CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

AMENDED AND RESTATED LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
as Landlord

and

SAN FRANCISCO MARKET CORPORATION,
a California nonprofit corporation,
as Tenant

for the lease of real property and improvements
known as the San Francisco Wholesale Produce Market

in San Francisco, California

Dated as of November 1, 2022

TABLE OF CONTENTS

LIST OF LEASE EXHIBITS

AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (this "**Lease**"), dated for reference purposes as of November 1, 2022, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), and SAN FRANCISCO MARKET CORPORATION, a California nonprofit corporation (the "**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. The San Francisco Wholesale Produce Market ("**SFWPM**") is the largest facility in Northern California dedicated to a wholesale produce marketplace. It houses a merchant base comprised of approximately 30 produce and food-related business, employing approximately 650 people, located at one wholesale and distribution center. The merchants at the SFWPM are a mix of wholesale food businesses and distributors and ancillary businesses. They serve customers across the San Francisco Bay region and the state, however the majority of customers are located in San Francisco. The merchants ensure a consistent supply of healthy, fresh, high quality produce from California's world-renowned agriculture industry to San Francisco hotels, restaurants, grocers and produce distributors, playing a key role in the fabric of the San Francisco community and bolstering San Francisco's tourism industry by supporting the City's reputation as a world class food destination and center of culinary culture.

B. Until the early 1960's, San Francisco produce wholesalers operated in the area bordered by Drumm, Clay, Front and Jackson Streets. As part of urban revitalization in San Francisco in the 1960's, the area that once housed the produce market was redeveloped as part of a larger redevelopment project area that included Golden Gateway Commons, the Embarcadero Center and surrounding areas.

C. The City and many of the merchants who were to be displaced worked together to find a suitable replacement site for the displaced produce market. A former United States Department of Defense supply depot in the Bayview/Hunter's Point district was identified as a suitable location. A new produce market, originally known as the "San Francisco Produce Terminal" and now more commonly known as the "San Francisco Wholesale Produce Market", was developed on the site in a manner which minimized the expenditure of City funds and the allocation of City resources.

D. The City and County of San Francisco Market Corporation, a California nonprofit corporation (the "**Original Market Corporation**"), was formed for the express purpose of helping the City establish a produce market in the new location. With the City's help, the Original Market Corporation obtained bond financing for the acquisition of the market site and the development of the SFWPM. The Original Market Corporation gave the City a portion of the bond proceeds for the City to use to acquire the site. The City, as ground lessor, and the Original Market Corporation, as ground lessee, entered into a ground lease, dated October 1, 1962 (as subsequently amended, the "**1962 Ground Lease**"), for the purpose of constructing, establishing and operating a municipal produce market on the new site.

E. The 1962 Ground Lease provided that the Original Market Corporation would construct the market and, with the consent of City's Director of Property, enter into subleases to produce merchants and to other persons or entities engaged in incidental or allied businesses. The 1962 Ground Lease and ancillary agreements were structured to provide that the sublease revenue received by the Original Market Corporation would be used to pay the bond indebtedness for the site acquisition and development, establish reserves, pay the costs of operation of the SFWPM, and pay the cost of repair and replacement of the SFWPM. The 1962 Ground Lease required the Original Market Corporation to provide copies of annual budgets, monthly statements, and annual audits to the City Controller for review and comment. The bond

indebtedness incurred in connection with site acquisition and the initial development of the SFWPM and the debt incurred for the development of the 2101 Jerrold Building have been fully repaid by the Original Market Corporation from sublease revenue. No City funds were used to acquire the site, or to develop or operate the SFWPM.

F. The Original Market Corporation constructed the facilities comprising the SFWPM, and, as sublandlord, entered into a number of subleases of space in the Initial Premises, including subleases of produce stalls, warehouse space and office areas to, among others, produce merchants, restaurants, a bank and the San Francisco Produce Association, a California mutual benefit corporation (the "**Association**") (formerly known as Wholesale Fruit and Produce Dealers Association of San Francisco), which is a membership organization for merchants located at the SFWPM. The Association and several merchants further sub-subleased part or all of their respective premises to other merchants and ancillary businesses. As contemplated by the original merchant subleases, the Original Market Corporation and the Association entered into a management agreement, dated as of October 1, 1962, under which the Association, as manager, provided certain managerial and supervisory services to and for the Original Market Corporation in connection with the Original Market Corporation's operation of the SFWPM, and in connection with such managerial services, employed a market manager, secretary-clerk, and janitors, guards, gardeners, parking attendants and other personnel required to operate the market. The management agreement was coterminous with the 1962 Ground Lease, and has now expired.

G. As the January 31, 2013 expiration date of the 1962 Ground Lease approached, the City recognized that the SFWPM had provided significant public benefits to the residents of San Francisco and to San Francisco businesses, both in its important role in the distribution of quality food from its source to San Francisco restaurants and grocery stores, which supported San Francisco's reputation as a world class food destination and served the tourist industry as well as City residents, and because the businesses comprising the SFWPM had provided high quality PDR (production, distribution and repair) jobs, many of which are held by residents of San Francisco. The SFWPM also had served as an informal anchor for PDR activities elsewhere in the City's Bayview neighborhood, attracting other food-related businesses, such as beverage distribution, seafood wholesale and distribution, and dry goods vendors to the Bayview neighborhood.

H. The City also recognized its ongoing commitment to preserving and protecting critical industries related to PDR activities in the Bayview neighborhood, as demonstrated in then-recent zoning changes which altered the zoning of the SFWPM site and surrounding area from M-1 Light Industrial to PDR-2: Core Production, Distribution and Repair. The intent of the PDR-2 area was "to encourage the introduction, intensification, and protection of a wide range of light and contemporary industrial activities."

I. As of the January 31, 2013 expiration date of the 1962 Ground Lease, the Initial Premises were improved with parking areas, truck loading docks, car ports, and ten (10) buildings, comprised of five (5) large warehouse buildings with ancillary office space (known by the Parties as buildings K, L, M, N and 2101 Jerrold), one warehouse building known by the Parties as the Cash & Carry building, three dock buildings, and one office building located at Jerrold Avenue and Toland Street, which included premises leased to Bank of America for a neighborhood serving bank branch (collectively, such improvements, the "**1962 Ground Lease Improvements**"). In total, the SFWPM occupied 288,242 square feet of warehouse, dock and office space. However, as the expiration of the 1962 Ground Lease neared, although there was continuing demand for space in the SFWPM, including expansion needs of then-existing SFWPM occupants that were not currently being met, most of the buildings were nearing the end of their useful life and were in need of repair or upgrade. The site and building configuration posed limitations to addressing the evolving food and operational safety issues and long term growth needs of the SFWPM. There had been changes in the food industry since construction of the facility in 1963, particularly related to food safety regulations, handling procedures, and food

security related issues such as the threat of bioterrorism. The SFWPM needed to provide a facility which could meet those regulatory and private sector driven requirements. Further, the facilities were designed prior to the passage of many current building design standards and regulations, and, in its then-current configuration, SFWPM traffic conflicted with public traffic along Jerrold Avenue.

J. The City remained committed to ensuring the continued availability and viability of suitable facilities for the conduct of produce wholesaling and distribution in the City following the expiration of the 1962 Ground Lease. However, due to the size required and the unique operational requirements of the businesses, the City, the Original Market Corporation and the Association were unable to locate an alternative site that was superior to the then-current SFWPM location. Accordingly, the City and Tenant entered into that certain undated Lease approved by Resolution No. 280-12 of the Board of Supervisors of the City and County of San Francisco, California (the "**2013 Ground Lease**"), a new long term multiphase lease of the SFWPM location that provides for expansion of the SFWPM and improvement of the facilities, and provides that Tenant will enter into subleases with produce merchants and other business and will operate the SFWPM, on the terms particularly set forth in the 2013 Ground Lease. City acknowledged that Tenant's agreement to plan and conduct the expansion and improvement and to operate and manage the SFWPM significantly lessens the burden of government.

