

FOURTH AMENDMENT TO LEASE

[DPH LEASE EXTENSION]

THIS FOURTH AMENDMENT TO LEASE [DPH] LEASE EXTENSION (this “**Fourth Amendment**”) is made and entered into as of _____, 2018, by and between **BRCP 1390 Market, LLC**, a Delaware limited liability company (“**Landlord**”), and the **City and County of San Francisco**, a municipal corporation, acting through the Director of Property (“**Tenant**” or “**City**”).

RECITALS

- A. Calfox, Inc., as managing agent for Polk Market Co. (“**Original Landlord**”), as landlord, and City, as tenant, entered into that certain Office Lease, dated September 9, 1996, for premises in the building known as Fox Plaza, located at 1390 Market Street, San Francisco, California (the “**Building**”), which lease was amended by (i) First Lease Amendment, dated as of November 23, 2003, between FP 2001 Co., successor-in interest to Original Landlord, and City, (ii) Second Amendment to Lease, dated June 26, 2006, between API Fox Plaza, LLC, successor-in-interest to FP 2001 Co., and City, and (iii) Third Amendment to Lease [DPH] Extension and Partial Substitution of Premises, dated March 22, 2013, between Landlord, successor-in-interest to API Fox Plaza, LLC, and City (the “**Third Amendment**”). The lease, as so amended (including this Fourth Amendment), is referred to herein as the “**Lease.**”

- B. The premises presently demised under the Lease (the “**Premises**”) is comprised of the following:

Suite	Area (RSF)	Comments
210	14,549	Net of plug load electricity
410	3,247	Fully serviced
810	4,646	Fully Serviced
910	4,971	Fully Serviced
Subtotal Office	27,413	
Storage C, D, & E (the “ Storage Premises ”)	413	Garage level
Total Premises	27, 826	

- C. The Term of the Lease is presently scheduled to expire on November 30, 2018.

- D. Landlord and City presently desire to amend the Lease to (i) extend the Term of the Lease through November 30, 2021, (ii) revise the Base Rent payable under the Lease, (iii) add two (2) additional options to extend the Term, (iv) permit Landlord, at no cost to City, to relocate the Storage Premises into alternative storage space within Landlord’s Commercial Parcel, and (v) make certain other modifications to the Lease more particularly set forth below.

AMENDMENT

NOW THEREFORE, in consideration of the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. LEASE EXTENSION. Landlord and City hereby agree to extend the Term for an additional three (3) year period (the “**Fourth Extended Term**”), commencing on December 1, 2018 and expiring November 30, 2021. Upon commencement of the Fourth Extended Term, all references in the Lease to the Term shall mean the Term as extended by the Fourth Extended Term.

2. BASE RENT AND BASE YEAR. Commencing on December 1, 2018, the Monthly Base Rent payable under the Lease shall be \$150,093.33 – calculated as follows:

<u>Area</u>	<u>Sq. Ft.</u>	<u>Base Annual Rent PSF</u>	<u>Base Monthly Rent</u>
Storage Premises	413 SF	\$12.00	\$413.00
Suite 210	14,549 SF	\$65.10	\$78,928.33
Suites 410, 810, 910	12,864 SF	\$66.00	\$70,752.00
Total Office and Storage	27,826 SF		\$150,093.33

Base Rent shall be increased by three percent (3%) annually on each December 1 starting on December 1, 2019. Commencing on December 1, 2018, the Base Year and Base Tax Year for the calculation of Additional Rent under Paragraph 6.B. of the Lease shall be the calendar year 2019.

