ii) a counter offer at a lesser price (the "Offered Purchase Price") and otherwise upon the other business terms set forth below. City's offer to purchase at the Sale Price will be deemed an acceptance of Landlord's offer on the terms and conditions below, subject to the conditions in Section 22.1(b) below. City's staff and Landlord will use diligent, good faith efforts to negotiate a proposed final form of purchase and sale agreement (the "Proposed Final Purchase and Sale Agreement"), which will incorporate the accepted purchase price and the terms set forth below, within sixty (60) days after either City offers to purchase at the Purchase Price or Landlord accepts a counter offer by City to purchase the Property at the Offered Purchase Price. The parties acknowledge that the Proposed Final Purchase and Sale Agreement will be subject to City's Approval, as defined below. If despite diligent, good faith efforts, City's staff and Landlord are unable to agree on the Proposed Final Purchase and Sale Agreement within that period, then either party may, by notice to the other, terminate the negotiations, in which event this right of first offer will terminate and Landlord will be free to sell the Property to any person whomever and upon any terms whatsoever without any obligation to City, except as described in Section 22.1(e).

(b) Conditions. City's offer to purchase the Property will be subject to the approval of City's Board of Supervisors and Mayor ("City's Approval"), the title company being willing to issue ALTA Title Insurance reasonably acceptable to City, and City's successful issuance of debt to fund the purchase, among other standard conditions described in the Proposal Final Purchase and Sale Agreement. The executed Proposed Final Purchase and Sale Agreement is referred to herein as the "Purchase Agreement." The Purchase Agreement will contain a provision permitting City to make such examinations, tests, analyses, non-invasive investigations (and/or invasive investigations with Landlord's consent, which shall not be unreasonably withheld), surveys, inquiries and other inspections in connection with City's examination of the Property as City deems necessary or desirable, and the terms and conditions applicable to such examinations, tests, analyses, investigations, surveys, inquiries and other inspections. The Purchase Agreement will also contain a provision with standard seller representations and warranties as may be approved by Landlord.

(c) Due Diligence. Within five (5) business days of City's written request, Landlord will deliver copies of all property reports, appraisals, and other Documents (as defined below) in Landlord's possession relating to the Property. Landlord will reasonably cooperate with the City in its due diligence investigation pertaining to the condition and operation of the Property, to the extent such documents exist and are in the possession or control of Landlord, its property manager, or its asset manager and have not been previously delivered to City. Landlord further agrees to promptly deliver to City any such Documents (as defined below) thereafter discovered, created or received by Landlord, its property manager or its asset manager (each, a "Newly Discovered Document") through the date of Closing (as defined below). As used herein, the "Documents" will mean the following documents, all to the extent such documents exist and are in the possession or control of Landlord, any member of Landlord, Landlord's property manager, or its asset manager: (i) structural calculations for the Building; (ii) site plans, digital copies of the

as-built plans and specifications for the Building and measurement of the Building, recent inspection reports by Landlord; (iii) existing service contracts, utility contracts, maintenance contract, brokerage and leasing commission agreements with respect to the Property, the obligations of which may continue following the closing contemplated by the Purchase Agreement (hereafter, the "Closing"); (iv) presently effective warranties or guaranties received by Landlord or Landlord's predecessors in interest from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Property; (v) current certificates of insurance for carriers insuring the Property, as well as any information or reports relative to the claims history of the Property; (vi) any environmental reports, studies, surveys, tests and assessments; (vii) any soils and geotechnical reports, including without limitation, any reports relating to the presence of asbestos or asbestos containing materials located at the Property; and (viii) any other contracts or documents necessary for the operation of the Property or which will be binding on the Property after the Closing. Notwithstanding the foregoing, in no event shall Landlord be required to provide City with any of the following items: (1) appraisal and valuation reports and information, (2) any documents, materials or information which are subject to attorney/client, work product or similar privilege or which constitute attorney communications with respect to the Property, (3) any confidential or proprietary information and communications, (4) any documents pertaining to the marketing of the Building for sale to prospective purchasers, (5) any internal memoranda, reports or assessments of Landlord or Landlord's affiliates to the extent relating to Landlord's valuation of the Property or interpretation of any agreements, contracts or third party reports pertaining to the Property, or (6) any materials projecting or relating to the future performance of the Property.