K. To reduce conflicts between operations on the SFWPM site and vehicular traffic traveling through the neighborhood, and to provide better controls for food safety within the SFWPM site, City and Tenant anticipated that the Former Street Property (*i.e.*, certain portions of Jerrold Avenue, Selby Street and other streets bisecting or adjacent to the SFWPM) would be vacated for public street purposes, jurisdiction of the Former Street Property would be transferred to City's Department of Real Estate, and such Former Street Property would be added to the premises under the 2013 Ground Lease. The Parties further anticipated that to better facilitate the flow of traffic around the SFWPM and to improve the existing transportation grid in the area, in connection with the vacation and closure of such segments of Jerrold Avenue and Selby Street, portions of Rankin Street, and Innes Avenue would be reconfigured and two (2) new street intersections would be created at Toland Street. To accomplish such reconfiguration, Tenant would demolish the existing improvements on the Relinquished Premises (*i.e.*, certain areas included in the Initial Premises, as defined in the 2013 Ground Lease and this Lease), would construct street improvements on the Relinquished Premises and adjacent streets, and the Relinquished Premises would then be dedicated for public street purposes, as described in and subject to the provisions of Section 6.2 [Surrender and Dedication of Relinquished Premises] of the 2013 Ground Lease and this Lease. Despite such proposed street reconfiguration, the 2013 Ground Lease and this Lease restrict the use of a portion of the Former Street Property (formerly part of Jerrold Avenue and Selby Street) with the goal of ensuring that those particular two former street areas within the Former Street Property would be in a suitable condition for City to rededicate them for public street purposes, at City's sole election, following the expiration or termination of the 2013 Ground Lease and this Lease.

L. The term of the 2013 Ground Lease commenced immediately following the expiration of the 1962 Ground Lease. The premises initially consisted of the Initial Premises. Subject to the terms and conditions in the 2013 Ground Lease, the Parties contemplated that the premises would be expanded to include (i) the 901 Rankin Premises, as more particularly described in the 2013 Ground Lease and this Lease, and (ii) the Former Street Property, subject to the provisions of Section 2.4 of the 2013 Ground Lease. The Parties also contemplated that the Relinquished Premises would be removed from the premises under the 2013 Ground Lease following satisfaction of the conditions described in Section 2.5 of the 2013 Ground Lease. The 901 Rankin Premises included that portion of Kirkwood Avenue that is subject to the Vacation Ordinance described in Recital U, referred to in this Lease as the Kirkwood Segment.

M. The 2013 Ground Lease envisioned the implementation of a master plan, through a phased build-out, beginning with the construction of a new building on the 901 Rankin

Premises and moving westward in subsequent phases, either demolishing existing buildings and constructing new buildings, or performing major renovations and seismic upgrades to the four major warehouse structures, or performing a combination of new construction and major renovations, as more particularly described in Article 5 and Exhibit E of the 2013 Ground Lease. The Parties anticipated that the 2101 Jerrold Building would remain without major renovations.

N. From and after the Commencement Date of the 2013 Ground Lease, development soft costs and equity requirements for financing the Project were funded from Tenant's subrent revenues and from the transfer to Tenant of accumulated reserves generated from subrent revenues under the 1962 Ground Lease. The 2013 Ground Lease included a timetable for the Project development based on projected marketplace demands and the ability to generate Project reserves, with the expectation that City's general funds would not be used for the development of the Project or to support SFWPM operations, thus lessening the burden on the City.

O. In entering into the 2013 Ground Lease, City and Tenant identified the joint goals of (a) continuing to provide a location and facilities in San Francisco to support an economically viable produce wholesaling and distribution industry serving San Francisco and the Bay Area; (b) continuing the SFWPM's role as a supplier of healthy, local, sustainable produce choices for local grocers, restaurants and families; (c) providing underlying support of San Francisco's reputation as a world class food destination by serving the tourist industry of San Francisco and supporting the culinary culture of the City; (d) creating a worker-safe, secure, modern, efficient facility that serves current and future merchants; (e) constructing a facility that is consistent with the City's goals for sustainable, environmentally responsible development; (f) maintaining high standards regarding food safety, security, and sustainability; (g) continuing to provide incubator space for emerging small produce-related businesses; (h) providing diverse, high-quality PDR employment; (i) employing a lease structure which allows the SFWPM to be an economically self-sustaining entity, both for the proposed development and for ongoing operations; and (j) balancing the preceding goals with the City's need to generate a reasonable future financial return on the use of the Premises after completion of the Project build-out and in the form of a revenue stream to supplement the City's general funds. These goals continue in this Lease, and are sometimes collectively referred to as the "**Project Goals**".

P. The Parties agreed that the 2013 Ground Lease would have numerous public benefits, and would lessen the burden on the City, as described in the Recitals of the 2013 Ground Lease and above. In order to achieve those benefits, a structured redevelopment of the SFWPM was outlined in a schedule of performance for the 2013 Ground Lease, and such schedule was inextricably linked to an expectation of reasonable market-based subrent revenues to Tenant sufficient to carry out the schedule. City's lease of the Premises to Tenant at limited initial expense to Tenant under the 2013 Ground Lease afforded the Parties an opportunity to meet the Project Goals in an expeditious fashion, while future revenues would accrue to City from Tenant upon completion of certain milestones as outlined therein.

Q. Prior to the execution of the 2013 Ground Lease, Tenant, the Original Market Corporation and/or the City obtained a number of Regulatory Approvals related to the 2013 Ground Lease and the Project contemplated thereunder. By letter dated September 6, 2011 (the "**Determination Letter**"), the City's Planning Department determined that the vacation of the Former Street Property and Kirkwood Segment, transfer of the Former Street Property and Kirkwood Segment to the jurisdiction of City's Department of Real Estate, and the lease of the Initial Premises, the 901 Rankin Premises and the Former Street Property to Tenant in the manner contemplated by the 2013 Ground Lease was consistent with the requirements of City's Planning Code Section 101.1 and was in conformity with the City's General Plan, subject to certain conditions specified in the Determination Letter. The City's Planning Department issued a Final Mitigated Negative Declaration dated May 11, 2011, as amended July 5, 2011, with respect to the proposed project, and on May 5, 2011 the Original Market Corporation entered into an Agreement to Implement Improvement and Mitigation Measures identified by the Planning Department in the Final Mitigated Negative Declaration (the "**Agreement to**

Implement Improvement and Mitigation Measures"). Further, City's Board of Supervisors approved the vacation of the Former Street Property in Ordinance No. 163-12 (the "**Vacation Ordinance**"), and approved and authorized execution of the 2013 Ground Lease by the City.

R. Since the execution of the 2013 Ground Lease, the 901 Rankin Premises was added to the Premises and Tenant successfully completed construction of a new 84,000 square foot warehouse and distribution building thereon.

S. The Parties now desire to amend and restate the 2013 Ground Lease to accommodate, among other things, leasing of the Premises under a multiple-lease structure that will support traditional, secured construction and permanent financing for each new or renovated building on the Premises. Generally, in connection with Tenant's entering into traditional, construction and/or permanent secured debt financing of Improvements on the Premises to be approved by the City (each such financing, a "**Financing**"), and on the terms and conditions of this Lease, the Parties anticipate terminating this Lease with respect to the applicable property and simultaneously entering into one or more new lease(s) with respect to such property using a form prescribed by this Lease (each, a "**Separate Parcel Lease**"). The Separate Parcel Lease structure is intended to meet typical institutional lenders' requirements for secured financing of new construction on ground leased real property, and support separate financing for each new or renovated building in the phased redevelopment of the Premises. In connection with the subdivision of the Premises, Tenant anticipates recording a declaration of reciprocal easements and/or a common area maintenance and operations CC&Rs consistent with the requirements set forth in Exhibit N with each Separate Parcel Tenant to govern shared access and shared use of common spaces, and to allocate the costs of shared services and maintenance of common spaces.

T. In addition, the Parties now desire to amend and restate the 2013 Ground Lease to revise the conditions to the effectiveness of Vacation Ordinance as to the remaining portions of the City public rights-of-way that bisect the Premises. Allowing these rights-of-way to be vacated and incorporated into the Premises before completion of identified street improvements is necessary for the creation of individual development parcels for the subdivision, Financing, and new construction and/or renovation of the Improvements, and will allow Tenant to continue the re-investment project envisioned by the 2013 Ground Lease and this Lease.

U. All initially capitalized terms used herein are defined in Article 1 below or have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in this Article. In the event of any conflict between a definition given in this Article and any more specific provision of this Lease, the more specific provision shall control.

1.1 "**901 Rankin Payment**" has the meaning set forth in Section 2.3.

1.2 "**901 Rankin Premises**" has the meaning set forth in Section 2.3.

1.3 "**1962 Ground Lease**" has the meaning set forth in Recital D.

1.4 "**1962 Ground Lease Improvements**" has the meaning set forth in Recital I.

1.5 "**2013 Ground Lease**" has the meaning set forth in Recital J.

