

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company,
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,
as Buyer

For the purchase and sale of

1321 Mission Street,
San Francisco, California

_____, 2021

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AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE
(1321 Mission Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this “**Agreement**”), dated for reference purposes only as of _____, 2021, is by and between MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company (“**Seller**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**” or “**City**”).

IN CONSIDERATION of the payment of the non-refundable sum of Ten Dollars and No/100 (\$10.00) by City, the receipt of which is hereby acknowledged by Seller, and the respective agreements contained hereinbelow, Seller and City agree as follows:

1. PURCHASE AND SALE

1.1 Property Included in Sale

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately 9,208 square feet of land, located in the City and County of San Francisco, commonly known as 1321 Mission Street, Assessor Parcel Numbers Block 3509, Lot 043 and more particularly described in the attached Exhibit A (the “**Land**”);

(b) all improvements and fixtures located on the Land, including, without limitation, that certain apartment building consisting of 160 apartments, ground floor commercial space, a central lobby, public lounges, common areas, plus a rooftop garden as well as all other buildings and structures located on the Land, all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land and its improvements such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, garbage disposal or other services, and together with all on-site parking, if any (collectively, the “**Improvements**”);

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the “**Appurtenances**”);

(d) the Leases (as defined below);

(e) the tangible personal property owned by Seller, and accepted by City, located on or in or used in connection with the Land, Appurtenances, or Improvements as described in Exhibit B attached hereto (the “**Personal Property**”). Seller shall not remove any Personal Property subsequent to the Effective Date, except for (i) Personal Property which is replaced with Personal Property of comparable utility, or (ii) as otherwise requested by City no later than sixty (60) days prior to Closing; and

(f) any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Land, Improvements, Appurtenances, or Personal

Property, excluding the names “Panoramic,” “SmartSpace,” “CitySpaces,” “CitySpace Studios,” or any derivation thereof. Buyer may otherwise use any other trade name now used in connection with the Land or Improvements, and, to the extent expressly approved by City pursuant to this Agreement, any contract rights or other agreements or rights relating to the ownership, use and operation of the Land, Improvements or Personal Property or any of the foregoing (collectively, the “**Intangible Property**”).

All of the items referred to in Subsections (a), (b), (c), (d), (e) and (f) above are collectively referred to as the “**Property**.”

2. PURCHASE PRICE

2.1 Purchase Price

The total purchase price for the Property is Eighty-Six Million Five-Hundred Thousand and No/100 Dollars (\$86,500,000.00) (the “**Purchase Price**”).

2.2 Deposit

Within ten (10) business days after the later of the Effective Date (as defined in Section 11.17 (Effective Date) below) or the Homekey Award Date (as defined in Section 2.5 (Project Homekey) below), City will deliver to the Title Company (as defined in Section 3.2 (Title Insurance) below), as escrow agent, Five Million and 00/100 Dollars (\$5,000,000.00) as an earnest money deposit applicable to the Purchase Price (the “**Deposit**”). If City elects, the Title Company will deposit the Deposit into an interest-bearing account at a bank or financial institution approved by City in writing, and the term “Deposit” will include any interest earned thereon. Unless this Agreement is terminated and the Deposit disbursed as provided in this Agreement, the Deposit will be applied to the Purchase Price at Closing. If City terminates this Agreement for failure of any condition precedent under this Agreement, then City and Seller will equally share all title fees and escrow cancellation fees and Seller and City will instruct the Title Company to immediately return the Deposit to City. If the sale of the Property is not consummated because of a City default, then City will pay all title fees and escrow cancellation fees and Seller and City will instruct the Title Company to immediately release the Deposit to Seller in accordance with Section 6.8 (City Default and Liquidated Damages) below. If City terminates this Agreement due to a Seller default, then Seller will pay all title fees and escrow cancellation fees and Seller and Buyer will instruct the Title Company to immediately return the Deposit to City.

2.3 Payment

(a) On the Closing Date (as defined in Section 6.2 (Closing Date)), City will pay the Purchase Price, adjusted pursuant to the provisions of Article 7 (Expenses and Taxes), and reduced by any credits due City hereunder.

(b) Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) (Seller's Delivery of Documents), City may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the “**Federal Tax Code**”), or Section 18662 of the California Revenue and Taxation Code (the “**State Tax Code**”). Any

amount properly so withheld by City and paid to the Internal Revenue Service or the California Franchise Tax Board will be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein and its obligations under this Agreement will not be excused or otherwise affected by such withholding.

2.4 Funds

All payments made by any party hereto will be in legal tender of the United States of America, paid in cash or by wire transfer of immediately available funds to Title Company (as defined in Section 3.2 (Title Insurance) below), as escrow agent.

2.5 Project Homekey

Seller acknowledges that City intends to apply for funding from the State of California through the State of California's Project Homekey program ("Project Homekey") to fund all or a portion of the Purchase Price to support the acquisition of the Property. City agrees to keep Seller informed to the extent possible on the Project Homekey process, including the date City submits any application associated with the Project and any meaningful feedback received during the application process. Seller agrees to use commercially reasonable efforts to cooperate with City during Project Homekey application process.

If City is successful in its Project Homekey application, the date upon which City is formally notified of its award under Project Homekey will be referred to as the "Homekey Award Date." The date upon which Project Homekey funds are transferred into escrow for the Property is referred to as the "Homekey Funding Date." If City is unsuccessful in its application for Project Homekey funding, (i) City may terminate this Agreement without penalty, or (ii) Seller and City may agree (in the sole and absolute discretion of each of them) to an extension to this Agreement to allow for a subsequent Project Homekey application or other funding source.

3. TITLE TO THE PROPERTY

3.1 Conveyance of Title to the Property

At the Closing, Seller will convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "**Deed**"), subject to the Accepted Conditions of Title (as defined in the Due Diligence Agreement and Permit to Enter Property by and between Seller and City dated as of July 29, 2021 (the "**Due Diligence Agreement**")).

3.2 Title Insurance

Delivery of title in accordance with the preceding Section will be evidenced by the commitment of Stewart Title Guaranty Company (the "**Title Company**") to issue to City, or its nominee, an ALTA extended coverage owner's policy of title insurance (Form ALTA 2006 – updated 6/17/2006) (the "**Title Policy**") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, rights of tenants or other occupants (except for the tenants under the Leases, provided such exception is limited to the interest of such tenants as tenants only without any rights or options to purchase

any of the Property), subject only to the Accepted Conditions of Title, as defined in the Due Diligence Agreement, or otherwise accepted by City under the Due Diligence Agreement. If Seller gives notice under Section 1.3(c) of the Due Diligence Agreement that Seller will remove or cure the exceptions objected to by City on or before the Closing and fails to remove the objectionable exceptions from title before the Closing Date, and City is unwilling to take title subject to the objectionable exceptions, Seller will be in default under this Agreement and City will have the rights and remedies provided in this Agreement. The Title Policy must provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, and contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property and such other special endorsements as City may reasonably request. The Title Policy will also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

3.3 Bill of Sale

At the Closing, Seller will transfer title to the Personal Property by bill of sale in the form attached hereto as Exhibit D (the “**Bill of Sale**”), such title to be free of any liens, encumbrances or interests. To the extent possible, any maintenance contract or warranty in connection with the purchase of the Personal Property will be optional (namely, City may, but is not required to, purchase any maintenance contract or warranty as provided in Section 5.2(h) below), and included in the Assignment of Intangible Property (defined below).

3.4 Assignment of Intangible Property

At the Closing, Seller will transfer title to the Intangible Property by such instruments as City may reasonably determine necessary, including, without limitation, an Assignment of Contracts, Warranties and Guaranties, and other Intangible Property in the form attached hereto as Exhibit E (the “**Assignment of Intangible Property**”).

3.5 Assignment of Leases

At the Closing, Seller shall transfer its title to the Leases by an assignment of leases in the form attached hereto as Exhibit F (the “**Assignment of Leases**”), such title to be free of any liens, encumbrances or interests, except for the Accepted Conditions of Title (as defined in the Due Diligence Agreement).