**(d) Closing.** At Closing, City will pay the cost of the extended coverage title insurance policy, real estate transfer taxes (if and to the extent that the transaction is not exempt from transfer taxes), one half the escrow fees, and one half of the other typical closing expenses. Landlord will pay one half the escrow fees and one half the other typical closing expenses, such as notary fees and overnight express charges. Landlord will deliver the following (among other customary items) through a mutually agreeable escrow company:

(A) a grant deed conveying ALTA insurable title subject only to taxes not yet due and payable, and other exceptions reasonably acceptable to City,

(B) a bill of sale for all personal property owned by Landlord on the Property and accepted by City, and

(C) a written disclosure of all facts actually known by Landlord about the Property (including any and all property inspection reports).

**(e) No Accepted Offer or Counter Offer.** If City does not agree to purchase the Property at the Sale Price and does not make any counter offer within the thirty (30)-day period described in Section 22.1(a), or if City's Offered Purchase Price is rejected by the Landlord, Landlord will have the right to sell the Property with no further obligation to City. Notwithstanding the foregoing, if the purchase price provided for in any other sale agreement for the Property to any unaffiliated third party purchaser (the "Third Party Purchase Price") is less than ninety-five percent (95%) of the Sale Price then City shall have another option to purchase the Property at a price equal to the Third Party Purchase Price, pursuant to this Section 22.

## **23. CITY PROVISIONS**

### **23.1 MacBride Principles - Northern Ireland**

The provisions of San Francisco Administrative Code Section 12F are incorporated into this Lease by this reference and made part of this Lease. Landlord confirms that Landlord has read

and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

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

Any undefined, initially-capitalized term used in this Section has the meaning given to that term in San Francisco Administrative Code section 23.61. Landlord will require its Contractors and Subcontractors performing (i) labor in the construction of a "public work" as defined in California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling if paid for in whole or part out of public funds), or (ii) Covered Construction at the Premises to (A) pay workers performing the work not less than the Prevailing Rate of Wages, (B) provide the same hours, working conditions, and benefits as in each case are provided for similar work performed in San Francisco County, and (C) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Landlord will cooperate with City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Landlord will include, and require its Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each Construction Contract must name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Landlord's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party.

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

#### **(a) Covenant Not to Discriminate**

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

association with members of those protected classes, or in retaliation for opposition to discrimination against those classes.

**(b) Subcontracts**

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

**(c) Non-Discrimination in Benefits**

Landlord does not as of the date of this Lease, and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for 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 the employees, where the domestic partnership has been registered with a governmental entity under state or local law authorizing that registration, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2(b).

**(d) CMD Form**

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

**(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of San Francisco Administrative Code Chapters 12B and 12C relating to non-discrimination by parties contracting for the lease of property to City are incorporated into this Section by reference and made a part of this Lease as though fully set forth. Landlord will comply fully with and be bound by all of the provisions that apply to this Lease under Administrative Code Chapters 12B and 12C, including the remedies provided in those Chapters. Without limiting the foregoing, Landlord understands that under San Francisco Administrative Code Section 12B.2(h) a penalty of Fifty Dollars (\$50) for each person for each calendar day during which that person was discriminated against in violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

### **23.4 Bicycle Parking Facilities**

San Francisco Planning Code (the "**Planning Code**") Article 1.5, Section 155.3 requires that bicycle parking must be provided at City-leased buildings at no cost to Landlord. During the Term, City will have the right to install and maintain, at no cost to Landlord, all Class 1 Bicycle Parking Spaces (as defined in the Planning Code) and all Class 2 Bicycle Parking Spaces (as defined in the Planning Code) in the Building locations required under the Planning Code.

### **23.5 Resource-Efficient City Buildings**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of City buildings. Landlord will comply with all applicable provisions of those code sections.

### **23.6 Sunshine Ordinance**

In accordance with San Francisco Administrative Code Section 67.24(e), 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 that is covered by this Section will be made available to the public on request.