1.6 "**2101 Jerrold Building**" means that certain building comprised of approximately 55,000 square feet of warehouse and ancillary office space on that portion of the Initial Premises located at the southwest corner of Jerrold Avenue and Toland Street, which was constructed approximately in 2000 and subleased for the distribution of produce and produce-related products.

1.7 "**Accounts**" has the meaning set forth in Section 9.3(a)i.

1.8 "**Acknowledged Non-Conforming Sublease**" has the meaning set forth in Section 8.3(g).

1.9 "**Additional Premises Commencement Date**" has the meaning set forth in Section 6.1.

1.10 "**Additional Rent**" means any and all sums (other than the payment of Net Revenues) that may become due or be payable by Tenant under this Lease.

1.11 "**Additional Replacements**" has the meaning set forth in Section 16.1(b).

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

1.13 "**Agents**" means, when used with reference to either Party to this Lease or any other person or entity, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other person or entity, and their respective heirs, legal representatives, successors and assigns.

1.14 "**Agreement to Implement Improvement and Mitigation Measures**" has the meaning set forth in Recital Q. A copy of the Agreement to Implement Improvement and Mitigation Measures is set forth in Exhibit I-1.

1.15 "**Ancillary Uses**" has the meaning set forth in Section 4.1.

1.16 "**Annual Statement**" has the meaning set forth in Section 12.2(b).

1.17 "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of the City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San

Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

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

1.19 "**Base Rent**" has the meaning set forth in Section 12.1.

1.20 "**Bona Fide Institutional Lender**" means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more persons or entities none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or eleemosynary institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other person or group of persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has assets of at least $500 million in the aggregate (or the equivalent in foreign currency) with respect to senior secured debt and $100 million in the aggregate (or the equivalent in foreign currency) with respect to mezzanine debt, and in the case of any Person or group of persons or entities none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Affiliate of any of the foregoing, or (iii) any person or entity acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, and (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons or entities then qualifying as a Bona Fide Institutional Lender.

1.21 "**Books and Records**" has the meaning set forth in Section 9.3(c).

1.22 "**Budget**" has the meaning set forth in Section 5.4(c).

1.23 "**Building Permit**" means a building or site permit issued by the City's Department of Building Inspection.

1.24 "**Capital Grant Funds**" has the meaning set forth in Section 12.2(a)i.

1.25 "**Capital Repairs and Replacements**" has the meaning set forth in Section 9.3(a)vi.

1.26 "**Casualty Notice**" has the meaning set forth in Section 20.4(a).

1.27 "**Central Market Site**" has the meaning set forth in Section I of Exhibit E.

1.28 "**Certificates of Participation**" has the meaning set forth in Section 11.

1.29 "**Certified Construction Costs**" has the meaning set forth in Section 5.10(b).

1.30 "**Chapter 12T**" has the meaning set forth in Section 47.22.

1.31 "**Chapter 24**" has the meaning set forth in Section 47.21.

1.32 "**City Administrator**" means the City Administrator of the City and County of San Francisco or his or her designee, or successor that succeeds to the rights and obligations of the City Administrator under applicable Law.

1.33 "**City Contractor**" has the meaning set forth in Section 47.17.

1.34 "**City representative**" has the meaning set forth in Section 12.2(c).

1.35 "**City Staff**" has the meaning set forth in Section 5.5(a).

1.36 "**City's Percentage Interest**" has the meaning set forth in Section 21.3(b).

1.37 "**Commencement Date**" means [February 1, 2013].

1.38 "**Community Development Entity**" has the meaning set forth in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended

1.39 "**Completeness Determination**" has the meaning set forth in Section 6.2.

1.40 "**Completion**" or "**Complete**" or "**Completed**" means completion of construction of all or any applicable portion of the Project in accordance with the terms of Article 5.

1.41 "**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the Law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any part of any property to any entity having the power of eminent domain (or to a designee of any such entity), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

1.42 "**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

1.43 **"Construction Contract"** means a construction contract meeting all the requirements described in Section 5.7(a)(vi).

1.44 "**Construction Documents**" has the meaning set forth in Section 18.4(a).

1.45 "**Debt Service**" has the meaning set forth in Section 12.2(a)ii.

1.46 "**Default Rate**" means an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the Effective Date of this Lease, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act.

1.47 "**Design Development Documents**" has the meaning set forth in Section 5.4(a)(ii).

1.48 "**Design Documents**" has the meaning set forth in Section 5.4(a).

1.49 "**Determination Letter**" has the meaning set forth in Recital Q.

1.50 "**Director of DPW**" means the Director of City's Department of Public Works (or successor department) or his or her designee.

1.51 "**Disabled Access Laws**" means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and disabled access Laws under the City's building code.

1.52 "**Dispossession Event**" means a foreclosure, sale, or conveyance in lieu of foreclosure through which a Mortgagee or its designee exercises rights under a Mortgage to acquire title to Tenant's leasehold interest in any Separate Parcel Lease, provided that a "Dispossession Event" shall pertain only to the leasehold interest in the Separate Parcel Lease if held by the initial tenant or an Affiliate of the initial tenant approved by City.

1.53 "**Effective Date**" means the later of (i) the date on which the Parties have executed and delivered this Lease or (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

1.54 "**Event of Default**" has the meaning set forth in Section 28.1.

1.55 "**Expiration Date**" means January 31, 2073.

1.56 "**Extended Sale Period**" has the meaning set forth in Section 44.7(b)ii.

1.57 "**Final Construction Documents**" with respect to any Phase means plans and specifications sufficient for the processing of an application for a building permit for such Phase in accordance with applicable Laws.

1.58 "**First Source Hiring Agreements**" has the meaning set forth in Section 47.10.

1.59 "**Force Majeure**" means events or conditions which result in delays in a Party's performance (excluding a Party's performance of the payment of money required under the terms of this Lease) of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of the delayed Party, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, war, explosion, invasion, insurrection, rebellion, riots, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, epidemics, pandemics, and inclement weather which is materially inconsistent with customary weather patterns. Force Majeure does not include the lack of credit or the failure to obtain financing or have adequate funds and therefore, no event caused by a lack of credit or a failure to obtain financing shall be considered to be an event of Force Majeure for purposes of this Lease. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, and to Restore if appropriate, and to complete performance of the hindered act.

1.60 "**Former Street Property**" has the meaning set forth in Section 2.4.

1.61 "**GAAP**" means generally accepted accounting principles, consistently applied.

1.62 "**General Plan Referral Conditions**" has the meaning set forth in Section 5.1(b).

1.63 "**Gross Revenues**" has the meaning set forth in Section 12.2(a).

1.64 "**Handle**" when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material (Handling will have a correlative meaning).

1.65 "**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" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

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

1.67 "**Hazardous Material Laws**" means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the Effective Date, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

1.68 "**Impositions**" has the meaning set forth in Section 13.1(b).

1.69 "**Improvements**" means all buildings, structures, fixtures and other improvements erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Project.

1.70 "**Indemnified Parties** "means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City.

1.71 "**Indemnify**" means indemnify, protect and hold harmless.

1.72 "**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

1.73 "**Initial Premises**" means the real property in the City and County of San Francisco, California, generally depicted on Exhibit A-1.2. The Initial Premises were comprised of approximately 10.25 acres of land. The Initial Premises were those premises occupied by the Tenant when the 2013 Ground Lease commenced.

1.74 "**Inspection Report**" has the meaning set forth in Section 16.1(b).

1.75 "**Invitees**" when used with respect to Tenant means the customers, patrons, invitees, guests, permittees, members, licensees, concessionaires, assignees, transferees and Subtenants of Tenant and the customers, patrons, invitees, guests, permittees, members, licensees, concessionaires, assignees, transferees and sub-tenants of such Subtenants.

1.76 "**Kirkwood Segment**" means that portion of Kirkwood Avenue that currently runs through the 901 Rankin Premises, as generally depicted on the attached Exhibit A-3.2.

1.77 "**Law**" or "**Laws**" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof (including, without limitation, any subsurface area, the use thereof and of the Premises, or any portion thereof, and of the buildings and Improvements thereon), whether or not in the contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Premises, or any portion thereof. The term Law or Laws shall also include Tenant's compliance with General Order 143-B and 95 of the Public Utilities Commission of the State of California (notwithstanding the fact that such General Orders may not be directly applicable to Tenant).

1.78 "**Lease**" means this Lease, as it may be amended from time to time in accordance with its terms.