4. BUYER'S DUE DILIGENCE INVESTIGATIONS; AS-IS SALE

4.1 City's Due Diligence

As of the date hereof, Seller has given City and/or its Agents a full opportunity to investigate the Property as provided in the Due Diligence Agreement, and Seller has provided the Documents (as defined in the Due Diligence Agreement) to City and its Agents.

5. ENTRY; CONDITIONS TO CLOSING

5.1 Entry

During the Due Diligence Period and at all times prior to the Closing Date, subject to the terms and conditions of the Due Diligence Agreement Seller shall afford City and its Agents reasonable access to the Property and the Documents (as defined in the Due Diligence Agreement) for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the City Conditions Precedent. As

used herein, the “**Due Diligence Period**” means the period commencing upon the execution of the Due Diligence Agreement by the City (August 2, 2021) and ending on October 1, 2021.

5.2 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, “**City Conditions Precedent**”):

(a) City has reviewed and approved title to the Property, as set forth in Article 3 herein and the Due Diligence Agreement.

(b) City has reviewed and approved the physical and environmental conditions of the Property prior to the end of the Due Diligence Period, as provided in the Due Diligence Agreement. City shall be responsible for performing or arranging any such reviews at City's expense, provided that if City's consultants reasonably determine that, based upon their Phase I examination, a Phase II examination is necessary with respect to all or a part of the Real Property, or if City otherwise desires to drill any test wells or take any soil borings, City shall notify Seller of the scope of any proposed Phase II examination, test wells or soil borings and may request Seller's consent to perform the same. City may not perform a Phase II examination, drill any test wells or take any soils borings without Seller's prior written consent, which may be withheld or granted in Seller's sole and absolute discretion. If Seller consents to a Phase II examination, any test wells or soils borings, City shall pay the cost of any such Phase II examination or the drilling of such test wells or soils borings performed by City or City's consultants.

If any of City's investigations reveal any contamination of the Property with any Hazardous Material, as defined in Section 8.1 (Representations and Warranties of Seller) below, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period: (i) request that Seller, at Seller's sole cost, complete before the Closing through duly licensed contractors approved by City such activities as are necessary to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Material located on or under the Property in compliance with all governmental laws, rules, regulations and requirements and in accordance with a written remediation plan approved by City in its sole discretion and by all regulatory agencies with jurisdiction; or (ii) terminate this Agreement. If City notifies Seller of its election to request that Seller remediate the contamination, Seller shall have fifteen (15) days after receipt of City's notice, to elect, at Seller's sole option, to provide City with: Seller's election to remediate the contamination before the Closing; or Seller's election to terminate this Agreement. Seller's failure to provide notice to Buyer within such fifteen (15)-day period shall be deemed notice of termination. If Seller chooses to remediate the contamination, the Closing may be extended for a reasonable time to enable Seller to complete such remediation, provided any such extension shall be subject to City's prior written approval, which City may give or withhold in its sole discretion. Seller shall indemnify City for any claims relating to the remediation of such Hazardous Material pursuant to a separate written agreement in form and substance satisfactory to City and Seller. If Seller and City are not able to agree to the form of such indemnification agreement, either party may terminate this Agreement.

(c) City has reviewed and confirmed the compliance of the Property with all applicable laws, regulations, permits, and approvals as of the Closing Date.

(d) City has reviewed and approved the Documents (as defined in the Due Diligence Agreement) prior to the end of the Due Diligence Period.

(e) Seller is not in default in the performance of any covenant or agreement to be performed by Seller under this Agreement or the Due Diligence Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement are true and correct both when made and as of the Closing Date. At the Closing, Seller will deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 (Representations and Warranties of Seller) below are true and correct as of the Closing Date or stating any exceptions thereto. If any exceptions are not satisfactory to the City in its sole discretion, this condition shall not be satisfied.

(f) The physical condition of the Property is substantially the same on the Closing Date as on the last day of the Due Diligence Period, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 (Risk of Loss)), and, as of the Closing Date, there is no litigation or administrative agency or other governmental proceeding, pending or threatened, that after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceeding is pending or threatened that could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(g) Title Company is committed at the Closing to issue to City, or its nominee, the Title Policy as provided in Section 3.2 (Title Insurance).

(h) City has reviewed and approved prior to the end of the Due Diligence Period a schedule (the "**Schedule of Agreements**") setting forth a list of all of the contracts or agreements that City has elected that Seller will assign to City, and City will assume at Closing (the "**Assumed Contracts**"), together with true and accurate copies of all such documents. At or before the Closing, Seller has terminated any contracts or agreements other than the Assumed Contracts and the Leases, without liability to City.

(i) Seller has delivered the items described in Section 6.3 below (Seller's Delivery of Documents) in form and substance satisfactory to City.

(j) Title Company has agreed to be the real estate reporting person for the Closing in compliance with the Reporting Requirements (as defined in Section 6.6 below).

(k) City has reviewed and approved prior to the end of the Due Diligence Period of all income and expense statements, year-end financial and monthly operating statements for the Property for the three (3) most recent calendar years prior to Closing and to the extent available, the current year, all of which shall be prepared on the accrual tax-basis accounting method.

(l) At or before the Closing, Seller has terminated any existing and pending leases and other occupancy agreements other than the Leases, without liability to City.

(m) Prior to the Effective Date, the City's Mayor and the Board of Supervisors, in the respective sole discretion of each, shall have enacted a resolution or an ordinance, as applicable, approving, adopting and authorizing this Agreement and the transaction

contemplated herein. City agrees to notify Seller within three (3) business days after the satisfaction of this condition.

(n) City has successfully obtained Project Homekey funding from the State of California to fund all or a portion of the Purchase Price, such funds have been transferred into escrow for the Property, and all applicable Project Homekey conditions related to the Property have been met.

(o) Seller has complied with all applicable requirements of Chapter 41B of the San Francisco Administrative Code (Community Opportunity to Purchase Act) (“COPA”), and no Qualified Nonprofit (as defined under COPA) shall have exercised the right of first refusal to purchase the Property conferred upon Qualified Nonprofits by Section 41B.7 of COPA.

The City Conditions Precedent are solely for the benefit of City. If any City Condition Precedent is not satisfied, City will have the right in its sole discretion either to waive in writing the City Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement. The waiver of any City Condition Precedent will not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant, or agreement of Seller, except to the extent of the specific City Condition Precedent so waived. If one or more City Condition Precedents has not been satisfied, but may be satisfied with additional time, then City may extend Closing Date, at City's option, for a reasonable period of time specified by City, to allow such City Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all City Conditions Precedent have not been satisfied, and provided that no such extension shall exceed ninety (90) days, in the aggregate, unless agreed to by Seller in its sole and absolute discretion.

With respect to those City Conditions Precedent which expressly state that the same are to be satisfied prior to the end of the Due Diligence Period, if the City has not given notice to Seller indicating that any such City Condition Precedent is satisfied or waived by the end of the Due Diligence Period, Seller may send a notice to City requesting that City confirm that such City Condition Precedent is either satisfied or waived. Unless within ten (10) days after receipt of such notice from Seller, City notifies Seller that such City Condition Precedent is satisfied or waived, Seller shall have the right to terminate this Agreement by giving written notice of such termination to City at any time after the expiration of such ten (10) day period.

5.3 Cooperation with City

Seller will cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any City Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City will not be affected or released by City's waiver or fulfillment of any City Condition Precedent, except to the extent of the specific Condition Precedent so waived. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

5.4 Map Act Compliance

The parties acknowledge that the conveyance of the Property is exempt from the California Subdivision Map Act under Government Code section 66428; therefore, compliance with the Subdivision Map Act is not a condition precedent to Closing.

5.5 Leases

(a) During the Due Diligence Period, City shall have the right to review: (i) all existing leases and other occupancy agreements other than the Excluded Leases (as defined below), and (ii) tenant correspondence files other than with respect to the Excluded Leases, and (iii) a current rent roll for the Property (excluding the Excluded Leases), prepared by Seller and listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than thirty (30) days in advance (if any), lease commencement date, lease termination date, lease expansion or extension options, option rent, and cost of living or other rent escalation clauses, any unexpired free rent, operating expense abatements or other unexpired concessions, and a description of any uncured defaults, if any. “**Excluded Leases**” means those leases with California College of the Arts (“**CCA**”) University of the Pacific (“**UOP**”) or Panoramic Interests LLC (“**PI**”).