3. CITY’S RIGHT TO TERMINATE THE LEASE. If City does not extend the Term under the Fifth Extension Option (as set forth in Section 4 below), City shall have the right to terminate, without penalty, the Lease and vacate and surrender the Premises to Landlord any time after November 30, 2019 by providing not less than two hundred seventy (270) days advance written notice of such termination to Landlord. City’s termination notice shall specify the Lease termination date (as specified in the City’s notice, the “**Accelerated Termination Date**”), provided that the Accelerated Termination Date shall be the last day of a calendar month and shall be no earlier than November 30, 2019. Effective as of the Accelerated Termination Date, the Lease shall be terminated and City shall vacate the Premises and return the same to Landlord in accordance with the terms and conditions of the Lease. Tenant shall remain liable for all Base Rent, Additional Rent and all other sums due under the Lease up to and including the Accelerated Termination Date even though billings for such may occur subsequent to the Lease expiration, as set forth in the Lease.

4. ADDITIONAL EXTENSION OPTIONS. On the Effective Date of this Fourth Amendment (as defined in Section 18 below), Paragraph 4.C. of the Lease is deleted and the terms of Paragraph 6.C of the Lease shall not apply to the Fifth Extension Options as set forth in this Section 4. Any other option to extend the Term set forth in the Lease is hereby deleted and replaced by this Section 4.

City shall have the right to extend the Term of the Lease (collectively, the "**Fifth Extension Options**") for two (2) additional terms of five (5) years each (the "**Fifth Extension Terms**"). The Fifth Extension Options shall be on all of the terms and conditions contained in the Lease, except that the Base Rent shall be adjusted as provided below. City may exercise each of the Fifth Extension Options, if at all, by giving written notice to Landlord no later than three hundred sixty five (365) days before the expiration of the Term to be extended; provided, however, if City is in material default under the Lease on the date of giving such notice and fails to cure such default as provided in the Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Landlord acknowledges and agrees that City's notice of its intent to exercise a Fifth Extension Option shall be subject to enactment of a resolution by the Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within ninety (90) days after the date the Base Rent for the applicable Fifth Extended Term is determined. If such approval and authorization is not received by Landlord within such ninety (90) day period, City's Fifth Extension Option shall terminate and City shall have no further option to extend the Term of the Lease.

The Base Rent during each Fifth Extension Term shall be adjusted at the start of each Fifth Extension Term to ninety five percent (95%) of the then-prevailing Fair Market Rent. At the start of each Fifth Extension Term, the Base Year shall also be adjusted to the calendar year of the first year of the applicable Fifth Extension Term; provided that City shall continue to pay Additional Rent during each Fifth Extended Term. City and Landlord hereby agree that Fair Market Rent shall be determined as follows:

(a) "Fair Market Rent" shall be the prevailing market rate for space of comparable size and location to the Premises having recently been leased to tenants in the Building or other Civic Center buildings similar in age, seismic condition, location and quality to the Property. As used herein, the term "prevailing market rate" shall mean the rental for such comparable space, taking into account (i) any expense adjustments such as separately metered electricity, taxes, operating expenses, and maintenance paid, (ii) the location and size of the premises of such comparable leases, (iii) the credit worthiness of the tenant, (iv) the duration of the renewal term and the term of such comparable space, (v) any free rent and any other tenant concessions offered under such comparable space, and (vi) any tenant improvements allowances and other allowances offered by such comparable space. Fair Market Rent shall be determined on a per square foot basis, and may include different rates for office, ground floor and basement space.

(b) Within thirty (30) days of Landlord's receipt of City's notice of its intent to exercise a Fifth Extension Option, Landlord shall provide written notice to City of Landlord's good faith determination of the prevailing market rate along with reasonable substantiation for such rate, including, but not limited to, at least three (3) recent comparable lease transactions. If City disputes Landlord's determination of the prevailing market rate, City shall so notify Landlord of the City's determination of prevailing market rate and reasonable substantiation for such rate within fourteen (14) days following Landlord's notice to City. If City and Landlord still disagree, then the dispute shall be resolved as follows:

(i) Within thirty (30) days following City's notice of the prevailing market rate (the "**Consultation Period**"), Landlord and City shall 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. Landlord and Tenant may agree in writing to extend the Consultation Period for a reasonable period to resolve their disagreement.