### **23.7 Conflicts of Interest**

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

### **23.8 Notification of Prohibition on Contributions**

By executing this Lease, Landlord acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who leases, or seeks to lease, to or from any department of the City any land or building from making any campaign contribution to (a) a City elected official if the lease must be approved by that official, (b) a candidate for that City elective office, or (c) a committee controlled by that elected official or a candidate for that office, at any time from the submission of a proposal for the lease until the later of either the termination of negotiations for the lease or twelve (12) months after the date the City approves the lease. Landlord acknowledges that the foregoing restriction applies only if the lease or a combination or series of leases or other contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of one hundred thousand dollars (\$100,000) or more. Landlord further acknowledges that (i) the prohibition on contributions applies to each prospective party to the lease; any person with an ownership interest of more than 10 percent (10%) in Landlord; any subcontractor listed in the lease; and any committee that is sponsored or controlled by Landlord; and (ii) within thirty (30) days of the submission of a proposal for the Lease, the City department with whom Landlord is leasing is obligated to submit to the Ethics Commission the parties to the lease and any subcontractor. Additionally, Landlord certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the lease, and has provided the names of the persons required to be informed to the City department with whom it is leasing.

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

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment under Environment Code Section 1304. The term "preservative-treated wood containing arsenic" means wood treated with

a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including chromated copper arsenate preservative, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

## **24. GENERALLY APPLICABLE PROVISIONS**

Except as otherwise specifically provided in this Lease, any notice given under this Lease must be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail or reputable overnight courier, return receipt requested, with postage prepaid, to: **(a)** City at City’s address set forth in the Basic Lease Information; or **(b)** Landlord at Landlord’s address set forth in the Basic Lease Information; or **(c)** any other address designated by as either Landlord or City as its new address for notices by notice given to the other in accordance with this Section. A properly addressed notice transmitted by one of the foregoing methods will be deemed received upon confirmed delivery, attempted delivery, or rejected delivery. For convenience of the parties, copies of notices may also be given by email to the email address number set forth in the Basic Lease Information or any other email address as may be provided from time to time, but, neither party may give official or binding notice by email.

### **24.1 No Implied Waiver**

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

### **24.2 Amendments**

The terms and provisions of this Lease may only be changed, waived, discharged, or terminated by a written instrument signed by both parties. No waiver of any breach will affect or alter this Lease, and each and every term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach. Whenever this Lease requires or permits City’s consent or approval, the Director of Property, or his or her designee, will be authorized to provide the consent or approval, except as otherwise provided by applicable Law, including the Charter of the City and County of San Francisco. City’s agreement to any amendments or modifications to this Lease (including the exhibits) may be made on the sole approval of the Director of Property, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 (Permitted Use), and **(e)** any other amendment or modification that materially increases City’s liabilities or financial obligations under this Lease will also require the approval of City’s Board of Supervisors.

### **24.3 Authority**

Landlord represents and warrants to City that it is the sole owner of the Property and, to Landlord's actual knowledge, the execution and delivery of this Lease by Landlord does not violate any provision of any agreement or any applicable Laws. If Landlord is a corporation, limited liability company, or a partnership, each person executing this Lease on behalf of Landlord, by their signature, covenants and warrants that Landlord is a duly authorized and existing entity, that Landlord is qualified to do business in California, that Landlord has the full right and authority to enter into this Lease, and that each person signing on behalf of Landlord is authorized to do so. On City's request, Landlord will provide City with evidence reasonably satisfactory to City confirming these representations and warranties.

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

If applicable, the word "**Landlord**" will include the plural as well as the singular. The term "**Agents**" when used with respect to either party includes the agents, employees, officers, and contractors of the party, and the term "**Invitees**" when used with respect to City will include the clients, customers, invitees, guests, licensees, assignees, or subtenants of City. All approvals, consents, or other determinations permitted or required by City under this Lease, including City's exercise of any option, must be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in City's Charter. If there is more than one entity that comprises Landlord, the obligations and liabilities under this Lease imposed on Landlord are joint and several.