(b) Before the end of the Due Diligence Period, City shall notify Seller (i) whether or not City wishes to take an assignment of, and to assume, as of the Closing, the lease with Coffee Cultures, and (ii) whether or not City approves all leases and occupancy agreements it has been provided in accordance with Section 5.5(a), other than the Excluded Leases. If City notifies Seller that it does not approve any leases other than the lease with Coffee Cultures and the Excluded Leases, then this Agreement shall automatically terminate. If City has not given the notice required under this Section 5.5(b) to Seller by the end of the Due Diligence Period, Seller may send a notice to City requesting that City give such notice. Unless City gives the notice required under this Section 5.5(b) to Seller within ten (10) days after receipt of such Seller’s notice requesting such notice from City, Seller shall have the right, at no cost to City, to terminate this Agreement by giving written notice of such termination to City at any time after the expiration of such ten (10) day period.

(c) Seller will not enter into any new leases at the Property without City’s approval or deemed approval as provided in this Section 5.5(c), except for Leases of individual apartment units at the Property with individuals or households referred to Seller by Brilliant Corners or another organization that works with homeless individuals and/or individuals who are at risk of homelessness (“**Target Individuals**”) or individuals who Seller otherwise reasonably believes are Target Individuals. Within ten (10) days after entering into any new lease with any Target Individual, but in no event later than five (5) days prior to the Closing Date, Seller shall notify City of such new lease and provide a copy of the lease to the City. Seller shall notify City at least ten (10) business days prior to entering into any new lease with any tenant other than a Target Individual, which notice shall include the identity of the tenant, the unit to be leased, the amount of rent and amount of the security deposit. City shall approve or disapprove any proposed new leases other than with Target Individuals within ten (10) business days after receipt of a request for approval from Seller. City’s failure to disapprove any lease within ten (10) business days after receipt of Seller’s request for approval shall be deemed to constitute

approval of such lease by City. Seller acknowledges that Target Individuals are preferred by the City as tenants, as the City intends to lease units to Target Individuals after acquiring the Property, and Seller intends to focus its leasing efforts on Target Individuals.

(d) Seller will terminate the lease with PI effective as of or prior to the Closing. Seller will use its commercially reasonable efforts to negotiate termination agreements with respect to the Excluded Leases (other than the lease with PI) and with respect to the lease with Coffee Cultures if City notifies Seller pursuant to Section 5.5(b) that City elects not to take an assignment of such lease. Any such termination agreements will be effective as of the Closing, and conditioned upon the Closing occurring. Seller agrees to notify City within seven (7) days after it has entered into any such termination agreement. City agrees that any such termination agreement with CCA and UOP may provide for any subleases of individual units at the Property to be assigned to Seller at Closing, in which case the same shall be further assigned by Seller to City at Closing, and may also provide for any subleases of individual units at the Property to terminate as of Closing. City acknowledges that Seller does not control and has only limited approval rights (and City shall not have approval rights) over the subleasing of individual units by CCA or UOP, however, Seller is currently assisting CCA in its subleasing activities, and has been working with Brilliant Corners to locate Target Individuals as subtenants of CCA, and will continue to do so, to the extent desired by CCA.

(e) At the Closing, Seller will assign to City, and City will assume (1) all leases and other occupancy agreements that City has approved pursuant to Section 5.5(b), (2) all new leases entered into by Seller with Target Individuals or otherwise approved (or deemed approved) by City in accordance with Section 5.5(c), (3) all subleases, if any, assigned to Seller in accordance with Section 5.5(d) (all of the foregoing described in clauses (1) through (3) are collectively referred to herein as the “**Leases**”).

5.6 Seller’s Conditions to Closing

The following are conditions precedent to Seller’s obligation to sell the Property (collectively, “**Seller Conditions Precedent**”):

(a) City shall have deposited into escrow the Purchase Price, subject to adjustment for any prorations and credits provided hereunder, in cash or by federal wire transfer of immediately available funds and all other monies required to be deposited by Buyer hereunder.

(b) City shall have deposited into escrow all instruments and documents to be delivered by City to Seller at the Closing under the provisions of this Agreement.

(c) City shall have performed and satisfied all material covenants and material obligations of City under this Agreement to the extent such covenants and obligations are to be performed or satisfied as of the Closing Date.

(d) All representations and warranties of City contained in this Agreement shall be true and correct in all material respects as of the Effective Date and shall remain true and correct in all material respects as of the Closing Date and are deemed remade as of the Closing Date.

(e) No Qualified Nonprofit (as defined under COPA) shall have exercised the right of first refusal to purchase the Property conferred upon Qualified Nonprofits by Section 41B.7 of COPA.

The Seller Conditions Precedent are solely for the benefit of Seller. If any Seller Condition Precedent is not satisfied, Seller will have the right in its sole discretion either to waive in writing the Seller Condition Precedent in question and proceed with the sale or, in the alternative, terminate this Agreement, provided that if the failure of such Seller Condition Precedent is due to a default by City, any termination by Seller as a result thereof shall not waive Seller's right to recover liquidated damages under Section 6.8. The waiver of any Seller Condition Precedent will not relieve City of any liability or obligation with respect to any representation, warranty, covenant, or agreement of City, except to the extent of the specific Seller Condition Precedent so waived. If one or more Seller Condition Precedents has not been satisfied, but may be satisfied with additional time, then Seller may extend Closing Date, at Seller's option, for a reasonable period of time specified by Seller, to allow such Seller Conditions Precedent to be satisfied, subject to Seller's further right to terminate this Agreement upon the expiration of the period of any such extension if all Seller Conditions Precedent have not been satisfied and provided that no such extension shall exceed ninety (90) days, in the aggregate, unless agreed to by City in its sole and absolute discretion. Any such extension shall not exceed the deadline for City to obtain funding from Project Homekey, as described in Section 6.2 below.

5.7 COPA

Seller and City each acknowledge that City's purchase of the Property will not occur if a Qualified Nonprofit exercises the right of first refusal conferred by Section 41B.7 of COPA, and in the event of such exercise this Agreement shall terminate.

6. ESCROW AND CLOSING

6.1 Opening of Escrow

On or before the Closing Date (as defined in Section 6.2), the parties will open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement will serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated under this Agreement. Seller and City will execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement will control.

6.2 Closing Date

The consummation of the purchase and sale contemplated under this Agreement (the "**Closing**") will be held, and delivery of all items to be made at the Closing under the terms of this Agreement will be made, at the offices of Title Company located at 100 Pine Street, Suite 450, San Francisco, CA 94111-5106 approximately sixty (60) days after the Homekey Award Date (the "**Anticipated Closing Date**"), or on such other date as City and Seller may mutually agree (the actual date of Closing, the "**Closing Date**"); provided, however, that City will have the right to unilaterally extend the Closing Date up to ninety (90) days after the Homekey Award Date (the "**Extended Closing Date**") upon payment of the Deposit and as provided under Section 5.2 (City's Conditions to Closing). Seller agrees that the timing requirements under Project Homekey, including an obligation to close escrow before a certain date, may accelerate

or postpone the Closing Date. So long as the Deposit has been paid, Seller agrees to reasonably cooperate with this process, subject to receiving sufficient advance notice from Buyer to coordinate defeasance of Seller's existing financing.

The Closing Date may not otherwise be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Extended Closing Date, Title Company will, unless it is notified by both parties to the contrary, within five (5) days after the Extended Closing Date, return to the depositor any items that may have been deposited into escrow, provided that the Deposit will not be released without the written consent of both parties or an order of a court of competent jurisdiction. Any such return will not, however, limit the provisions of this Agreement or otherwise relieve either party of any liability it may have for its wrongful failure to close. In no circumstances shall the Closing Date occur prior to the Effective Date or the Homekey Funding Date.