1.79 "**Lease Year**" means, for the Term of this Lease, each twelve (12) month period beginning on the Commencement Date (i.e., February 1, 2013), and each February 1 thereafter during the Term. Each Lease Year will end on the following January 31, unless the Term ends before that date.

1.80 "**Leasing Reserve Account**" has the meaning set forth in Section 9.3(a)vii.

1.81 "**Leasing Schedule**" has the meaning set forth in Section 7.1(a).

1.82 "**Loss**" or "**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 costs and expenses, (including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

1.83 "**Major Damage or Destruction**" means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed sixty percent (60%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

1.84 "**Management Agreement**" has the meaning set forth in Section 9.2(a).

1.85 "**Manager**" has the meaning set forth in Section 9.2(a).

1.86 "**Market Rent**" has the meaning set forth in Section 7.1(c).

1.87 "**Market Rent Schedule**" has the meaning set forth in Section 7.1(b).

1.88 "**Memorandum of Lease**" has the meaning set forth in Section 48.10.

1.89 "**Minor Alterations**" has the meaning set forth in Section 18.2.

1.90 "**Mitigation and Improvement Measures**" has the meaning set forth in Section 5.1(b).

1.91 "**Monthly Income Statement**" has the meaning set forth in Section 12.2(b).

1.92 "**Mortgage**" means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of all or a portion of Tenant's leasehold interest under this Lease, or Separate Parcel Tenant's leasehold interest under the Separate Parcel Lease, that is recorded in the Official Records.

1.93 "**Mortgage Confirmation Statement**" has the meaning set forth in Section 44.4(b).

1.94 "**Mortgagee**" means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

1.95 "**Net Awards and Payments**" has the meaning set forth in Section 21.4.

1.96 "**Net Effective Rental Rate**" means the rental rate, including periodic increases, minus the tenant improvement allowance (other than any tenant improvement allowance for

"green building" components, equipment or other features intended to assist a Subtenant in complying with applicable "green building" Laws) and the value of all leasing concessions amortized over the Sublease term, on a per square foot basis.

1.97 "**Net Revenues**" has the meaning set forth in Section 12.2.

1.98 "**New Lease**" has the meaning set forth in Section 44.10(d).

1.99 "**Nominee**" has the meaning set forth in Section 11.

1.100 "**Non-Disturbance Agreements**" has the meaning set forth in Section 8.5(a).

1.101 "**Nutritional Standards Requirements**" has the meaning set forth in Section 47.23.

1.102 "**Official Records**" means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

1.103 "**Operating Account**" has the meaning set forth in Section 9.3(a).

1.104 "**Operating Reserve Account**" has the meaning set forth in Section 9.3(a).

1.105 "**Operating Expenses**" has the meaning set forth in Section 12.2.

1.106 "**Original Market Corporation**" has the meaning set forth in Recital D.

1.107 "**Partial Condemnation**" has the meaning set forth in Section 21.3.

1.108 "**Party**" means City or Tenant, as a party to this Lease; "**Parties**" means both City and Tenant, as Parties to this Lease.

1.109 "**Payment Caps**" has the meaning set forth in Section 9.3(a)ii.

1.110 "**Permitted Title Exceptions**" has the meaning set forth in Section 22.1.

1.111 "**Permitted Uses**" has the meaning set forth in Section 4.1.

1.112 "**Personal Property**" means all trade fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant or any subtenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

1.113 "**Pesticide Ordinance**" has the meaning set forth in Section 25.1(d).

1.114 "**Phase**" has the meaning set forth in Section I of Exhibit E.

1.115 "**Preliminary Construction Documents**" has the meaning set forth in Section 5.4(a)(iii).

1.116 "**Premises**" shall mean the real property from time to time leased to Tenant pursuant to the terms of this Lease. The "Premises" initially referred to the Initial Premises. The initial Premises were modified by the addition of the 901 Rankin Premises and the Former Street Property in accordance with the terms of the 2013 Ground Lease and this Lease. The Premises leased hereunder may be modified by boundary adjustments or other modifications as may otherwise be agreed to by the Parties from time to time in one or more written Lease amendments to this Lease. The Premises may also be amended to remove the applicable

Separate Parcel Lease Premises from the Premises, in accordance with Section 2.9 hereunder. The Premises shall include the 1962 Ground Lease Improvements, the Project and any permitted Improvements, together with any additions, modifications or other Subsequent Improvements thereto permitted hereunder.

1.117 "**Prevailing Wage Requirements**" has the meaning set forth in Section 5.11(a).

1.118 "**Primary Uses**" has the meaning set forth in Section 4.1.

1.119 "**Prime Rate**" means the rate of interest designated as the "prime rate" in The Wall Street Journal, or, if such publication ceases to exist, in a business publication of similar substance and reputation thereto.

1.120 "**Project**" means the expansion, improvement and or replacement of the Improvements on the Premises through a phased build out, as described in detail in Exhibit E.

1.121 **"Project Development Account**" has the meaning set forth in Section 9.3(a)v.

1.122 "**Project Development Costs**" has the meaning set forth in Section 12.2.

1.123 "**Project Goals**" has the meaning set forth in Recital O.

1.124 "**Project Requirements**" has the meaning set forth in Section 5.1(b).

1.125 "**Property Related Insurance**" means the insurance set forth in items i, ii and v of Section 21.1(a).

1.126 "**Proposed Transfer**" has the meaning set forth in Section 8.1(g).

1.127 "**Proposed Uses**" has the meaning set forth in Section 44.7(b)ii.

1.128 "**QALICB**" has the meaning set forth in Section 8.1(i).

1.129 "**Regulatory Approval**" means any authorization, approval or permit required by any governmental agency having jurisdiction over the Project or the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Art Commission and the City's Department of Building Inspection.

1.130 "**Release**" when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

1.131 "**Relinquished Premises**" has the meaning set forth in Section 2.5.

1.132 "**Relinquished Premises Deletion Date**" has the meaning set forth in Section 3.1.

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

1.134 "**Rent**" means Base Rent and Additional Rent.

1.135 "**Rent Roll**" has the meaning set forth in Section 8.3(k).

1.136 "**Replacements**" has the meaning set forth in Section 16.1(b).

1.137 "**Replacement Reserve Account**" has the meaning set forth in Section 9.3(a)vi.

1.138 "**Replacement Reserve Account Funds**" has the meaning set forth in Section 20.3.

1.139 "**Reserve Account**" has the meaning set forth in Section 9.3(a)vii.

1.140 "**Restoration**" means the repair, restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable to substantially the same condition they were in immediately before an event of damage or destruction or, in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. All Restoration shall be conducted in accordance with the provisions of Article 18. ("Restore" and "Restored" shall have correlative meanings.). Notwithstanding the foregoing, in the event of a Major Damage or Destruction occurring at any time during the Term, Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements as Restored, constitute a first class wholesale produce market and distribution center. In connection with any such Restoration after an event of Major Damage or Destruction, the Project and the other Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Project as so redesigned is a first class project affording similar public benefits as the original Project.

1.141 "**Restricted Area**" means the area depicted on Exhibit C-3.

1.142 "**Safety Restoration Work**" has the meaning set forth in Section 20.4(b)ii.

1.143 "**Salary History**" " has the meaning set forth in Section 47.28.

1.144 "**Sale Period**" has the meaning set forth in Section 44.7(b)i.

1.145 "**Schedule of Performance**" is described in Exhibit G.

1.146 "**Schematic Drawings**" has the meaning set forth in Section 5.4(a)(i).

1.147 "**Scope of Development**" is described in Exhibit E.

1.148 "**Separate Parcel Lease**" has the meaning set forth in Section 2.9.

1.149 "**Separate Parcel Lease Premises**" has the meaning set forth in Section 2.9.

1.150 "**Separate Parcel Tenant**" has the meaning set forth in Section 2.9.

1.151 "**SFPUC Facilities**" has the meaning set forth in Section 2.8(a).

1.152 "**SFWPM**" has the meaning set forth in Recital A.

1.153 "**Significant Deviation From Economic Model**" means extraordinary economic events or conditions, such as credit and financial crises, spikes in construction costs, labor shortages, unusually high rates of inflation and other similar conditions, or numerous less significant economic events or conditions that, when considered cumulatively, cause the assumptions upon which the Schedule of Performance is based to become so unreliable as to prevent timely performance.