### **24.5 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 will in no way define or limit the scope or intent of any provision of this Lease. Except as otherwise specifically provided in this Lease, wherever Landlord or City is required or requested to give its consent or approval to any matter or action by the other, the consent or approval will not be unreasonably withheld or delayed and the reasons for disapproval of consent will be stated in reasonable detail in writing. Provisions in this Lease relating to number of days will be calendar days, unless otherwise specified. If the last day of any period to give notice, reply to a notice, or to take any other action occurs on a Saturday, Sunday, or a bank or City holiday, then the last day for taking the action or giving or replying to the notice will be the next succeeding business day. The words "**include**" or "**including**" or similar words will not be construed to limit any general term, statement, or other matter in this Lease or any of its attached exhibits, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

### **24.6 Successors and Assigns**

Subject to the provisions of Section 14 (Assignment and Subletting), the terms, covenants, and conditions contained in this Lease will bind and inure to the benefit of Landlord and City and, except as otherwise provided in this Lease, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

### **24.7 Brokers**

Neither party has had any contact or dealings or communications regarding leasing the Premises 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 of the Premises, except for the broker, if any, identified in the Basic Lease Information. That broker's commission is Landlord's sole responsibility under a separate written agreement between Landlord and the broker, and City has no liability for that commission. If any other broker or finder perfects a claim for a commission

or finder's fee based on any contact, dealings, or communication, the party through whom the broker or finder makes his claim will be responsible for the commission or fee and will Indemnify the other party from any and all Claims incurred by the indemnified party. The provisions of this Section will survive any termination of this Lease.

#### **24.8 Severability**

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

#### **24.9 Governing Law**

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

#### **24.10 Entire Agreement; Incorporation of Exhibits**

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

#### **24.11 Holding Over**

If City holds over in possession of the Premises after the expiration of the Term with Landlord's written consent, that holding over will not be deemed to extend the Term or renew this Lease, and City's tenancy will continue as a month-to-month tenancy until the tenancy is terminated by either party by giving least thirty (30) days' prior written notice of termination. The month-to-month tenancy will be on all the terms and conditions of this Lease and at the monthly Base Rent in effect during the last month of the Term or as Landlord and City may mutually agree in writing. If City holds over without Landlord's consent, the rent payable by City during the period of holding over will be one hundred twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease for the first six (6) months of the holdover period and thereafter shall be one hundred fifty percent (150%) of the Base Rent in effect during the last month of the Term should the holdover continue beyond six (6) months, and the tenancy will otherwise be on the terms and conditions contained in this Lease. If, as provided in Section 20 (Surrender of Premises) above, City fails to remove its furniture, furnishings, equipment, City's Personal Property and designated Alterations by the Expiration Date, then City's continued possession will be deemed a holding over, but Base Rent will not be payable for a ten (10)-day period so long as City complies with Section 20 (Surrender of Premises) no later than the last day of such ten (10)-day period; if City remains in possession of the Premises beyond that ten (10)-day period, then City's possession will be deemed a holding over and Base Rent will be payable for the entire hold over period (including the 10 days) as set forth in this Section 24.11.



#### **24.12 Cumulative Remedies**

All rights and remedies of either party set forth in this Lease are cumulative, except as otherwise specifically provided in this Lease.

#### **24.13 Time of Essence**

Time is of the essence for all provisions of this Lease.

#### **24.14 Survival of Indemnities**

Termination of this Lease will not affect the right of either party to enforce any indemnities and representations and warranties given or made to the other party, and it will not affect any provision of this Lease that expressly states it will survive termination. With respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim that actually or potentially falls within the indemnity provision even if the claim is or may be groundless, fraudulent, or false, and the obligation to defend arises at the time the claim is tendered to the indemnitor by the indemnitee and continues at all times until resolved.

#### **24.15 Signs**

Subject to applicable Law, City may erect or post exterior signs on or about the Premises with Landlord's prior approval. Landlord reserves the right to review and approve the placement, design, and plan for before erecting or posting any sign, which review and approval will not be unreasonably withheld or delayed. Interior signs not visible from the exterior of the Premises are permitted as provided under Article 7 (Alterations). Upon the expiration or earlier termination of this Lease, City shall remove any signs installed by City and repair any damage to the Building.

#### **24.16 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power, and authority to grant the leasehold estate as provided in this Lease, and covenants that City, on paying the Rent and performing the covenants contained in this Lease, will peaceably and quietly have, hold, and enjoy the Premises and all related rights during the Term as against all persons or entities or on account of any action, inaction, or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord will Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

#### **24.17 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. City's leasehold estate under this Lease includes all rights to receive and enjoy all services, facilities, and amenities of the Premises and the Building as provided in this Lease. If any of the services, facilities, or amenities are terminated, or materially limited or restricted because of any such case or proceeding, or for any other reason, City may **(a)** contract directly with any third-party provider of those services, facilities, or amenities, and **(b)** offset against the Rent all reasonable costs and expenses incurred by City in obtaining those services, facilities, or amenities.