6.3 Seller's Delivery of Documents

At or before the Closing, Seller will deliver to City, or City's nominee, through escrow, the following, in form and substance satisfactory to City:

- (a) a duly executed and acknowledged Deed;
- (b) a duly executed Bill of Sale;
- (c) a Certificate from the Secretary of State or other appropriate government official of the State of California indicating that, as of the Closing Date, there are no filings against Seller in the office of the Secretary of State or other government official under the Uniform Commercial Code of such State which would be a lien on any of the items specified in the Bill of Sale (other than such filings, if any, as are being released at the time of the Closing);
- (d) four (4) duly executed and acknowledged counterparts of the Assignment of Leases;
- (e) four (4) duly executed counterparts of the Assignment of Intangible Property;
- (f) to the extent in the possession of Seller or its property manager, originals of the Documents, Leases, and Assumed Contracts and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (g) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller's indirect owner is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (h) a properly executed California Franchise Tax Board Form 593 certifying that Seller's indirect owner is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or is a partnership for tax purposes or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (i) such resolutions, authorizations, or other limited liability company documents or agreements relating to Seller and its members as the Title Company may

reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated by this Agreement, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;

(j) a closing statement in form and content satisfactory to City and Seller;

(k) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above; and

(l) A statement executed by Seller certifying to City (i) all defaults, if any, which then exist on the part of any party to any Lease or Assumed Contract in any obligations for the payment of money under the applicable Lease or Assumed Contract; and (ii) all defaults, if any, which then exist on the part of any party to any Lease or Assumed Contract in any obligations under the applicable Lease or Assumed Contract other than obligations for the payment of money and for which a written notice of default has been given or received.

6.4 City's Delivery of Documents and Funds

At or before the Closing, City, or its nominee, will deliver to Seller through escrow the following:

(a) an executed certificate of acceptance of the Deed executed by City's Director of Property;

(b) four (4) duly executed and acknowledged counterparts of the Assignment of Leases;

(c) four (4) duly executed counterparts of the Assignment of Intangible Property;

(d) a closing statement in form and content satisfactory to City and Seller; and

(e) the Purchase Price, as provided in Article 2 hereof, subject to adjustment as provided in Section 7.

6.5 Other Documents

Seller and City will each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

6.6 Title Company as Real Estate Reporting Person

Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "**Reporting Requirements**") require that certain information be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Closing. Seller and City agree that if the Closing occurs, Title Company will be the party responsible for closing the transaction contemplated in this Agreement and is designated as the real estate reporting person (as defined in the Reporting Requirements) for such transaction. Title Company will perform all duties required of the real estate reporting person for the Closing under the Reporting Requirements, and Seller and City will each timely furnish Title Company with any information reasonably requested by Title

Company and necessary for the performance of its duties under the Reporting Requirements with respect to the Closing.

6.7 Seller Default

If the sale of the Property is not consummated solely because of a Seller default under this Agreement or the Due Diligence Agreement, or if a City Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or failure to act where Seller has an affirmative duty to act, City may, at its sole election, and as its sole and exclusive remedy, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller will pay to City any title, escrow, legal and inspection fees incurred by City and any other expenses reasonably incurred by City in connection with the Due Diligence Agreement and performance of its due diligence review of the Property, and neither party will have any further rights or obligations under this Agreement or the Due Diligence Agreement; or (2) continue this Agreement pending City's action for specific performance.

6.8 City Default and Liquidated Damages

If the sale of the Property contemplated under this Agreement is not consummated solely because of a default under this Agreement by City, then City will pay the amount of the Deposit to Seller as liquidated damages. The parties have agreed that Seller's actual damages, in the event of a default by City, would be extremely difficult or impracticable to determine. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST CITY, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT UNDER THIS AGREEMENT ON THE PART OF CITY.

INITIALS: Seller _____ City _____

7. EXPENSES AND TAXES

7.1 Rent and Other Apportionments

The following are to be apportioned through escrow as of the Closing Date:

(a) Rent

Rent under the Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date through the month during which such rent is collected, and then to unpaid rent accruing prior to the Closing Date. City shall not be obligated to take any steps to recover any rent arrearage, and Seller shall not be permitted to do so. Notwithstanding the foregoing, nothing herein shall preclude Seller from collecting any arrearages owed under any leases terminated effective as of, or prior to, the Closing Date, including, but not limited to the Excluded Leases.

(b) Leasing Costs

Seller shall pay all leasing commissions and tenant improvement costs accrued in connection with any Lease executed on or before the Closing (including, without limitation, any leasing commissions attributable to expansion or extension options which are not exercised until after the Closing), if applicable. City shall be entitled to a credit against the Purchase Price for the total sum of all security deposits paid to Seller by tenants under any Leases (except to the extent properly applied to any obligations of such tenants prior to the Closing), and any interest earned thereon, and to the extent applicable, as well as for any free rent, operating expense abatements, or other unexpired concessions under any Leases to the extent they apply to any period after the Closing.

(c) Other Tenant Charges

Where the Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

(d) Utility Charges

Seller will cause all the utility meters to be read on the Closing Date, and will be responsible for the cost of all utilities used prior to the Closing Date. All utility deposits paid by Seller will remain the property of Seller and City will reasonably cooperate to cause such deposits to be returned to Seller to the extent Seller is entitled thereto.

(e) Other Apportionments

Amounts payable under any Assumed Contracts, annual or periodic permit or inspection fees (calculated on the basis of the period covered), and liability for other normal Property operation and maintenance expenses and other recurring costs will be apportioned as of the Closing Date.

7.2 Closing Costs

City will pay the cost of the any survey ordered by City, the premium for the Title Policy, recording fees and one-half of any escrow fees. City will pay the cost of any transfer taxes applicable to the sale of the Property. Seller will pay one-half of any escrow fees, and for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement will be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

7.3 Real Estate Taxes and Special Assessments

At or before the Closing, Seller will pay all general real estate taxes payable for the tax year in which the Closing occurs and all prior years. Seller may file claim with the City and County of San Francisco for a property tax refund for any taxes paid for the period from and after the Closing Date. At or before the Closing, Seller will pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior the Closing Date. Seller will pay any other taxes applicable to the Property for the period prior to the Closing Date.

7.4 Preliminary Closing Adjustment

Seller and City shall jointly prepare a preliminary Closing adjustment on the basis of the Leases and other sources of income and expenses, and shall deliver such computation to Title Company prior to Closing.

7.5 Sales and Use Taxes for Transferred Taxable Personal Property

Based on Seller's representations and warranties in Section 8.1(r) and Section 8.1(s) below, the parties anticipate that the sale of the Personal Property included in the sale of the Property will be considered an "occasional sale" under the California Sales and Use Tax Law (California Revenue and Taxation Code 6001, *et seq.*), and as a result thereof, will be exempt from sales and use taxes. If the State of California deems the sale of the Personal Property included in the sale of the Property not to be an "occasional sale" under the California Sales and Use Tax Law, City will pay to Seller, and Seller will promptly remit to the State of California, the entire amount of any applicable sales and use taxes triggered by the transfer of the Personal Property included in the sale of the Property, in accordance with the California law. The parties agree that the value of the Personal Property included in the sale of the Property is Twenty Five Thousand Dollars and 00/100 (\$25,000.00). Upon such payment of any applicable sales and use taxes, Seller will promptly provide City with confirmation of such payment to the State of California. Seller, on behalf of itself and its successors and assigns, will indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses (including, without limitation, reasonable attorneys' fees) relating to the sales and use taxes arising out of the transfer of the Personal Property included in the sale of the Property, but only to the extent the City has paid such sales and use tax to Seller as provided in this Section 7.5. The foregoing indemnity includes any applicable sales and use taxes that City pays to Seller and Seller fails to remit to the State of California. The indemnification provisions of this Section will survive beyond the Closing. Each party agrees to cooperate with the other in the event of any audit by, or communication with, the State of California as it relates to any applicable sales and use taxes triggered by the transfer of the Personal Property included in the sale of the Property.

7.6 Post-Closing Reconciliation

If any of the foregoing prorations cannot be calculated accurately on the Closing Date, then they will be calculated as soon after the Closing Date as feasible. Either party owing the other party a sum of money based on such subsequent prorations will promptly pay such sum to the other party.

7.7 Survival

The provisions of this Section will survive the Closing.

8. REPRESENTATIONS AND WARRANTIES; AS-IS SALE

8.1 Representations and Warranties of Seller

Seller represents and warrants to City as follows:

(a) To Seller's knowledge, and without any independent investigation or inquiry by Seller, there are no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act), except with respect to the model unit constructed in the basement of the Improvements, provided that Seller makes no representation or warranty as to the compliance of the premises leased by Coffee Cultures with any handicap laws (including, but not limited to, the Americans with Disabilities Act). City is hereby notified that the model unit was constructed for demonstration purposes only and is not a habitable dwelling unit.