1.154 "**Significant Subtenant Change**" means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in a Subtenant, directly or indirectly, in one or more transactions, by operation of law or otherwise, that results in any of the following: (1) a change in the identity of persons or entities controlling the Subtenant, provided that a Significant Change will not include the Transfer of beneficial interests in any entity as a result of the trading of shares on the open-market where such entity is a publicly-traded company, (2) the admission of any equity investor that has the right to exercise day-to-day management or day-to-day control over the business of the Subtenant, (3) the dissolution of the Subtenant, (4) the sale of fifty percent (50%) or more of the Subtenant's assets, capital or profits, or the assets, capital or profit of any person or entity controlling the Subtenant, except for sales of publicly traded stock.

1.155 "**Stabilization Date**" has the meaning set forth in Section 12.2.

1.156 "**Status Change Notice**" has the meaning set forth in Section 46.1(c).

1.157 "**Street Increment Dedications**" has the meaning set forth in Section 6.2.

1.158 "**Sublease**" means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities).

1.159 "**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements, other than completion of the Project.

1.160 "**Substantial Condemnation**" has the meaning set forth in Section 21.3(a).

1.161 "**Subtenant**" means any person or entity leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

1.162 "**Sufficient Restoration Funds**" has the meaning set forth in Section 20.3.

1.163 "**Surrounding Street Improvements**" has the meaning set forth in Section III.C. of Exhibit E. **[Note to Draft: Revise Section and Exhibit references as necessary when overall draft is closer to final]**

1.164 "**Tax Credit Assignment**" has the meaning set forth in Section 8.1(i).

1.165 "**Tenant**" has the meaning set forth in the introductory paragraph of this Lease and includes Tenant's permitted successors and assigns.

1.166 "**Tenant's Organizational Expenses**" has the meaning set forth in Section 12.2(a)vi.

1.167 "**Tenant's Percentage Interest**" has the meaning set forth in Section 21.3(b).

1.168 "**Tenant's Restoration Funds**" has the meaning set forth in Section 20.3.

1.169 "**Term**" has the meaning set forth in Section 3.1.

1.170 "**Total Condemnation**" has the meaning set forth in Section 21.2.

1.171 "**Transfer**" means to sell, convey, assign, transfer, encumber, alienate or otherwise dispose (directly or indirectly, by one or more transactions, and by operation of law or

otherwise) of all or any interest or rights in the Project, the Premises, the Improvements, and/or this Lease, including but not limited to any right or obligation to develop or operate the Premises (other than pursuant to a Sublease made in the ordinary course), or otherwise do any of the above or make any contract of agreement to do any of the same, or permit a Significant Change to occur.

1.172 "**Umbrella Policy**" has the meaning set forth in Section 24.1(a)iii.

1.173 "**Uninsured Casualty**" has the meaning set forth in Section 20.4(b).

1.174 "**Unmatured Event of Default**" means any event, action or inaction that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

1.175 "**Vacation Date**" has the meaning set forth in Section 6.1.

1.176 "**Vacation Ordinance**" has the meaning set forth in Recital Q.

2. PREMISES; DELIVERY; CONDITION OF PREMISES

2.1. General; Limits on Definition of Premises.

"Premises" has the meaning set forth in Article 1 above. Any acreage stated in this Lease with respect to the Premises or any part thereof is an estimate only, and City does not warrant it to be correct.

2.2. Initial Premises.

The "**Initial Premises**" refers to the real property depicted on the attached Exhibit A-1.2.

2.3. 901 Rankin Premises.

(a) 901 Rankin. The "**901 Rankin Premises**" refers to the real property in the City and County of San Francisco, California, described on the attached Exhibit A-2.1 and generally depicted on the attached Exhibit A-2.2. The 901 Rankin Premises have been accepted by Tenant. As of the Effective Date, the Premises are depicted on the attached Exhibit A-1.1.

(b) Occupying City Department Relocation Costs. Commencing on February 1, 2013 and continuing until January 1, 2028, Tenant shall pay to City Eleven Thousand Eight Hundred Sixty-Two Dollars ($11,862.00) per month (the "**901 Rankin Payment**") as a contribution toward City's costs associated with relocating the Occupying City Department, which 901 Rankin Payment shall constitute Additional Rent, as described in Section 12.7 below.

2.4. Former Street Property; Vacation of Former Street Property.

The "**Former Street Property**" refers collectively to the real property in the City and County of San Francisco, California, comprised of (i) certain portions of Jerrold Avenue, Selby Street, Lettuce Lane, and Milton J. Ross Street that currently run through the SFWPM, and (ii) a portions of Innes Avenue and Rankin Street adjacent to the Initial Premises, all as more particularly described on the attached Exhibit A-3.1 and generally depicted on the attached Exhibit A-3.2. There are certain restrictions on the use of certain portions of the Former Street Property as more particularly set forth in Section 2.8 below. The vacation process with respect to the Former Street Property is described in Article 6 below and delivery of the Former Street Property to Tenant is described in Section 3.1 below.

2.5. Relinquished Premises

The "**Relinquished Premises**" refers individually and collectively to those increments of the Premises described on the attached Exhibit B-1 and generally depicted on the attached Exhibit B-2. Tenant's obligation to improve the Relinquished Premises is described in

Section 6.2 below and the surrender of the Relinquished Premises and expiration of this Lease with respect to the Relinquished Premises is described in Section 3.1 below.

2.6. Correction of Property Descriptions.

The Parties reserve the right, upon mutual agreement of the City's Director of Property and Tenant, to enter into one or more memoranda setting forth the legal description of the Initial Premises or technical corrections to reflect any non-material changes in the legal description and square footages of the 901 Rankin Premises or the Former Street Property occurring during or after the development of the Project, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

2.7. Condition of Premises.

(a) Inspection of Premises. Tenant acknowledges that (i) as of the Effective Date, Tenant conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of each increment of the Premises and the suitability of the Premises for Tenant's intended use and (ii) Tenant has accepted and is currently in possession of the Premises.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises, and each increment thereof, are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, any water lines, sewer lines, or other facilities, structures, equipment or fixtures located on or under the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Waiver and Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises (including, but not limited to, soils and groundwater conditions), (ii) any Laws applicable thereto, including without limitation, Hazardous Materials Laws; provided that the foregoing release shall not be applicable in the event of the intentional concealment of a material fact or matter with respect to the Premises that was actually known by the City Administrator or the Director of Property at or before the Commencement Date and not disclosed to Tenant in writing.

In connection with the foregoing release, Tenant acknowledges that it is familiar with 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.

Tenant's Initials: V/t

Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(d) Without limiting the foregoing provisions of this Section 2.7, City's Director of Property shall cause City staff at the Department of Real Estate to cooperate in good faith with Tenant's attempts to resolve title matters which arise in connection with Tenant's development and financing of the Project, including but not limited to filing and prosecuting an action under the McEnerney Act at Tenant's request and at Tenant's sole cost and expense.

2.8. Utility Operators' Rights; SFPUC Facilities; Reserved Rights

(a) Utility Operators; SFPUC Facilities; Restrictions. Tenant acknowledges that, on the effective date of the 2013 Ground Lease, certain utilities were located on and under portions of the Premises, including, without limitation, those utilities under the Former Street Property and in that portion of the Initial Premises located in the existing median of Jerrold Avenue that are identified on the attached Exhibit C-1. Without limiting the generality of Section 2.6 and Section 2.7 above, Tenant accepted the Premises subject to the rights of owners and operators of such utilities (collectively, the "**Utility Operators**"). As indicated on Exhibit C-1 and Exhibit C-2, the San Francisco Public Utilities Commission (the "**SFPUC**") is a Utility Operator. The City, on behalf of SFPUC, reserves the right to use, operate, maintain, repair, enlarge, replace, modify, expand, and reconstruct the existing main sanitary drain line presently located in the general area delineated and labeled on the attached Exhibit C-3 and any other pipelines, drains or appurtenances which connect improvements on the Premises to such main sanitary drain line (collectively the "**SFPUC Facilities**") in coordination with Tenant and in a manner designed to minimize unreasonable interference with Tenant's and Subtenants' business operations and use of the Premises. Except in the event of any emergency, prior to granting SFPUC or any other Utility Operator permission pursuant to any license agreement, permit to enter, or similar such agreement to enter upon the Premises for the purpose of using, operating, maintaining, repairing, enlarging, replacing, modifying, expanding or reconstructing any utility facilities located on or under the Premises, City shall notify Tenant and use good faith efforts to cause such Utility Operator to coordinate with Tenant in a manner designed to minimize unreasonable interference with Tenant's and Subtenants' business operations and use of the Premises. Tenant shall not do or grant to others the right to do anything in, on, under or about the Former Street Property that could cause damage to or interference with SFPUC Facilities or the facilities of the other Utility Operators. Without limiting the foregoing, any development, installation, repair and replacement by Tenant or third parties to whom Tenant has given rights to the Former Street Property area shall be performed in a manner which does not endanger or damage any of then-existing utility installations within the Former Street Property. To prevent damage to the SFPUC Facilities, neither Tenant nor any third party shall use vehicles or equipment in excess of the standards established by AASHTO-H20 within the Restricted Area designated on Exhibit C-3 without the prior written consent of a staff member of the SFPUC. Following any installation or construction in or on the Restricted Area, Tenant shall promptly provide the SFPUC with a copy of the as-built plans for such installation or construction.