(ii) If within this Consultation Period, Landlord and City cannot reach agreement as to the prevailing market rate, they shall each select one appraiser to determine the prevailing market rate. Each such appraiser shall be an “MAI” designated appraiser with at least five (5) years experience appraising commercial office properties in San Francisco. Each appraiser shall arrive at a determination of the prevailing market rate and submit his or her conclusions to Landlord and City within thirty (30) days of the expiration of the Consultation Period.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the prevailing market rate. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the prevailing market rate. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser, with the qualifications specified above, who will within twenty (20) days of his or her selection choose either Landlord’s or City’s appraisers’ determination of the prevailing market rate and provide the reasoning for such selection. All appraisals and determinations hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the MAI. Landlord and City shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser.

5. LANDLORD’S RIGHT TO RELOCATE STORAGE PREMISES. During the Term or any extension thereof, Landlord shall have the right upon not less than ninety (90) days prior written notice to City to relocate the Storage Premises to an area (the “**Relocated Storage Premises**”) in Landlord’s Commercial Parcel of the Building provided that (i) the Relocated Storage Premises are the same size and functionality as the Storage Premises, and (ii) Landlord shall be responsible for all costs to move City’s property from the Storage Premises to the Relocated Storage Premises. City shall pay the same amount of Base Rent for the Relocated Storage Premises as is payable under the Lease for the Storage Premises, and no Additional Rent shall be payable with respect to the Relocated Storage Premises. City acknowledges that the Relocated Storage Premises may not be in the garage area of the Building. In the event of that City does not want to lease the Relocated Storage Premises, City shall have the right to terminate the Storage Premises from the Lease (and reduce the Base Rent owed accordingly) by written notice to Landlord.

6. LANDLORD’S RIGHT TO MAKE SEISMIC IMPROVEMENTS.

A. Construction Activities.

(a) Tenant acknowledges that certain seismic improvements are being considered at the Building that involve installing diagonal braces in a single column bay (window opening) in two locations from the ground floor through the seventh floor of the Building and small steel plates installed at an additional four locations per floor (the “**Construction Activities**”). The Construction Activities are intended to improve the seismic performance of the Building by reducing building movement during an earthquake. The Construction Activities will be

undertaken, if at all, as a voluntary seismic upgrade to the Building (and, according to Landlord's architect, is not required by any Building codes) at Landlord's election and at no cost to Tenant. Tenant understands that the Construction Activities will impact Tenant's access to and use of certain common areas of the Building and certain portions of the Premises as shown in Attachment 2. During the periods access or use is denied, such spaces are referred to herein as the "**Restricted Common Areas**" and the "**Restricted Premises**", respectively. Tenant consents to the Construction Activities, and the limitations on Tenant's use of the Restricted Common Areas and the Restricted Premises, on the terms and conditions set forth in this Fourth Amendment.

(b) Throughout the Term, including during Construction Activities, Tenant shall have access to and possession of all of the Premises that are not part of the Restricted Premises. Unless otherwise agreed to by Tenant, the portion of the Construction Activity that impacts the Premises, as opposed to the Common Areas or the exterior of the Building (the "**Premises Construction Activities**"), shall occur in phases, one floor of the Premises at a time, so that the Restricted Premises shall not affect more than one floor of the Premises at any time and Tenant shall not be dislocated from space on more than one floor at a time.

B. Construction Activity Coordination.

(a) Landlord will provide Tenant with reasonable advance notice, but not less than four (4) weeks' notice, of upcoming Premises Construction Activities and the anticipated schedule and work program for the Restricted Premises. Landlord agrees to meet with Tenant weekly before and during Premises Construction Activities and reasonably address Tenant's ongoing concerns, and to work out the location of any Replacement Space (as defined below) and a mutually and reasonably agreed schedule for relocation work in an effort to minimize any disruption to Tenant. Landlord agrees to provide an overall construction schedule and updated "two week look ahead" schedules at the start of each week during which the Premises Construction Activities are being performed. Landlord acknowledges that Tenant's work is privileged and confidential and Landlord and Tenant agree to work cooperatively to provide Landlord's workers access through the Premises to the Restricted Premises, as needed, in a manner that meets Tenant's reasonable security requirements.