(b) To Seller's knowledge, and without any independent investigation or inquiry by Seller, Seller has not received any written information indicating that any document or instrument furnished by Seller to City in connection with this Agreement contains any untrue statement of material fact or omits a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement was made.

(c) The Leases and Assumed Contracts furnished to City and are true, correct, and complete copies of such documents. The Documents and other information furnished to City (other than the Leases and Assumed Contracts) include all of the relevant documents and information in the possession of Seller or its property manager pertaining to the physical condition and operation of the Property and are true and complete (to the extent in the possession of Seller or its property manager) copies of such documents.

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) There are no easements or rights of way on the Property that have been acquired by prescription or are otherwise not of record, and to Seller's knowledge, there are no easements, rights of way, permits, licenses or other forms of agreement that afford third parties the right to traverse any portion of the Property to gain access to other real property that are not of record. There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

(f) To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property and to Seller's knowledge and without any independent investigation or inquiry by Seller, are adequate to service the Property.

(g) There is no litigation pending or, after due and diligent inquiry, to Seller's knowledge, threatened, against Seller or any basis for litigation that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

(h) Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property, except as required under COPA.

(i) Seller is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is in good standing under the laws of the State of Delaware, and in good standing as a registered foreign limited liability company in California; this Agreement and all documents executed by Seller that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

(j) Seller has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state, or local governmental agency. In the event Seller has been so suspended, disbarred, disciplined, or prohibited from contracting with any governmental agency, it will immediately notify the City of and the reasons therefor together with any relevant facts or information requested by City. Any such suspension, debarment, discipline, or prohibition may result in the termination or suspension of this Agreement.

(k) Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using and operating the Property after Closing as residential housing and ground floor retail.

(l) Except as described in the reports listed on Schedule 1 ("**Seller's Environmental Disclosure**") (i) the Property is not currently in violation of any Environmental Laws; (ii) the Property is not now, nor to Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (iii) during Seller's ownership of the Property, and to Seller's knowledge, prior to Seller's ownership of the Property, there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property; (iv) during Seller's ownership of the Property, and to Seller's knowledge, prior to Seller's ownership of the Property, there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property, or if there are currently any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they are properly registered with all appropriate authorities, they are in full compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) to Seller's knowledge, the Property does not consist of any landfill; (vii) to Seller's knowledge, and without any independent investigation or inquiry by Seller, no building materials that constitute Hazardous Materials were incorporated into the Improvements in violation of Environmental

Laws in effect at the time the Improvements were constructed; and (viii) the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

“Environmental Laws” means any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Property, including, without limitation, soil, air and groundwater conditions.

“Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”, also commonly known as the “Superfund” law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

“Release” or **“threatened 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 any of the improvements, or in, on, under or about the Property. Release also includes, without limitation, “release” as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

(m) At the time of Closing, there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller will cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property at the request of Seller before Closing. There are no obligations in connection with the Property that will be binding upon City after Closing except for the Accepted Conditions of Title, the Assumed Contracts, and the Leases.

(n) Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code.

(o) There are no free rent, operating expense abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions (collectively referred to as

“Offsets”) or any termination, extension, cancellation or expansion rights under any existing or pending Leases except as set forth in the Leases. Seller has paid in full any of landlord's leasing costs incurred by Seller in connection with any tenant improvements.

(p) No brokerage or similar fee is due or unpaid by Seller with respect to any Lease. No brokerage or similar fee shall be due or payable on account of the exercise of, without limitation, any renewal, extension or expansion options arising under any Leases.

(q) The copies of the Leases delivered by Seller to City contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any unexpired rent concessions, over-standard tenant improvement allowances or other inducements to lease.

(r) Seller is not engaged in the business of “retail sales” as defined under the California Sales and Use Tax Law. Seller does not hold, and the nature of Seller’s business does not require Seller to hold, a seller’s permit under the California Sales and Use Tax Law.

(s) Within twelve (12) months prior to the Closing Date Seller has not engaged in two (2) or more sales sufficient in number, scope, and character to constitute an activity for which it is required to hold a seller’s permit under the California Sales and Use Tax Law.

8.2 Survival and Limitation on Seller’s Representations and Warranties

All representations and warranties contained in Section 8.1, are qualified by any information contained in the Documents and other materials made available to City pursuant to the Due Diligence Agreement, including any title report or survey made available to City. In addition, in the event City is actually aware prior to the Closing that any of the representations or warranties set forth in Section 8.1 are not true, correct or complete, and City nonetheless proceeds with the purchase of the Property, such representations and warranties shall be deemed to be qualified by all matters of which City is actually aware, and City shall have no claim for breach of any such representation or warranty to the extent it is actually aware prior to the Closing of any inaccuracies therein. The representations and warranties of Seller set forth in Section 8.1, as qualified by all matters of which City is actually aware as of the Closing and by any exceptions and qualifications set forth on the certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above, Seller’s indemnification obligations under the Assignment of Intangible Property and Seller’s indemnification obligations under the Assignment of Leases (collectively, “**Seller’s Surviving Obligations**”), shall survive the Closing for a period of nine (9) months from and after the Closing Date (the “**Survival Period**”). City must give Seller written notice of any claim City may have against Seller with respect to any of Seller’s Surviving Obligations prior to the expiration of the Survival Period. Any such claim which City may have which is not so asserted prior to the expiration of the Survival Period shall not be valid or effective, and Seller shall have no liability with respect thereto. Notwithstanding any provision of this Agreement or any closing document executed by Seller and delivered to Buyer at Closing to the contrary, Seller’s liability with respect to Seller’s Surviving Obligations shall not exceed, in the aggregate, one percent (1%) of the Purchase Price; provided that Seller’s liability with respect to Seller’s

Surviving Obligations may exceed, in the aggregate, one percent (1%) of the Purchase Price for any claims caused by Seller's intentional misrepresentation or fraud.

8.3 As-Is Sale.

(a) As provided in this Agreement and the Due Diligence Agreement, it is the intent of Seller and City that, by the Closing Date, City will have had the opportunity to perform a diligent and thorough inspection and investigation of the Property, either independently or through its Agents. CITY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT SELLER IS CONVEYING AND CITY IS ACQUIRING SELLER'S INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS. CITY IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND, OTHER THAN THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SELLER OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PROPERTY, THE SUITABILITY FOR CITY'S INTENDED USES OR ANY OF THE PROPERTY CONDITIONS THEREOF. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 (REPRESENTATIONS AND WARRANTIES OF SELLER), SELLER DOES NOT WARRANT THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL, ZONING, OR OTHER CONDITIONS OF THE PROPERTY, OR THE SUITABILITY FOR ANY USE, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PROPERTY OR ITS USE WITH ANY APPLICABLE LAWS. IT IS CITY'S SOLE RESPONSIBILITY TO DETERMINE ALL BUILDING, PLANNING, ZONING, AND OTHER REGULATIONS AND APPLICABLE LAWS RELATING TO THE PROPERTY AND THE USES TO WHICH IT MAY BE PUT.

(b) As part of its agreement to accept the Property and in its "as is and with all faults" condition, City as of the Closing Date, on behalf of itself and its successors and assigns, waives any right to recover from Seller, and forever releases and discharges, Seller and its Agents, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, or foreseen or unforeseen, that may arise on account of or in any way be connected with (a) the use of the Property by City and its successors and assigns or (b) the physical, geological, or environmental condition of the Property, including but not limited to the presence of any Hazardous Materials on, in, under or about the Property. "Losses" means any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including attorneys' fees and costs. In connection with the foregoing release, City, as of the Closing Date, expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING PROVISIONS OF THIS SECTION 8.3 WILL NOT SERVE TO RELEASE

SELLER OR ITS AGENTS FROM, AND NO RELEASE IN THIS SECTION 8.3 APPLIES TO, AND CITY EXPRESSLY DOES NOT WAIVE ANY LOSSES TO THE EXTENT ARISING FROM (A) ANY INTENTIONAL MISREPRESENTATION, INTENTIONAL OMISSION OR FRAUD ON THE PART OF SELLER OR ITS AGENTS, (B) ANY MATERIAL BREACH OF ANY COVENANT OR REPRESENTATION OR WARRANTY MADE BY SELLER UNDER THIS AGREEMENT, OR (C) ANY CLAIM MADE BY ANY THIRD PARTY AGAINST CITY WITH RESPECT TO THE PROPERTY ARISING DURING SELLER'S OWNERSHIP, EXCEPT AS AND TO THE EXTENT CAUSED BY CITY.