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

Landlord may transfer its interest in the Property, the Building, or this Lease to any other financially responsible person or entity. If Landlord transfers its interest in the Property, the Building, or this Lease to another other financially responsible person or entity, then Landlord will be relieved of Landlord's obligations under this Lease accruing from and after the date of the transfer when (a) Landlord has provided notice to City of the name and address of Landlord's successor, (b) Landlord has provided City with supporting documentation reasonably acceptable to City demonstrating the transferee's financial ability to assume this obligations transferred to it by Landlord, (c) Landlord has transferred the Security Deposit to the transferee, and (d) Landlord has delivered to City an express written assumption by the transferee of all of Landlord's obligations under this Lease.

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

Notwithstanding anything to the contrary in this Lease, no elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Landlord, its successors, or its assigns for any City default or breach or for any amount that may become due to Landlord or its successors or assigns, or for any obligation of City under this Lease.

#### **24.20 Counterparts**

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

#### **24.21 Effective Date**

This Lease will become effective on the date (the "**Effective Date**") that (a) City's Mayor and Board of Supervisors, at their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by Landlord and City. If the City's Mayor and Board of Supervisors fail to approve this Lease by March 25, 2022, Landlord shall have the right to terminate this Lease by providing written notice to City.

#### **24.22 Memorandum of Lease**

On the Effective Date, Landlord and City will execute the memorandum of lease in the form attached as **Exhibit H** (the "**Memorandum of Lease**"), and Landlord will cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within ten (10) business days after execution. Upon the expiration or earlier termination of the Lease, City and Landlord shall execute a termination agreement or similar instrument nullifying the Memorandum of Lease, which Landlord may record.

#### **24.23 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 will be considered the drafter of this Lease, and no presumption or rule that an ambiguity will be construed against the party drafting the clause will apply to the interpretation or enforcement of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS LEASE UNLESS CITY'S BOARD OF SUPERVISORS HAS DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED BY THIS LEASE. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY UNDER THIS LEASE ARE CONTINGENT ON

ADOPTION OF THAT RESOLUTION AND THIS LEASE WILL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, AT THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION, OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT THE RESOLUTION WILL BE ADOPTED AND NO SUCH APPROVAL WILL CREATE ANY BINDING OBLIGATIONS ON CITY.

#### **24.24 Force Majeure**

Time is of the essence with respect to all provisions of this Lease, except that whenever a period of time is herein prescribed for action to be taken by Landlord or City, Landlord or City shall not be liable or responsible for and there shall be excluded from the computation of any such period of time, any delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions or any other cause of any kind whatsoever which are beyond the reasonable control of Landlord or City. This Section shall not apply to payments of Rent by City.

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

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

*Landlord also acknowledges that they have read and understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.*

LANDLORD:

Barak D. & Taly L. Jolish Living Trust, Zepporah Glass Trust and Oded Schwartz & Ruth Rosenthal Trust, a California trust

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

Barak D. Jolish

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

ANDRICO Q. PENICK  
Director of Property

RECOMMENDED:

\_\_\_\_\_  
GREG WAGNER  
Chief Operating Officer  
Department of Public Health  
APPROVED AS TO FORM:

DAVID CHIU, City Attorney

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

Deputy City Attorney

**EXHIBIT A**

**FLOOR PLAN(S)**

CONSISTING OF \_\_\_\_\_ PAGE(S)

**EXHIBIT B**

**INTENTIONALLY OMITTED**

## EXHIBIT C

### **BUILDING RULES AND REGULATIONS**

1. No sign, placard, picture, advertisement, name or notice shall be installed or displayed on any part of the outside or inside of the Building without the prior written consent of the Landlord. Landlord shall have the right to remove, at Tenant's expense and without notice, any sign installed or displayed in violation of this rule. All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at Tenant's expense by a vendor designated or approved by Landlord. In addition, Landlord reserves the right to change from time to time the format of the signs or lettering and to require previously approved signs or lettering to be appropriately altered.