(b) Before any part of the Premises can become Restricted Premises, Landlord shall prepare, at no cost to Tenant, replacement space on third (3rd), eleventh (11th) or twelfth (12th) floors of the Building, or an alternative location reasonably approved by the Tenant, that provides substantially the same functionality (but not the same finishes) and no less than the same square footage as the applicable Restricted Premises, with no less than the same number of offices and conference rooms and the same telephone, computer and internet connectivity as compared to the applicable Restricted Premises (each, a "**Replacement Space**"). As part of such relocation, Landlord shall provide data and telephone connections to Tenant's servers located on the sixth (6th) floor and other necessary equipment (the "**Communication Connections**") for the Replacement Space so as to ensure the same connectivity and to prevent any interruption in telephone or internet service to affected employees of Tenant during their occupancy of the applicable Replacement Space. The Replacement Spaces currently existing in the Building have been built-out and are ready for occupancy, however, if required by law, Landlord shall obtain any necessary regulatory approvals for use of the Replacement Space before Tenant's occupancy. Tenant shall review and approve each Replacement Space, including the Communication Connections, before any

relocation, which approval shall not be unreasonably withheld, conditioned, or delayed, and Tenant shall respond in writing within five (5) business days to Landlord's request for approval.

C. Relocation from Restricted Premises.

(a) Upon Tenant's approval of the applicable Replacement Space, Landlord shall, at no cost to Tenant, promptly move Tenant's furniture, files, equipment and personal property (collectively, the "**Personal Property**") from the affected Restricted Premises to the Replacement Space.

(b) Landlord agrees to hire a relocation or move consultant reasonably acceptable to Tenant to assist in the securing and moving of the Personal Property. Tenant agrees that Linda Fink with WK Design is an acceptable move consultant. All relocations (from the Restricted Premises to the Replacement Space, and from the Replacement Space back to the Premises) shall start after 6:00 pm on Friday and be fully complete by 8:00 on Monday, except as may otherwise be agreed by Tenant. Tenant's only responsibility will be to clear work surfaces into Landlord supplied boxes and disconnect and reconnect telephone and computer equipment. Landlord shall remove files from file cabinets as needed to transport the cabinets without damage, and shall be responsible for any items lost or damaged during a relocation. Landlord and Tenant shall reasonably cooperate to prepare an inventory of Tenant's files and property to be relocated, which inventory shall be prepared by Landlord and approved by Tenant.

(c) Landlord shall pay all costs associated with Construction Activities, including restoring each part of the Restricted Premises impacted by Construction Activities to good condition and repairing any damage to the Premises caused by the Construction Activities or Landlord's construction workers. By way of example, if the Construction Activities disturb the existing dropped ceiling, Landlord shall make such improvements that the ceiling is uniform and consistent with the ceiling of the other portions of the Premises. Without limiting the foregoing, Landlord shall paint the walls and install new carpet in each of the Restricted Premises (consistent with existing paint color and carpet) before returning possession of such space to Tenant.

(d) Upon completion of the Premises Construction Activity and Landlord's restoration of the Restricted Premises as it relates to a floor of the Premises, Landlord shall notify Tenant. Landlord shall obtain the approval of the San Francisco Building Department (to the extent required) for Tenant to occupy the Restricted Premises before alleging that the work has been completed. Tenant shall review and inspect the restoration of the Premises, and notify Landlord of any items that have not been completed in accordance with the standards set forth in this Fourth Amendment. Upon Tenant's approval of the restoration work with respect to the applicable Restricted Premises, which approval shall not be unreasonably withheld, conditioned or delayed, Landlord shall, at no cost to Tenant, move the Personal Property back to the applicable Restricted Premises, consistent with the placement of such materials before the relocation, and restore the Communications Connections. Such work shall be performed at a mutually agreed upon time.