9. RISK OF LOSS; POSSESSION

9.1 Risk of Loss

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any portion of the Property, then the rights and obligations of Seller and City under this Agreement are as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount of up to Five Thousand Dollars (\$5,000), and the insurer agrees to timely pay for the entire cost of such repair (except the deductible), and the entire cost of the damage or destruction would cost less than Four Million Dollars (\$4,000,000) (the "**Threshold Damage Amount**") to repair or restore, then this Agreement will remain in full force and effect and City shall proceed to acquire the Property upon the terms and conditions set forth in this Agreement. In such event, City will receive a credit against the Purchase Price equal to the deductible amount, and Seller will assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City for the deductible under any insurance policy, and if the amount expended by Seller exceeds the total amount of such deductible(s), Seller shall reserve from the assignment of insurance proceeds to City, the amount of such excess.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the above deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement will be consummated with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City. Notwithstanding the foregoing, Seller shall have no obligation to provide any credit under this Section 9.1(b) in excess of Two Hundred Fifty Thousand Dollars (\$250,000), and if the cost of repairing such damage or destruction that is not covered by Seller's insurance exceeds Two Hundred Fifty Thousand Dollars (\$250,000), then City shall have the right, at its election, to terminate this agreement within thirty (30) days after Seller notifies City of the damage or destruction unless Seller notifies City within twenty (20) days after the occurrence of the damage and destruction that Seller will provide a credit for the full amount of the cost of repairing such damage and destruction to the extent the same is not covered by Seller's insurance.

(c) If the cost of the repairs of damage or destruction would equal or exceed the Threshold Damage Amount, then City will have the right, at its election, to terminate this Agreement in its entirety, or to not terminate this Agreement and purchase the Property. City will have thirty (30) days after Seller notifies City that an event described in this subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within the thirty (30)-day period will be deemed City's election to terminate this Agreement. If this Agreement is terminated by City's delivery of notice of termination to Seller, then City and Seller will each be released from all obligations under this Agreement, except those expressly stated to survive, the parties will share equally any title fees and escrow cancellation costs. If City elects not to terminate this Agreement, this Agreement will remain in full force and effect, and Seller will notify City of either (i) Seller's intention to repair such damage or destruction, or (ii) Seller's intention to assign insurance proceeds to City. Any repairs elected to be made by Seller under clause (i) of this subsection must be made within one hundred eighty (180) days following such damage or destruction and the Closing will be extended until the repairs are substantially completed. If Seller elects to assign insurance proceeds under clause (ii) of this subsection, City will receive a credit against the Purchase Price equal to the deductible amount, and Seller will assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City; provided that if Seller shall have expended any sums before the Closing to repair or restore the Property, the amount expended by Seller shall first be deducted from any credit due City for the deductible under any insurance policy, and if the amount expended by Seller exceeds the total amount of such deductible(s), Seller shall reserve from the assignment of insurance proceeds to City, the amount of such excess.

(d) If condemnation proceedings are commenced against any of the Property (other than by the City or any division or instrumentality thereof), then, City will have the right, at its election, either to terminate this Agreement in its entirety, or only as to that portion of the Property subject to condemnation proceedings (in which case there will be an equitable adjustment to the Purchase Price), or to not terminate this Agreement and purchase the Property (or the portion not affected by condemnation, as the case may be). City will have thirty (30) days after Seller notifies City of receipt of the condemnation notice to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period will be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (d) by City's delivery of notice of termination to Seller, then City and Seller will each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination except those expressly stated to survive, the parties will share equally any title fees and escrow cancellation costs. If City elects not to terminate this Agreement, then this Agreement will remain otherwise in full force and effect and City will pay Seller the full purchase price less the amount of any condemnation award previously paid to Seller and Seller will transfer and assign to City at Closing the right to receive any condemnation award not paid as of the Closing Date.

9.2 Insurance

Through the Closing Date, Seller will maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements and the Personal Property, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, water, and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller does not maintain, and shall not be obligated to maintain, earthquake insurance. Seller will furnish City with evidence of such insurance upon request by City.

9.3 Possession

Seller will deliver possession of the Property to City on the Closing Date, vacant, except for the Assumed Contracts and Leases.

10. MAINTENANCE; CONSENT TO NEW CONTRACTS

10.1 Maintenance of the Property by Seller

Between the Effective Date and the Closing, Seller will maintain the Property in good order, condition and repair, reasonable wear and tear and casualty excepted, and will make all repairs, maintenance and replacements of the Improvements and any Personal Property and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property, provided that Seller shall have no obligation to make any capital improvements to the Property.

10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts

Except for leases permitted to be entered into in accordance with Section 5.5 above, after the Effective Date, Seller may not enter into any lease or contract with respect to the Property that will survive the Closing, or any amendment thereof, or waive any rights of Seller under any Assumed Contract, without in each instance obtaining City's prior written consent. City agrees that it will not unreasonably withhold or delay any such consent. Seller will terminate prior to the Closing, at no cost or expense to City, any and all agreements, including any management agreements affecting the Property that are not Assumed Contracts or Leases.

11. GENERAL PROVISIONS

11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement must be in writing and will be deemed to have been given upon receipt, as demonstrated by courier confirmation of delivery or US mail return receipt or other verified tracking. Notices will be addressed as follows:

City:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property
Re: **1321 Mission Street**
andrico.penick@sfgov.org

with copy to:

Jessie Alfaro-Cassella
Deputy City Attorney
Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Re: **1321 Mission Street**
Email Address: jessie.cassella@sfcityatty.org

Seller:

MISSION SMARTSPACE SENIOR LLC
1321 Mission Street, Suite 101
San Francisco, CA 94103
Attn: Patrick Kennedy and JP Walsh
Email Addresses:
pck@panoramic.com; jp@panoramic.com

With a copy to:

Shartsis Friese LLP
One Maritime Plaza, 18th Floor
San Francisco, CA 94111
Attn: Craig B. Etlin
Email Address: cetlin@sflaw.com

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by email to the email address listed above, or such other address as may be provided from time to time. However, except for any notices given pursuant to Section 5.5(c), neither party may give official or binding notice by email. Except for any notices given pursuant to Section 5.5(c), the effective time of a notice will not be affected by the receipt, before receipt of the original, of an email copy of the notice. With respect to any notices given pursuant to Section 5.5(c), such notices shall be effective upon transmission by e-mail if transmitted before 5:00 p.m. Pacific Time on a business day (otherwise such notice shall be deemed given the next business day), provided that no error or non-delivery message is received by the sender and provided that a copy is also sent on the same business day by one of the other methods set forth in this Section 11.1 unless the recipient affirmatively replies to such email and acknowledges receipt (*i.e.*, not an automated return receipt), in which case no copy need be sent. Notices may be given on behalf of Seller by its attorneys, Shartsis Friese LLP.

11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, 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 purchase and sale contemplated herein. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, then the party through whom the broker or finder makes his or her claim will be responsible for such commission or fee and will indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section will survive the Closing.

11.3 Successors and Assigns

This Agreement is binding on, and will inure to the benefit of, the parties and their respective successors, heirs, administrators and assigns. City has the right, upon notice to Seller given at least ten (10) days prior to the Closing Date, to assign its right, title and interest in and to this Agreement to a non-profit organization directly affiliated with City's intended use of the Property at any time before the Closing Date.

11.4 Amendments

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

11.5 Continuation and Survival of Representations and Warranties

All representations and warranties by the respective parties in this Agreement or made in writing under this Agreement will be deemed to be material, and, together with all conditions, covenants, and indemnities made by the respective parties under this Agreement or made in writing in accordance with this Agreement will survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement, except as otherwise expressly limited by the terms of this Agreement, including but not limited to, Section 8.2 above. All statements contained in the certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.2(e) above will constitute representations and warranties hereunder.