(b) Reserved Rights. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(i) Any and all water and water rights, including, but not limited to any and all surface water and surface water rights, riparian rights and appropriative water rights to surface streams and the underflow of streams;

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

(iii) The right, after reasonable prior written notice to Tenant and consideration of any objection by Tenant to the same, to grant future rights and easements over, across, under, in and upon the Premises as City shall determine in its sole discretion, provided that any such right or easement shall not unreasonably interfere with Tenant's use of the Premises; and

(iv) All rights of access provided for in Section 43.1 below.

2.9. Separate Parcel Lease; Termination of Premises.

(a) Financing Notice. In connection with a Financing, Tenant may propose, by notice to City (each a "**Financing Notice**"), entering into one or more new lease(s) with City with respect to only those legal parcels within the Premises that will secure a Financing for the construction of a new building or substantial renovation of an existing building (each such lease, a "**Separate Parcel Lease**", and such portion of the Premises, the "**Separate Parcel Lease Premises**"). Each Financing Notice shall (i) generally describe the proposed Separate Parcel Lease Premises, (ii) describe the terms of the Financing, the identity of the Mortgagee, and otherwise provide such information described in Article 44 in order for City to approve the Mortgagee and to provide a Mortgage Confirmation Statement, and (iii) the status of the design work and cost estimates for the new or renovated building, and any conditions or requirements that must be completed, including the completion of any subdivision maps, for the Separate Parcel Lease. If a Financing proposes to include multiple loans on separate legal parcels within the Separate Parcel Lease Premises, in no event will the terms of such Financing allow for cross-default among the separate loans, except with City's consent in its sole and absolute discretion. The Parties expect that Tenant will be the tenant under any Separate Parcel Lease (the "**Separate Parcel Tenant**"), although Tenant may form a new entity to be the Separate Parcel Tenant if required by the Mortgagee and subject to the City's prior written consent, not to be unreasonably withheld. Upon City's receipt of a Financing Notice, (i) the parties agree to meet and confer in good faith in order to advance the proposal and determine the steps to be taken and a proposed schedule for the creation of the Separate Parcel Lease(s), and (ii) Tenant will provide to City any information or documents requested by City relative to the proposed Financing, Mortgagee, and Separate Parcel Lease(s). City may withhold approval in its reasonable discretion if it determines that Tenant's financing plan for the proposed Financing is not viable or otherwise imprudent in light of estimated costs and projected revenues or past experience with Separate Parcel Leases has created problems with market operations or administration. City agrees to act in good faith with respect to any such proposal. If City withholds approval of any proposed Separate Parcel Lease, it will provide a brief written statement of the reasons for its decision not to approve Tenant's proposal. Unless otherwise agreed to by City, Separate Parcel Tenant would be expected to comply with the same requirements under each Separate Parcel Lease as Tenant under this Lease, including but not limited to the insurance requirements described in Section 24 hereof. The Parties anticipate that Tenant will deliver a Financing Notice, if at all, no later than its submittal of Preliminary Construction Documents in connection with the proposed new or renovated building for City's review, as contemplated in greater detail in **Article 5** of this Lease.

(b) Monthly Rent. Each Separate Parcel Lease shall contain a "**Monthly Rent**" schedule that becomes effective only upon a Dispossession Event (as defined in Section

1.35, above). Except with respect to any Separate Parcel Lease for which there has been a Dispossession Event, each Separate Parcel Tenant shall continue to pay Net Revenues into the Project Development Account in the manner described in **Article 12** of the form of Separate Parcel Lease attached as **Exhibit M** and **Article 12** of this Lease.

(c) Determination of Monthly Rent. Following Tenant's delivery of a Financing Notice, the City will engage a certified MAI appraiser (the "**Appraiser**") from City's as-needed pool of appraisers to determine a fair market rent for the Separate Parcel Lease. Tenant shall reimburse City for the cost of the appraisal. The Appraiser shall determine a fair market Monthly Rent schedule for each proposed Separate Parcel Lease in accordance with the applicable appraisal instructions attached to this Lease as **Exhibit O-1** and **Exhibit O-2**. In determining the Monthly Rent schedule for a proposed Separate Parcel Lease on which new construction in furtherance of the Project is proposed, the Appraiser shall use the instructions set forth in **Exhibit O-1.** In determining the Monthly Rent schedule for a proposed Separate Parcel Lease for a parcel containing an existing building that Tenant proposes to pledge as security for a Financing, the Appraiser shall use the instructions set forth in **Exhibit O-2.** The monthly rent schedule shall incorporate an annual escalation in the amount of any increase (but not any decrease) in the Consumer Price Index, provided that the Monthly Rent shall not increase by more than 4% of the previous year's rent amount.

(d) Form of Separate Parcel Lease. If approved by the City, the Parties will enter into the Separate Parcel Lease(s) for the applicable Separate Parcel Lease Premises substantially in the form attached hereto as **Exhibit M**, with such changes as may be agreed upon by the City and Tenant; provided that no Separate Parcel Lease shall become effective unless and until (i) a final subdivision map creating the Separate Parcel Lease Premises has been recorded in the Official Records of the City, (ii) the close of escrow in connection with the applicable Financing, (iii) the removal of any prior Mortgage from the Separate Parcel Lease Premises, if applicable, and (iv) the Parties amend this Lease to remove the applicable Separate Parcel Lease Premises from the Premises under this Lease. The term of a Separate Parcel Lease approved by the City will expire on the earlier of: the date of repayment of the Financing for the Separate Parcel Lease Premises (not including any repayment in connection with (i) a re-financing prior to the expiration of the initial term of the Separate Parcel Lease or (ii) a Mortgagee's exercise of rights following a Disposition Event), or the original term of the Mortgage for the Separate Parcel Lease Premises, unless extended by City in writing. Upon expiration of the Separate Parcel Lease, this Lease shall be amended to include the Separate Parcel Lease Premises without the need for approval by the Board of Supervisors.

(e) City Costs; Board Delegation. Tenant will reimburse the City for its actual costs relating to the creation of any Separate Parcel Lease and the amendment of this Lease as contemplated by this Section 2.9, and Tenant shall be responsible for all closing and recording fees and any taxes or assessments in connection with the transaction. Any City approvals under this Section 2.9 shall be made, if at all, by the Director of Property in writing following consultation with the Controller, City Attorney's Office, and any other City staff selected at the Director of Property's discretion. Nowithstanding the foregoing, any Separate Parcel Lease, and corresponding amendment to this Lease to remove the applicable Separate Parcel Lease Premises, shall be subject to the prior approval of the Board of Supervisors, where required by law.

3. TERM; INCREMENTAL COMMENCEMENT

3.1. Term; Incremental Commencement and Surrender of Relinquished Premises.

The Premises are leased for the term specified in this Article 3, subject to the terms and conditions set forth herein and elsewhere in this Lease, and unless sooner terminated pursuant to the provisions of this Lease. The Term commenced (a) with respect to the Initial Premises on the Commencement Date, and (b) with respect to the 901 Rankin Premises on September 18, 2013. The Term will commence with respect to each increment of the Former Street Property on the applicable Additional Premises Commencement Date, as provided in Section 6.1 below. In accordance with Section 6.2, Tenant shall surrender each increment of Relinquished Premises and such increment shall be deleted from the Premises under this Lease on a date approved by the City and Tenant (each such date, a "**Relinquished Premises Deletion Date**"); provided (i) the City shall have the right to demand relinquishment of some or all of the Relinquished Premises at any time upon not less than 90 days' prior written notice to Tenant, and (ii) Tenant shall remain liable for all of Tenant's obligations which arose with regard to the Relinquished Premises prior to the Relinquished Premises Deletion Date and Tenant's indemnification obligations set forth in this Lease with regard to the Relinquished Premises that survive the expiration or termination of this Lease shall survive the Relinquished Premises Deletion Date. Each Relinquished Premises Deletion Date shall be confirmed by the Parties in writing following the occurrence thereof. The term of this Lease shall expire with respect to the entire Premises on January 31, 2073 (the "**Expiration Date**"), unless earlier terminated in accordance with the terms of this Lease. The period from the Commencement Date until the Expiration Date is referred to as the "**Term**".

