

1 [Lease of Bill Graham Civic Auditorium to BGCA Management, LLC - 99 Grove Street]

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3 **Resolution approving and authorizing a lease of the Bill Graham Civic Auditorium**  
4 **located at 99 Grove Street to BGCA Management, LLC for a term of approximately**  
5 **20 years, with two five-year extension options, under San Francisco Charter Section**  
6 **9.118; and making findings that the lease is in conformance with the City's General**  
7 **Plan and is categorically exempt from environmental review under CEQA.**

8

9 WHEREAS, The City Administrator requested proposals for the rehabilitation, use, and  
10 operation of the historic Bill Graham Civic Auditorium owned by the City and County of  
11 San Francisco (the "City") and located at 99 Grove Street (between Polk and Larkin Streets)  
12 in San Francisco (the "Building"); and,

13 WHEREAS, As stated in the request for proposals, the City Administrator sought to  
14 create a vibrant and active venue for concerts and special events and to optimize the public  
15 use and enjoyment of the Building, including the retention of certain City uses during each  
16 year; and,

17 WHEREAS, The City Administrator selected and negotiated a lease with BGCA  
18 Management, LLC, a Delaware limited liability company ("Tenant"), an affiliate of Another  
19 Planet Entertainment, Inc., to maximize revenues while providing a high-quality concert venue  
20 at no cost to the City; and,

21 WHEREAS, The lease, a copy of which is located in Board File No. 100649 (the  
22 "Lease"), includes: (i) an expiration date of December 31, 2030, subject to Tenant's 2 options  
23 to extend the term, each for an additional 5 year period, at fair market rent; (ii) Tenant's  
24 acceptance of the Building "as-is", without representation or warranty; (iii) base rent of  
25 \$100,000 per year, increased by 2-1/2% each year, but subject to a rent abatement period of

1 up to 12 months during the construction of the Initial Improvements; and (iv) participation rent  
2 equal to the sum of (A) 50% of net naming rights revenue (from naming the internal arena, not  
3 the Building) in excess of \$500,000, (B) \$5 per ticket, increased each year per CPI, for each  
4 ticket sold in excess of 337,000 per year, and (C) \$2,500, increased each year per CPI, for  
5 each corporate event, subject to renegotiation after Lease Year 10; and,

6 WHEREAS, The Lease also requires Tenant to make improvements to the Building in  
7 3 phases (the "Initial Improvements"), including new staging, lighting, drapery, sound and light  
8 systems, and others interior improvements designed to turn the Building into a vibrant concert  
9 venue, and to spend at least \$10 million on the Initial Improvements. If the Initial  
10 Improvements cost more than \$10 million, then Tenant will receive a rent credit against  
11 participation rent, but not base rent, for the overage up to \$2.5 million; and,

12 WHEREAS, Under the Lease, the City will retain the right to use the Building 50 days  
13 per year for civic events and other City purposes. The City is not required to pay rent, but is  
14 required to pay for the costs of use, such as cleaning, ushers, and security, during these City  
15 events; and,

16 WHEREAS, The Lease includes specified termination rights for the benefit of the City if  
17 the Tenant does not meet certain performance standards, and specified termination rights for  
18 the benefit of Tenant if Tenant cannot by the 10<sup>th</sup> year profitably operate the premises or if  
19 City leases or finances a competing venue, all as more particularly described in the Lease;  
20 and,

21 WHEREAS, The Lease also permits the Tenant to sell parking passes and to validate  
22 parking at the Civic Center Garage during events at the premises, and to receive credit for  
23 50% of the net revenue to City generated from such parking sales at the City's "event rate"  
24 and from such validated parking tickets (after deducting from Tenant's share any discounts  
25 given by Tenant for parking validation), as more particularly described in the Lease; and,

1           WHEREAS, During the Lease term, Tenant shall have the right to sell, and shall in fact  
2 sell, sponsorships and/or naming rights to the theater or arena located within the Building, to  
3 maximize participation rent. But the Building itself shall continue to be named the “Bill  
4 Graham Civic Auditorium”; and,

5           WHEREAS, During the Lease term, Tenant shall maintain and repair the premises at  
6 no cost to the City, provided that Tenant shall have the right to a rent credit in the event  
7 Tenant performs a “Major Repair” and such rent credit is approved by the City Administrator in  
8 his or her sole discretion. A “Major Repair” is a sudden or unexpected repair to or  
9 replacement of the plumbing, elevators, electrical wiring, or heating, ventilation or air  
10 conditioning systems not caused by Tenant's failure to maintain such item, the cost of which is  
11 expected to cost more than \$250,000; and,

12           WHEREAS, The City shall repair and maintain the exterior and the foundation, load  
13 bearing walls and other structural portions of the Building, but if the City repair costs more  
14 than \$3 million, as adjusted by CPI, then City shall have the right to make the repair or  
15 terminate the Lease. If City elects to terminate, then Tenant may prevent such termination by  
16 making the repair and receiving a rent credit in the amount of the repair costs; and,

17           WHEREAS, Tenant shall pay for all utilities in connection with Tenant’s use of the  
18 Building. But if Tenant's utility costs exceed \$200,000, as adjusted by CPI, in any Lease year,  
19 then Tenant shall receive a rent credit for 50% of such excess costs but this rent credit shall  
20 not apply during any extension term; and,

21           WHEREAS, Tenant shall have offered employment to all existing employees at the  
22 Building, and such employees shall have the right to either accept such employment with  
23 Tenant or remain employees of Moscone Center Joint Venture (“SMG”; the current manager  
24 of the Building); and,

1           WHEREAS, In a Certificate of Determination dated April 7, 2008, the City's Planning  
2 Department determined that this Lease is categorically exempt from environmental review  
3 under CEQA State Guidelines Section 15301(a), or Class 1; and,

4           WHEREAS, In a Historic Resource Evaluation Response dated March 28, 2008, the  
5 City's Planning Department determined that the proposed interior changes to the Building are  
6 consistent with the Secretary of Interior's standards for the treatment of historic properties and  
7 would not have an adverse effect on off-site historic resources; now, therefore, be it

8           RESOLVED, That the Board of Supervisors of the City and County of San Francisco  
9 hereby finds that the Lease is consistent with the General Plan and with the Eight Priority  
10 Policies of City Planning Code Section 101.1, and is exempt from environmental review for  
11 the same reasons as set forth in the Planning Department's Certificate of Determination dated  
12 April 7, 2008; and, be it

13           FURTHER RESOLVED, That the Board approves the Lease and authorizes the City  
14 Administrator and the Director of Property to execute and deliver the Lease and to perform the  
15 City's obligations under the Lease; and, be it

16           FURTHER RESOLVED, That the Board authorizes the City Administrator and the  
17 Director of Property to amend the existing management agreement between the City and  
18 SMG dated as of November 6, 1990, as amended, to remove the Building from the  
19 management agreement; and, be it

20           FURTHER RESOLVED, That all actions heretofore taken by the officers of the City  
21 with respect to the Lease are hereby approved, confirmed and ratified; and, be it

22           FURTHER RESOLVED, That the Board of Supervisors authorizes the City  
23 Administrator and the Director of Property to enter into any additional amendments or  
24 modifications to the Lease that they determine, in consultation with the City Attorney, are in  
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1 the best interest of the City, do not decrease the rent or materially increase the obligations or  
2 liabilities of the City, and are in compliance with all applicable laws, including the City Charter.

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4 RECOMMENDED:

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7 By: \_\_\_\_\_  
8 City Administrator

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10  
11 By: \_\_\_\_\_  
12 Director of Property