11.6 Governing Law

This Agreement is governed by and construed in accordance with the laws of the State of California and the City's Charter and Municipal Code.

11.7 Merger of Prior Agreements

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) and the Due Diligence Agreement are the final expressions of their agreement with respect to Seller's sale of the Property and City's purchase of the Property and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings, including, without limitation, any letter of intent or term sheet. The parties further intend that this Agreement and the Due Diligence Agreement will constitute the complete and exclusive statement of their terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

11.8 Parties and Their Agents; Approvals

The term "Seller" as used herein includes the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller will be joint and several. As used herein, the term "Agents" when used with respect to either party includes the agents, employees, officers, contractors, and representatives of such party. All approvals, consents, or other determinations permitted or required by City will be made by or through City's Director of Property unless otherwise provided herein, subject to applicable law.

11.9 Interpretation of Agreement

The article, section, and other headings of this Agreement and the table of contents are for convenience of reference only and will not affect the meaning or interpretation of any provision of this Agreement. Whenever the context requires, the use of the singular will be deemed to include the plural and vice versa, and each gender reference will be deemed to include any gender. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has

been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

11.10 Seller Tax Obligations

Seller 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 (“**Delinquent Payment**”). If, under that authority, any payment City is required to make to Seller under this Agreement is withheld because Seller owes the City a Delinquent Payment, then City will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Seller, without interest, late fees, penalties, or other charges, upon Seller coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

11.11 Sunshine Ordinance

Seller understands and agrees that under the City’s Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to the City hereunder public records subject to public disclosure. Seller hereby acknowledges that the City may disclose any records, information and materials submitted to the City in connection with this Agreement.

11.12 Conflicts of Interest

Through its execution of this Agreement, Seller 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 provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller will immediately notify the City.

11.13 Notification of Prohibition on Contributions

Through its execution of this Agreement, Seller 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 any department of the City whenever such transaction would require the 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 (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) 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 twelve (12) months after the date the contract is approved. Seller 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 \$100,000 or more. Seller further acknowledges that the (i) prohibition on contributions applies to each Seller; each member of Seller's board of directors, and Seller’s chief executive officer, chief financial

officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Seller; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Seller; and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department with whom Seller is contracting is obligated to submit to the Ethics Commission the parties to the contract and any subcontractor. Additionally, Seller certifies that Seller has informed each of the persons described in the preceding sentence of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

11.14 Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City will be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

11.15 Intentionally Omitted

11.16 Counterparts

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

11.17 Effective Date

As used herein, the term “**Effective Date**” means the date on which City, or its nominee, and Seller have executed this Agreement, as authorized by a resolution or ordinance, as applicable, enacted by the City's Board of Supervisors and Mayor approving and authorizing this Agreement and the transaction contemplated hereunder.

11.18 Severability

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

11.19 Agreement Not to Market

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller will not negotiate with any other parties pertaining to the sale of the Property and will not market the Property to third parties.

11.20 Intentionally Omitted.

11.21 Cooperative Drafting.

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party will be considered the drafter of this Agreement, 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 Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS WILL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT WILL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY WILL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[SIGNATURES ON FOLLOWING PAGES]

The parties have duly executed this Agreement as of the respective dates written below.

SELLER:

MISSION SMARTSPACE SENIOR LLC
a Delaware limited liability company

By: 1321 Mission SmartSpace LLC,
a California limited liability company
its Manager

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability
company,
its Manager

By: _____
Patrick C. Kennedy, Manager

Dated: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

Dated: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Jessica Alfaro-Cassella
Deputy City Attorney

SCHEDULE 1

SELLER'S ENVIRONMENTAL DISCLOSURE

Phase I Environmental Site Assessment prepared by AEI Consultants dated June 24, 2013

Phase I Environmental Site Assessment prepared by John Carver dated March 30, 2011

Geotechnical Report prepared by Rockridge Geotechnical dated September 1, 2011

Analytical Report (Soils) prepared by TestAmerica dated August 16, 2013

Voluntary Remedial Action Program Soil Sampling Report prepared by ACC Environmental Consultants dated February 13, 2012

SCHEDULE 2

WARRANTIES

	Description	Warranty End Date	Warranty Grantor/ Manufacturer
1.	Countertops	7/7/2030	Dal-Tile Corporation
2.	Modified Bitumen Sheet Waterproofing	7/7/2025	Siplast
3.	Subgrade Waterproofing	7/7/2025	CETCO
4.	Traffic Coating on Roof	7/7/2025	Siplast
5.	Modified Bitumen Membrane Waterproofing	7/7/2040	Siplast
6.	Graffiti Resistant Coatings	7/7/2025	Dryvit
7.	EIFS	7/7/2025	Dryvit
8.	Weather Barrier	7/7/2025	W.R. Grace & Co.
9.	Joint Sealants	7/7/2025	Dow Corning Corporation
10.	Plaster	7/7/2030	BMI Products
11.	Fiber-Reinforced Cementitious (FRC) Wall	7/7/2025	SwissPearl
12.	Glazing	7/7/2025	Oldcastle Building Envelope
13.	Door Hardware	7/7/2025	Falcon

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the County of San Francisco, State of California, described as follows:

Beginning at a point of intersection of the Southwesterly line of 9th Street with the Southeasterly line of Mission Street, running thence Southwesterly along the Southeasterly line of Mission Street 113 feet 4 inches to the Northeasterly line of Washburn Street; thence at a right angle Southeasterly along the Northeasterly line of Washburn Street 81 feet 3 inches, thence at a right angle Northeasterly 113 feet and 4 inches to the Southeasterly line of 9th Street; and thence at a right angle Northwesterly along the Southwesterly line of 9th Street 81 feet and 3 inches to the Southeasterly line of Mission Street and the point of beginning.

Being a portion of Mission Block No. 3.

Assessors Lot/Block: Lot 043; Block 3509

EXHIBIT B

DESCRIPTION OF ACCEPTED PERSONAL PROPERTY

1. Twin bed + mattress (180)
2. Full bed + mattress (80)
3. Entry bench (110)
4. Table (160)
5. Mesh chair (320)
6. Desk (10)
7. Wall-mounted flatscreen TV (160)
8. Elevator lobby furniture (5 sets)
9. Lobby table (5)
10. Lobby chair (5)
11. Lobby stool (7)
12. Lobby low chair (3)
13. Lobby and reading room dining table (2)
14. Reading room chair (6)
15. Reading room lounge pieces by Norix (4)
16. Heated bench (2)
17. Heated chair (2)
18. Rooftop concrete chair (2)
19. Rooftop wooden bench (1)
20. Rooftop white plastic chair (15)

Note: Quantities indicated in parenthesis

EXHIBIT C

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

The undersigned declares this instrument to be
exempt from Recording Fees (CA Govt. Code
§ 27383) and Documentary Transfer Tax (S.F.
Bus. & Tax Reg. Code § 1105)

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

GRANT DEED

(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company, hereby grants
to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property
located in the City and County of San Francisco, State of California, described on the attached
Exhibit A which is made a part hereof (the "**Property**").

TOGETHER WITH any and all rights, privileges and easements incidental or
appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other
hydrocarbon substances on and under the Property, as well as any and all development rights, air
rights, water, water rights, riparian rights and water stock relating to the Property, and any and all
easements, rights-of-way or other appurtenances used in connection with the beneficial use and
enjoyment of the land and all of Grantor's right, title and interest in and to any and all roads and
alleys adjoining or servicing the Property.

THE FOREGOING GRANT is made subject to all matters of record and rights of parties in
possession.

[SIGNATURES ON FOLLOWING PAGE]

Executed as of _____, 20__.