3.2. Intentionally deleted.

3.3. Discussions Regarding Possible Future Use of the Premises.

In order to allow Tenant and Subtenants to plan for the orderly continuation, transition or termination, as applicable, of business under this Lease and the Subleases, approximately five (5) years before the Expiration Date, provided that this Lease has not been earlier terminated, City's Director of Property, or his or her designee, and Tenant shall meet to discuss whether the Parties are interested in extending the Term of this Lease or entering into a new lease for the Premises or some portion thereof. Tenant acknowledges that any future agreement to extend the Term of the Lease or to enter into a new lease would be subject to the prior approval of the then-Board of Supervisors, in its sole and absolute discretion.

4. USES

4.1. Permitted Use.

Tenant shall use the Premises for the operation of a produce wholesaling and distribution center serving San Francisco and the Bay Area, bringing quality food from its source to San Francisco and Bay Area food businesses and citizens by bringing together merchants, distributors, buyers and sellers, and providing warehouses, infrastructure, program space and a supportive structure for individual businesses engaged in the following (the "**Permitted Use**" or "**Permitted Uses**"), consistent with PDR zoning: 1) receiving, storing, selling, distributing and producing agriculture, horticultural products, produce and other food products and related uses; ancillary office and administration functions; hosting food industry trade shows; and educational and training programs related to the food industry, nutrition and sustainability (together, the "**Primary Uses**"); and 2) support and services uses that are ancillary to and necessary or desirable to support the Primary Uses, including, without limitation, limited retail, restaurants, pallet repair, equipment repair, truck maintenance and washing, waste management and

recycling facilities necessary or desirable for the operation of the SFWPM, security services facilities and break room facilities for truck drivers (together, the "**Ancillary Uses**"). Tenant shall operate the Premises in a manner which maintains high standards regarding food safety and security. Any exceptions to the Permitted Use shall require prior approval of City, which may be withheld or granted in its sole discretion. Notwithstanding the foregoing, (i) prior to its demolition in connection with the Project Tenant may sublease space in the existing office building located at 2095 Jerrold Avenue and commonly known as the Produce Building, for general office uses, and (ii) prior to development of the area in connection with the Project Tenant may sublease space for construction staging and similar temporary uses in the area generally depicted and labeled "Temporary Staging Area" on the attached Exhibit L.

4.2. Development and Ongoing Operations.

Tenant acknowledges that a material consideration for this Lease is Tenant's agreement to develop the Project in the manner described in Article 5 below, to develop and implement a leasing strategy as described in Article 7 below, and to operate the Premises as provided in this Article 4 and as described in Article 9 below.

4.3. Education and Community Involvement.

Tenant shall use good faith efforts to support educational and training programs, displays and/or presentations related to the food industry, including, as appropriate, providing space for programs related to the food industry, nutrition and sustainability, and shall explore ways to cultivate connections with the Bayview neighborhood and the wider San Francisco community.

4.4. Financial Sustainability.

Tenant shall use diligent, good faith efforts to actively seek grants, stimulus funds and other monies to supplement the sublease revenues available for development of the Improvements and operation of the SFWPM. Tenant shall include a summary of its efforts to secure grants, stimulus funds and other monies as part of the Development Plan(s) required pursuant to Section 5.2, below, which summary shall include a list of those funding sources investigated, actual applications for funds tendered, status of applications for funding, and status of any funding received from such sources.

4.5. Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

i. any activity that creates a public or private nuisance;

ii. any activity that is not within the Permitted Use;

iii. any activity that will cause damage to the Premises or the Improvements;

iv. any activity that is reasonably determined by City to constitute waste, disfigurement or damage to the Premises;

v. any activity that is reasonably determined by City to constitute a material nuisance to owners or occupants of adjacent properties. Such activities include, without limitation, the preparation, manufacture or mixing of anything that emits any materially objectionable or unlawful odors, noises or lights onto adjacent properties, or the unreasonable or unlawful use of loudspeakers or sound apparatus that can be heard outside the Premises or the unlawful or unreasonable use of any light apparatus that can be seen outside of the Premises (taking into account the Permitted Uses and the hours of operation of the businesses in the Premises), subject to any right given Tenant to alter, modify, repair, maintain, restore or construct Improvements; provided, however, that such activities are performed in accordance with all Laws and all terms and conditions of this Lease as applicable;

vi. any activity that will materially injure, obstruct or interfere with the rights of Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress, to their properties, except to the extent necessary on a temporary basis to alter, modify, repair, maintain, restore or construct Improvements and conducted within the Permitted Uses hereunder in accordance with all Laws and Regulatory Approvals;

vii. any activity that attracts members of the general public to the Premises in a manner that materially obstructs, conflicts or interferes with the food-oriented wholesaling and distribution activities of Subtenants;

viii. use of the Premises for sleeping or personal living quarters and use;

ix. any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of City; and

x. while any New Markets Tax Credit loan is outstanding, any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(b) Land Use Restrictions: Special Restrictions Regarding Former Street Property. Tenant shall not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on City's reversionary interest in the Premises, or obtain changes in applicable land use Laws or conditional use permits for any uses not provided for hereunder, in each instance without City's prior written consent, which consent may be withheld in City's sole discretion. Tenant acknowledges that City wishes to preserve the ability to rededicate for public street use those portions of the Former Street Property within current Jerrold Avenue and Selby Street rights of way upon the expiration or termination of this Lease, and that, accordingly, Tenant shall not perform or permit any improvements on those particular portions of the Former Street Property which would be inconsistent with future use as a public street, other than improvements which may readily be removed at the expiration or termination of this Lease.

4.6. Continuous Use

Tenant shall use good faith efforts to ensure that the Premises are used continuously during the Term in accordance with the Permitted Uses and shall not allow the Premises to remain unoccupied or unused without the prior written consent of City, which City may withhold in its sole discretion, subject to Article 20 [Damage or Destruction], Article 21 [Condemnation] and Force Majeure, and further subject to vacancies which are reasonably necessary to plan for and construct the Phases of the Project and customary vacancies of space that may arise from time to time in connection with retenanting.

5. DEVELOPMENT OF PROJECT

5.1. Scope of Development; Project Requirements; Costs

(a) Scope of Development. Tenant shall construct or cause to be constructed the Improvements in the manner set forth in this Article 5 and substantially as set forth in the Scope of Development attached hereto as Exhibit E and the Development Plan approved by the City, as may be amended from time to time with the City's approval.

(b) Project Requirements. Tenant shall construct the Improvements in compliance with Design Documents approved pursuant to this Article 5, and in compliance with all applicable Laws, including, without limitation, Hazardous Materials Laws and Disabled Access Laws and with the Agreement to Implement Improvement and Mitigation Measures set

forth in Exhibit I-1 attached hereto and the mitigation and improvement measures specified therein (the "**Mitigation and Improvement Measures**") and items 2, 3, 4 and 6.b. set forth in Exhibit I-2 attached hereto (the "**General Plan Referral Conditions**"), as excerpted from the Determination Letter. All of the requirements set forth in this Section 5.1(b) are referred to collectively as the "**Project Requirements**."

(c) Costs. Tenant shall bear all of the cost of developing the Premises as described in Exhibit E. Without limiting the foregoing, Tenant shall be responsible for performing all preparation work necessary for the development of the Improvements, to the extent the cost thereof has not previously been paid by the Original Market Corporation. Such preparation of the property shall include, among other things, investigation and Remediation of Hazardous Materials required for development or operation of the Improvements, demolition and site preparation, all structure and substructure work, and Improvements and tenant improvements. Nothing in this Section 5.1(c) shall prohibit Tenant from using grants or loans, including grants and loans from City, if any.

(d) Funding for Surrounding Street Improvements. Tenant shall not pay for any architectural, surveying, engineering, legal, project management, construction, contracting, or other consulting services for the Surrounding Street Improvements with funds transferred to Tenant from the Original Market Corporation or transferred to Tenant by City pursuant to the terms of Section 10 of the 2013 Ground Lease. Notwithstanding the foregoing, Tenant may use any such funds for such purpose at Tenant's election made by written notice to City, subject to City's reasonable approval, provided that in such event the contracts and services for Surrounding Street Improvements for which such funds are used shall be subject to the requirements of Chapter 6 of City's Administrative Code, notwithstanding the provisions of Section 5.1(e) below.