(e) Upon Landlord's return of each part of the Restricted Premises and the Personal Property in the condition required under this Fourth Amendment, the applicable Restricted Premises shall terminate. The parties shall memorialize in writing the start and end date for each of the

Restricted Premises for purposes of the Rent abatement set forth in Section 6.E of this Fourth Amendment.

D. Construction Work.

(a) Landlord shall cause the Construction Activities, including the work in and around the Restricted Premises, to be performed in a good and professional manner in accordance with sound building practices and consistent with other first-class buildings in the Civic Center region of San Francisco. Such work shall be performed by licensed and insured contractors and shall be performed in accordance with all applicable laws and regulations, and all such work in the Premises shall otherwise performed in accordance with the terms of the Lease, as amended hereby. Landlord shall use good faith efforts to cause such work to be performed and completed with due diligence and without interruption, subject to standard force majeure delays. In accordance with and subject to the limitations set forth in Paragraph 17 of the Lease, the parties confirm that Landlord's indemnity obligations under Paragraph 17 shall extend to any losses (other than any loss of use or enjoyment of the Premises or loss of business) or injuries resulting from the Construction Activities and the relocations contemplated by this Fourth Amendment.

(b) Landlord will obtain all required permits before starting work. Tenant, in approving this Fourth Amendment, is acting in its proprietary capacity as a tenant of the Property and not as a regulatory entity.

(c) Before starting Premises Construction Activities, Landlord shall take appropriate measures to insulate the Restricted Premises from the remainder of the Premises and to protect the remainder of the Premises from noise, dust and damage caused by the construction so that work can continue in these spaces during business hours. Unless otherwise approved by Tenant, no construction materials will travel through the Premises to the Restricted Premises except after 7:00 pm and before 8:00 am, and on weekends. During Landlord's use of the Restricted Premises and the Restricted Common Areas, Landlord shall take commercially reasonable measures necessary to minimize the disruption to Tenant's use and occupancy of the remainder of the Premises at all times, including but not limited to performing construction work which would produce excessive noise or any dust or disruption in the Premises (outside of the Restricted Premises) on weekends or after 7:00 pm and before 8:00 am; provided that Tenant acknowledges that certain Construction Activities producing noise (but not excessive noise that unreasonably disturbs Tenant's use of the Premises as a public law office) shall be performed on floors below and above the Premises during normal business hours for the Building.

(d) If applicable due to the presence of asbestos containing materials in any Restricted Premises, Landlord shall timely perform and provide the results for routine air testing pursuant to a schedule, quantity and quality approved by City's Environment Health's asbestos and lead divisions.

(e) Tenant acknowledges and agrees that Landlord may install barricades and scaffolding on or about the Building and the common areas as needed during the Construction Activities.

(f) Except for prearranged and OSHA compliant inspections during construction coordination meetings, Tenant shall not enter or use the Restricted Premises during the Construction Activities.

(g) Landlord agrees that any person performing labor with respect to the Construction Activities shall be paid not less than the highest prevailing rate of wages, and Landlord shall include this requirement in all construction contracts, as set forth in Paragraph 28 of the Lease and San Francisco Administrative Code Section 23.61.

E. Rent Abatement. During the time that Tenant cannot use the Restricted Premises (on a floor by floor basis), Tenant shall receive a proportionate abatement of Base Rent and a proportionate reduction in Tenant's Percentage Share of Operating Expenses based on the square footage of the Restricted Premises. Tenant shall not be required to pay Base Rent or Operating Expenses for any Replacement Space.