MISSION SMARTSPACE SENIOR LLC
a Delaware limited liability company

By: 1321 Mission SmartSpace LLC,
a California limited liability company
its Manager

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability company,
its Manager

By: _____
Patrick C. Kennedy, Manager

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 San Francisco)

On _____, before me, _____, a notary public in and for said State, 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)

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property located at _____ conveyed by the foregoing Grant Deed dated _____ to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. _____ Series of _____, approved _____, and Resolution No. _____, approved _____, 20____, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Andrico Q. Penick
Director of Property

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the County of San Francisco, State of California, described as follows:

Beginning at a point of intersection of the Southwesterly line of 9th Street with the Southeasterly line of Mission Street, running thence Southwesterly along the Southeasterly line of Mission Street 113 feet 4 inches to the Northeasterly line of Washburn Street; thence at a right angle Southeasterly along the Northeasterly line of Washburn Street 81 feet 3 inches, thence at a right angle Northeasterly 113 feet and 4 inches to the Southeasterly line of 9th Street; and thence at a right angle Northwesterly along the Southwesterly line of 9th Street 81 feet and 3 inches to the Southeasterly line of Mission Street and the point of beginning.

Being a portion of Mission Block No. 3.

Assessors Lot/Block: Lot 043; Block 3509

EXHIBIT D
BILL OF SALE

For good and valuable consideration the receipt of which is acknowledged, MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company (“**Seller**”), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Buyer**”), all personal property owned by Seller and located on or in or used in connection with the Land and Improvements (as such terms are defined in that certain Agreement of Purchase and Sale of Real Estate dated as of _____, 20____, between Seller and Buyer (or Buyer's predecessor in interest) (the “**Purchase Agreement**”), including, without limitation, those items described in the attached Schedule 1 (the “**Personal Property**”).

Seller hereby represents to Buyer that Seller is the lawful owner of the Personal Property, that the Personal Property is free and clear of all encumbrances, and that Seller has good right to sell the Personal Property and will warrant and defend the title thereto unto Buyer, its successors and assigns, against the claims and demands of all persons whomsoever.

The Personal Property is in a used condition, and Seller is neither a manufacturer, nor distributor of, nor dealer nor merchant in, the Personal Property. Seller makes no representations, express or implied, as to the condition or state of repair of the Personal Property, including warranties of fitness or merchantability, it being expressly understood that the Personal Property is being sold to Buyer in its present “AS IS, WHERE IS” condition and with all faults, as provided in the Purchase Agreement.

DATED _____, 20____.

SELLER:

MISSION SMARTSPACE SENIOR LLC
a Delaware limited liability company

By: 1321 Mission SmartSpace LLC,
a California limited liability company
its Manager

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability company,
its Manager

By: _____
Patrick C. Kennedy, Manager

EXHIBIT E

ASSIGNMENT OF CONTRACTS, WARRANTIES AND GUARANTIES, AND OTHER INTANGIBLE PROPERTY

THIS ASSIGNMENT is made and entered into as of _____, 20____, by and between MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company (“**Assignor**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Assignee**”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is acknowledged, effective as of the Closing Date (as defined in the Purchase Agreement), Assignor assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under:

- A. the contracts listed in the attached Schedule 1 (the “**Contracts**”)
- B. all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of that certain real property described in the attached Exhibit A including, without limitation, those warranties and guaranties listed in the attached Schedule 2 (collectively, “**Warranties**”);
- C. any other Intangible Property (as defined in that certain Agreement of Purchase and Sale of Real Estate dated as of _____, 20____, between Assignor and Assignee (or Assignee's predecessor in interest) (the “**Purchase Agreement**”).

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

- 1. Assignor will indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of Assignor's obligations under the Contracts prior to the Closing Date.
- 2. Effective as of the Closing Date, Assignee hereby assumes all of the Assignor's obligations under the Contracts required to be performed on or subsequent to the Closing Date. Assignee will indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of Assignor's obligations under the Contracts on or after the Closing Date.
- 3. This Assignment will be binding on and inure to the benefit of the parties to this Assignment, their heirs, executors, administrators, successors in interest and assigns.
- 4. This Assignment is governed by and construed in accordance with the laws of the State of California and the City's Charter and Municipal Code.

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

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

ASSIGNOR:

MISSION SMARTSPACE SENIOR LLC
a Delaware limited liability company

By: 1321 Mission SmartSpace LLC,
a California limited liability company
its Manager

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability company,
its Manager

By: _____
Patrick C. Kennedy, Manager

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

REAL PROPERTY DESCRIPTION

All that certain real property located in the County of San Francisco, State of California, described as follows:

Beginning at a point of intersection of the Southwesterly line of 9th Street with the Southeasterly line of Mission Street, running thence Southwesterly along the Southeasterly line of Mission Street 113 feet 4 inches to the Northeasterly line of Washburn Street; thence at a right angle Southeasterly along the Northeasterly line of Washburn Street 81 feet 3 inches, thence at a right angle Northeasterly 113 feet and 4 inches to the Southeasterly line of 9th Street; and thence at a right angle Northwesterly along the Southwesterly line of 9th Street 81 feet and 3 inches to the Southeasterly line of Mission Street and the point of beginning.

Being a portion of Mission Block No. 3.

Assessors Lot/Block: Lot 043; Block 3509

SCHEDULE 1
CONTRACTS

SCHEDULE 2

WARRANTIES

EXHIBIT F

ASSIGNMENT OF LEASES

THIS ASSIGNMENT is made and entered into as of _____, 20___, by and between MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company (“**Assignor**”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**Assignee**”).

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Closing Date (as defined in the Agreement for the Purchase and Sale of Real Property between Assignor, as Seller, and Assignee, as City, dated as of _____ (the “**Purchase Agreement**”)), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under certain leases executed with respect to that certain real property commonly known as 1321 Mission Street, San Francisco, and more fully described in Exhibit A to the Purchase Agreement (the “**Property**”) as more fully described in Schedule 1 attached hereto (collectively, the “**Leases**”). Initially capitalized terms used but not defined in this Assignment have the meanings given to them in the Purchase Agreement.

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that, as of the date of this Assignment, the attached Schedule 1 includes all of the Leases and occupancy agreements to which Seller is a party affecting any of the Property. As of the date hereof, there are no assignments of or agreements to assign the Leases by Seller to any other party.
2. Assignor hereby agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of landlord's obligations under the Leases prior to the Closing Date; provided that nothing in this Section 2 shall obligate Assignor to indemnify Assignee with respect to the physical condition of the Property, which Assignee has agreed to accept in its “as-is, where-is” condition as of the Closing Date, or any matter for which Assignee has agreed to release Assignor as set forth in Section 8.3 of the Purchase Agreement.
3. Effective as of the Closing Date, Assignee hereby assumes all of the landlord's obligations under the Leases required to be performed on or subsequent to the Closing Date. Assignee hereby agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees) to the extent arising out of the breach of landlord's obligations under the Leases on or after the Closing Date.
4. Any rental and other payments under the Leases will be prorated between the parties as provided in the Purchase Agreement.
5. This Assignment will be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.
6. This Assignment is governed by and will be construed in accordance with the laws of the State of California.

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

[SIGNATURES ON FOLLOWING PAGE]

Assignor and Assignee have executed this Assignment as of the day and year first written above.

ASSIGNOR:

MISSION SMARTSPACE SENIOR LLC
a Delaware limited liability company

By: 1321 Mission SmartSpace LLC,
a California limited liability company
its Manager

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability company,
its Manager

By: _____
Patrick C. Kennedy, Manager

ASSIGNEE:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
Andrico Q. Penick
Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
[DEPUTY'S NAME]
Deputy City Attorney

SCHEDULE 1
LEASES

EXHIBIT G
INTENTIONALLY OMITTED.

EXHIBIT H

**CERTIFICATE OF TRANSFEROR
OTHER THAN AN INDIVIDUAL
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by 1321 MISSION SMARTSPACE LLC, a California limited liability company which is the indirect owner of 100% of the membership interests in MISSION SMARTSPACE SENIOR LLC, a Delaware limited liability company, the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor is not a disregarded entity as defined in Income Tax Regulations §1.1445-2(b)(2)(iii);
3. Transferor's U.S. employer identification number is _____; and
4. Transferor's office address is _____

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

[signature follows]

Dated: _____, 20__.

On behalf of:

1321 MISSION SMARTSPACE LLC,
a California limited liability company

By: Panoramic Mission LLC,
a California limited liability company,
its Manager

By: Panoramic Interests, LLC,
a California limited liability company,
its Manager

By: _____
Patrick C. Kennedy, Manager