2. If Landlord objects in writing to any curtains, blinds, shades or screens attached to or hung in or used in connection with any window or door of the Premises, Tenant shall immediately discontinue such use. No awning shall be permitted on any part of the Premises. Tenant shall not place anything or allow anything to be placed against or near any glass partitions or doors or windows which may appear unsightly, in the opinion of Landlord, from outside the Premises.

3. Tenant shall not obstruct any sidewalks, halls, passages, exits, entrances, elevators, or stairways of the Building. No tenant and no employee or invitee of any tenant shall go upon the roof of the Building.

4. The toilet rooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed. No foreign substance of any kind whatsoever shall be thrown into any of them, and the expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees or invitees, shall have caused it.

5. Tenant shall store all its trash and garbage within its Premises. Tenant shall not place in any trash box or receptacle any material which cannot be disposed of in the ordinary and customary manner of trash and garbage disposal. All garbage and refuse disposal shall be made in accordance with directions issued from time to time by Landlord. Tenant will comply with any and all recycling procedures designated by Landlord.

6. Tenant shall not alter any lock or install a new or additional lock or bolt on any door of its Premises. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys of all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.

7. Tenant shall not place a load upon any floor which exceeds the load per square foot which such floor was designed to carry and which is allowed by law. Heavy objects shall stand on such platforms as determined by Landlord to be necessary to properly distribute the weight.

8. Tenant shall be responsible for all persons for whom it requests passes and shall be liable to Landlord for all acts of such persons. Landlord shall not be liable for damages for any error with regard to the admission to or exclusion from the Building of any person.

9. Tenant shall not use any method of heating or air conditioning other than that supplied or approved in writing by Landlord.

10. Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or other device on the roof or exterior walls of the Building without Landlord's prior written consent, which consent may be withheld in Landlord's sole discretion, and which consent may in any event be conditioned upon Tenant's execution of Landlord's standard form of license agreement. Tenant shall be responsible for any interference caused by such installation.

11. Tenant shall not mark, drive nails, screw or drill into the partitions, woodwork, plaster, or drywall (except for pictures, tackboards and similar office uses) or in any way deface the Premises. Tenant shall not cut or bore holes for wires. Tenant shall not affix any floor covering to the floor of the Premises in any manner except as approved by Landlord. Tenant shall repair any damage resulting from noncompliance with this rule.

12. Tenant shall not install, maintain or operate upon the Premises any vending machine without Landlord's prior written consent, except that Tenant may install food and drink vending machines solely for the convenience of its employees.

13. No cooking shall be done or permitted by any tenant on the Premises, except that Underwriters' Laboratory approved microwave ovens or equipment for brewing coffee, tea, hot chocolate and similar beverages shall be permitted provided that such equipment and use is in accordance with all applicable Regulations.

14. Tenant shall not use in any space or in the public halls of the Building any hand trucks except those equipped with the rubber tires and side guards or such other material-handling equipment as Landlord may approve. Tenant shall not bring any other vehicles of any kind into the Building.

15. Tenant shall not permit any motor vehicles to be washed or mechanical work or maintenance of motor vehicles to be performed in any parking lot.

16. Tenant shall not use the name of the Building or any photograph or likeness of the Building in connection with or in promoting or advertising Tenant's business, except that Tenant may include the Building name in Tenant's address. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and address of the Building.

17. Tenant shall not permit smoking or carrying of lighted cigarettes or cigars other than in areas designated by Landlord as smoking areas.

18. Canvassing, soliciting, distribution of handbills or any other written material in the Project is prohibited and each tenant shall cooperate to prevent the same. No tenant shall solicit business from other tenants or permit the sale of any good or merchandise in the Project without the written consent of Landlord.

19. Tenant shall not permit any animals (including birds and other fowl), reptiles, amphibians or fish (including fish tanks), other than service animals, e.g. seeing-eye dogs, to be brought or kept in or about the Premises or any Common Area of the Project.



20. These Rules and Regulations are in addition to, and shall not be construed to in any way modify or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Building. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building, and for the preservation of good order in and about the Building. Tenant agrees to abide by all such rules and regulations herein stated and any additional rules and regulations which are adopted. Tenant shall be responsible for the observance of all of the foregoing rules by Tenant's employees, agents, clients, customers, invitees and guests.