F. Recognition of and Payment for Inconvenience and Associated Costs. In consideration of the disruption and inconvenience to Tenant resulting from the Premises Construction Activities and Tenant's loss of the Restricted Premises for the limited periods contemplated by this Fourth Amendment, if the Premises Construction Activities proceed, Landlord shall make a one-time payment to Tenant in the amount of Twenty-Five Thousand Dollars (\$25,000). Payment will be made within ten (10) business days of the start of the Premises Construction Activities (i.e., the date that Landlord notifies Tenant that the contractor is to begin the work in the Restricted Premises). In addition, if the City's aggregate required occupancy of Replacement Spaces exceeds fifteen (15) months from the commencement of the Premises Construction Activities and such delay is not caused by the acts or omissions of Tenant, its agents or employees, Landlord shall provide to Tenant a credit against Rent in the amount of Ten Thousand Dollars (\$10,000) for each calendar month, or portion thereof, that the City's occupancy of Relocation Spaces continues (prorated based on the number of days in that calendar month). Landlord shall not be required to make the above payment (or provide the credit) if it elects not to proceed with the Premises Construction Activities. Upon receipt of the payments in this paragraph and Landlord's fulfillment of its obligations relating to the Construction Activities and the relocations (including Landlord's indemnity as set forth in Section 6.D(a) above), Landlord shall have no additional liability to Tenant resulting from the disruption and inconvenience caused by the Construction Activities.

G. General Cooperation. Tenant acknowledges and agrees that the Construction Activities as provided herein may be performed by Landlord in the Restricted Premises and Building during normal business hours for the Building. Landlord and Tenant agree to cooperate with each other in order to enable the Construction Activities to be performed in a timely manner and with as little inconvenience to the operation of Tenant's business in the Premises (exclusive of any Restricted Premises from which Tenant has been relocated) as is reasonably possible.

7. ADDITIONAL PROVISIONS. The Lease is amended and updated to include the provisions in Attachment 1, which replace the corresponding language in the Lease.

8. NO BROKERS. Tenant represents and warrants that it has not dealt with any real estate broker in connection with this Fourth Amendment, and no compensation is due to

Tenant's broker in connection with this Fourth Amendment. Tenant agrees to indemnify and hold Landlord harmless for any loss, cost, liability or expense incurred by Landlord as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Tenant in breach of the foregoing warranty. Landlord represents and warrants that it has not dealt with any real estate broker in connection with this Fourth Amendment, and no compensation is due to Landlord's broker in connection with this Fourth Amendment. Landlord agrees to indemnify and hold Tenant harmless for any loss, cost, liability or expense incurred by Tenant as a result of a claim for brokerage commissions or finder's fee from any broker based on the act or omission of Landlord in breach of the foregoing warranty.

9. DEFINED TERMS. All capitalized terms used but not defined in this Fourth Amendment will have the meanings set forth for such terms in the Lease. All terms that are defined in this Fourth Amendment and used in any provisions that are added to the Lease pursuant to this Fourth Amendment will have the meanings in the Lease set forth for such terms in this Fourth Amendment.

10. WHOLE AGREEMENT. This Fourth Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements. Except as amended herein, there shall be no other changes or modifications to the Lease between the parties and the Lease and the terms and provision contained therein shall remain in full force and effect.

11. MISCELLANEOUS. This Fourth Amendment shall be binding upon the parties hereto, their heirs, successors and assigns. Except as modified hereby, there shall be no other changes or modifications to the Lease unless in writing and executed by the parties. No reference to this Fourth Amendment is necessary in any instrument or document at any time referring to the Lease. From and after the Effective Date, any reference to the Lease shall be deemed a reference to such document as amended hereby. This Fourth Amendment shall be governed by, construed and enforced in accordance with, the laws of the State of California.

12. CONFIRMATION OF LEASE. As amended by this Fourth Amendment, Landlord and Tenant confirm and ratify in all respects the terms and conditions of the Lease, and further confirm that there are no outstanding tenant improvement obligations of Landlord regarding the Premises. The execution of this Fourth Amendment shall not constitute a waiver of relinquishment of any rights which Landlord or Tenant may have relating to the Lease.

13. NO JOINT VENTURE. This Fourth Amendment or any activity by Tenant hereunder does not create a partnership or joint venture between Tenant and Landlord relating to the Lease or otherwise. This Fourth Amendment does not constitute authorization or approval by the City of any activity conducted by Landlord.

14. COUNTERPARTS. This Fourth Amendment may be executed in one or more counterparts, each of which shall be deemed an original, including transmittals by facsimile, all of which together shall constitute one and the same instrument.

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

16. STATUTORY DISCLOSURES; COMPLIANCE. For purposes of Section 1938(a) of the California Civil Code, Landlord hereby discloses to Tenant, and Tenant hereby acknowledges, that the Premises have not undergone inspection by a Certified Access Specialist (CASp). As required by Section 1938(e) of the California Civil Code, Landlord hereby states as follows: "A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises." In furtherance of the foregoing, Landlord and Tenant hereby agree as follows: (a) any CASp inspection requested by Tenant shall be conducted, at Tenant's sole cost and expense, by a CASp approved by Landlord, subject to Landlord's reasonable rules and requirements; (b) such inspection shall be limited to the Premises and access to the Premises; (c) Tenant is not a Small Business and San Francisco Administrative Code section 38.5 does not apply to this Lease; and (d) Tenant, at its sole cost and expense, shall be responsible for making any improvements or repairs to correct violations of construction-related accessibility standards identified as a result of any such inspection by Tenant, which work shall be performed in accordance with the terms of the Lease. Notwithstanding the foregoing, (A) if any disability access improvements or upgrades are triggered by the Construction Activities, Landlord shall make such improvements or upgrades at no cost to Tenant, and (B) notwithstanding anything to the contrary set forth in the Lease, (x) if any disability access improvements or upgrades are triggered by tenant improvements or alterations selected or performed by or on behalf of Tenant, then Tenant shall be responsible for the cost of such improvements or upgrades, and (y) Tenant hereby acknowledges that Tenant shall be solely responsible for compliance with applicable laws, regulations and ordinances (including with respect to any upgrades or modifications required by the ADA or any similar statutes) arising from or triggered by any tenant improvements, alterations or additions performed by or on behalf of Tenant.

17. ADDITIONAL SERVICES. City reserves the right to request that Landlord, at City's cost, perform minor Lease related services or incur additional expenses not otherwise described in the Lease from time to time, as reasonably requested by the City and approved by the Real Estate Division, acting through the Director of Property or his or her designee. If Landlord, in its sole discretion, agrees to perform such services or incur such additional expenses, City shall reimburse Landlord for the pre-approved cost for such expenses as Additional Rent within thirty (30) days after receipt of Landlord's invoice for such service or expense, which shall include reasonable backup documentation.

18. EFFECTIVE DATE. This Fourth Amendment shall become effective on the date (the "**Effective Date**") that (i) the City's Board of Supervisors enacts such resolution

authorizing this Fourth Amendment and (ii) the Fourth Amendment is fully executed and delivered by both parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS FOURTH AMENDMENT, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS FOURTH AMENDMENT AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS FOURTH AMENDMENT SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS FOURTH AMENDMENT, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS FOURTH AMENDMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Fourth Amendment as of the day and year first above written.

LANDLORD

BRCP 1390 Market, LLC,
a Delaware limited liability company

By: BRCP Realty II, L.P.,
a Delaware limited partnership
Its: Sole Member

By: BRCP Gen-Par II, LLC,
a Delaware limited liability company
Its: General Partner

By: _____

Name: _____

Its: _____

TENANT

City and County of San Francisco,
a municipal corporation

By: _____
Name: John Updike, Director of Real Estate

RECOMMENDED:
Department of Public Health

By: _____

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Charles Sullivan, Deputy City Attorney

ATTACHMENT 1

Updated City Provisions

Conflicts of Interest

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

Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (a) the City elective officer, (b) a candidate for the office held by such individual, or (c) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each Landlord; each member of Landlord's board of directors, and Landlord's chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the name of each person, entity or committee described above.

ATTACHMENT 2 Restricted Premises