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

## EXHIBIT D

### STANDARDS FOR UTILITIES AND SERVICES

Landlord will provide the following utilities and services, at City's cost:

(a) Elevators. Unattended automatic passenger elevator facilities serving the floor(s) on which the Premises are located, on a 24-hours a day, 7-days a week basis.

(b) Ventilation; Heating, and Air-Conditioning. Ventilation to the Premises and air-conditioning and heating to the Premises in season, 5-days per week, Monday through Friday, except holidays generally recognized in the City of San Francisco, from 8:00 a.m. to 6:00 p.m., as reasonably necessary for the comfortable occupancy of the Premises, subject to applicable governmental laws, ordinances, rules, and regulations. In addition to the above hours, Landlord will provide ventilation to the Premises and air-conditioning and heating to the Premises in season, after hours or on weekends or during holidays, on twenty-four (24) hours' notice from City, provided that City will reimburse Landlord for Landlord's actual cost for providing the additional ventilation to the Premises and air-conditioning and heating to the Premises in season. City may not alter, adjust, or tamper with the installations or facilities supplying climate control to the Building or the Premises.

(c) Electricity. Electric current to the Premises 24-hours a day, 7-days per week, as required by the Building standard office lighting and for personal computers and other normal fractional horsepower office machines. If City's electrical installation or electrical consumption is in excess of general office use, as reasonably determined by Landlord, City will reimburse Landlord monthly for the additional consumption. City will not connect any apparatus or device with wires, conduits, or pipes, or other means by which the services are supplied, for the purpose of using additional or extraordinary amounts of the services without the prior written consent of Landlord. At all times, City's use of electric current at the Premises may not exceed the capacity of feeders to the Building or the risers or wiring installation, except as provided in working drawings to City.

(d) Water. Water available at current points of supply in public areas for drinking and lavatory purposes only, and hot and cold water in the Premises for drinking and kitchen purposes 24-hours per day, 7-days per week.

**EXHIBIT E**

**INTENTIONALLY OMITTED**

**EXHIBIT F**

**INTENTIONALLY OMITTED**

**EXHIBIT G**

**INTENTIONALLY OMITTED**

**EXHIBIT H**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

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

Exempt from recording fees under Government Code  
Section 27383.

Documentary Transfer Tax: NONE – Exempt under San  
Francisco Business and Tax Regulations Code Section  
1105

[Address]  
Block [ ], Lot [ ]

(Space above this line reserved for Recorder’s use only)

**MEMORANDUM OF LEASE**

This Memorandum of Lease (“**Memorandum**”), dated for reference purposes as of \_\_\_\_\_, 20\_\_, is by and between Barak D. & Taly L. Jolish Living Trust, Zepporah Glass Trust and Oded Schwartz & Ruth Rosenthal Trust, a California Trust (together, the “**Landlord**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”).

**Recitals**

A. Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 20\_\_ (the “**Lease**”), under which Landlord leased to City and City leased from Landlord the property more particularly described in the attached **Exhibit A** (the “**Property**”).

B. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Under the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease will expire on March 25, 2032, subject to one five (5) year option to extend (subject to the terms and conditions of the Lease), unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. Landlord leases the Premises to City on the terms and conditions of the Lease, which are incorporated into this Memorandum by reference as if they were fully set forth in this Memorandum; the rights and obligations of Landlord and Tenant are

contained in the Lease. This Memorandum does not and will not be deemed to modify, alter, or amend the Lease in any way. If any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease will govern. Except as otherwise defined in this Memorandum, capitalized terms have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease bind and will inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, to the provisions of the Lease.

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

LANDLORD:

Barak D. & Taly L. Jolish Living Trust, Zepporah Glass Trust and Oded Schwartz & Ruth Rosenthal Trust, a California trust

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

Barak D Jolish

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation,

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

ANDRICO Q. PENICK  
Director of Property

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

State of California                    )  
  ) ss  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



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

State of California                    )  
  ) ss  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



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

State of California            )  
  ) ss  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**TO MEMORANDUM OF LEASE**

**Legal Description of Property**