(e) Competitive Requirements Inapplicable. Pursuant to the Board of Supervisors Resolution approving this Lease, Tenant's architectural, surveying, engineering, legal, project management, construction, contracting, and other consulting services for the Project are not subject to the requirements of Chapter 6 of City's Administrative Code.

5.2. Development Plan

(a) Preparation. The Parties acknowledge that Tenant has prepared a development plan in accordance with this Section 5.2 (the "**Development Plan**"). Tenant shall prepare an updated Development Plan approximately one year prior to breaking ground on any Phase of the Project, and in all events at least once every five (5) years. The Development Plan shall describe and update Tenant's anticipated program, projected timeline, and anticipated financing for the next Phase (including description of all grants, stimulus funds and other monies that Tenant is seeking or intends to seek). The Development Plan is intended to facilitate Tenant's internal Project planning efforts by tracking progress toward Tenant's commencement and completion of each successive Phase of the Project.

(b) Considerations. In preparing the Development Plan, Tenant shall consider, among other things, the current and projected revenues, the current and projected balance in the Project Development Account, the Schedule of Performance, current financing costs and related financing terms, a summary of Tenant's efforts to secure grants, stimulus funds and other outside sources of funding (as described in Section 4.4, above), projected Project Development Costs, projected Operating Expenses and the Project Goals, each in relation to the other.

(c) Submittal. Tenant shall submit a copy of each Development Plan to City for City's information and review, and shall promptly provide additional information about such Development Plan upon City's written request.

5.3. Overview of City's Review of Design and Budget for Each Phase

(a) Review and Approval. Prior to commencing construction of any Phase of the Project, Tenant shall submit Design Documents and corresponding Budgets (as those terms are defined and described in greater detail below) at progressive stages of completion for City's iterative review and approval. The stages of Design Documents are described in Section 5.4(a), below.

(b) Consistency with Previous Approvals. The Design Documents and Budget submittals are intended to be generally consistent with and constitute a further development and refinement from the previous stage, incorporating conditions, modifications and changes required by the City for approval of the prior stage and as required for Regulatory Approval. Except by mutual agreement with Tenant, City will not disapprove or subsequently require changes in matters it has previously approved. This process is intended to give Tenant early guidance and reasonable certainty to facilitate efficient pre-construction planning for each Phase.

(c) Scope and Standards of City's Review.

i. Intent. City and Tenant acknowledge and agree that each Party has an interest in ensuring that the Improvements balance the need for efficient, durable, state-of-the-art facilities with the need for cost-effective design and construction that is financially feasible and commercially appropriate for the Permitted Uses. Accordingly, Tenant and City shall consider this balance in the context of the Project Goals when making decisions and exercising discretion with respect to the Design Documents and Budget for each Phase.

ii. Scope of City's Review of Design Documents. City's review and approval of the Design Documents shall address (to the extent applicable to the stage of design): (i) conformity with the Scope of Development and other Project Requirements; (ii) consistency with previously approved submittals (except as otherwise expressly indicated by Tenant) (iii) exterior architectural appearance and aesthetics; (iv) durability of fixtures and finishes, energy efficiency, and life cycle costs; and (v) design of any areas required under Regulatory Approvals to be accessible to the public. City shall defer to Tenant's reasonable judgment with respect to design elements related to functionality and operations, including but not limited to security and food safety and handling.

iii. Scope of City's Review of Budgets. City's review and approval of the updated Budgets submitted with each set of Design Documents shall be for the purpose of confirming that the Budget is: (i) accurate and reliable relative to the design expressed in the corresponding Design Drawings; and (ii) reasonable in light of the Project Goals and the interests described in item i. above and Tenant's obligations under this Lease. In evaluating Tenant's proposed Budgets, City may obtain a third-party cost estimator's report at Tenant's sole cost and expense if City, in its sole discretion, determines to do so.

5.4. Description of Design Documents and Budgets; Preparation

(a) Definition of Design Documents. The "**Design Documents**" for each Phase shall consist of the following:

i. "**Schematic Drawings**" for the Phase, which shall generally include, without limitation (a) perspective drawings sufficient to illustrate the Improvements to be constructed in the Phase, (b) a site plan at appropriate scale showing relationships of the Improvements with their respective uses, and designating public access areas, open space areas, walkways, loading areas and adjacent uses, (c) building plans, floor plans and elevations sufficient to describe the development proposal for the Phase, and the general architectural character, and the location and size of uses, of the Phase, and (d) building sections showing height relationships of the areas noted above;

ii. "**Design Development Documents**" in sufficient detail and completeness to show and describe among other things, the size and character of the

Improvements as to the architectural, structural, mechanical and electrical systems and materials.

iii. "**Preliminary Construction Documents**" (i.e., 50% Construction Documents) in sufficient detail and completeness to show the Improvements and the construction thereof in compliance with the Project Requirements, and which shall generally include, without limitation, (a) site plans at appropriate scale showing the building, streets, walks, parking and gates, and other open spaces, with all land uses designated and all site development details and bounding streets, and points of vehicular and pedestrian access shown, (b) all building plans and elevations at appropriate scale, (c) building sections showing all typical cross sections at appropriate scale, (d) floor plans, (e) preliminary tenant improvement plans to the extent then available for space that is to be delivered in other than "shell" condition, (f) outline specifications for materials, finishes and methods of construction, (g) exterior signage and exterior lighting plans, (h) material and color samples, and (i) roof plans showing all mechanical and other equipment.

iv. "**Final Construction Documents**," which shall include all plans and specifications required under applicable Laws to be submitted with an application for a Building Permit.

(b) Licensed Design Professionals. The Design Documents shall be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California. A California licensed architect shall coordinate the work of any associated design professionals, including engineers and landscape architects. A California licensed structural engineer shall review and certify all final structural plans and the sufficiency of structural support elements to support the Improvements under applicable Laws.

(c) Budgets and Preliminary Financing Plans. Together with each submittal of Design Documents to City for City's review, Tenant shall submit for City's review and approval an updated estimated budget of total development costs for the Phase, including soft costs (i.e., pre-development costs, permits and fees, architectural and engineering costs), financing costs, and hard construction costs (each, a "**Budget**"), prepared at a level of detail commensurate with the stage of design expressed in the Design Drawings then under review. Tenant shall also submit, for City's information, an updated financing plan setting forth anticipated sources and uses of funds for the Phase, including a description of all anticipated predevelopment, construction and permanent financing necessary to complete the Phase. If Tenant intends to enter into a Separate Parcel Lease in connection with Financing the Phase, Tenant shall deliver a Financing Notice no later than its submittal of Preliminary Construction Documents.

(d) Progress Meetings; Consultation. During the preparation of the Design Documents (other than the Schematic Drawings), Tenant and City Staff (as defined in Section 5.5(a) below) shall hold periodic progress meetings, as appropriate to the stage of design, to coordinate the preparation of, submission to, and review of the Design Documents and Budget by the City. City Staff and Tenant (and its applicable consultants) shall communicate and consult informally as frequently as reasonably necessary to facilitate City's prompt consideration of Tenant's formal submittal of any Design Documents required by this Agreement.

5.5. Method and Timing of City Review

(a) City Staff. For the purposes of this Lease, City's review and approval of the Design Documents and Budget means review and approval by City staff designated from time to time by the City Administrator or his or her designee to review the Design Documents ("**City Staff**"), acting in City's proprietary capacity, and does not encompass review and approval of the Design Documents by City's Planning Department or any other Regulatory Agency, as may be required pursuant to applicable Laws.

(b) Timing of City Review. Except with respect to City's review and approval of the Final Construction Documents and Budget, City will approve, disapprove or approve

conditionally, in writing, each submittal set of Design Documents and Budget within fifteen (15) business days after submittal, so long as the applicable Design Documents and Budget are properly submitted. If City does not approve, disapprove or approve conditionally the Design Documents within the fifteen (15) business day period described above, then Tenant may submit a second written notice to City that such approval or disapproval was not received within the period provided by this Section 5.5(b) and requesting City's approval or disapproval of the Design Documents within five (5) business days after Tenant's second notice. If the City fails to respond within such five (5) business day period, then such Design Documents and Budget will be deemed approved, provided that the original request met the requirements of this Section.

(c) Written Disapproval Notice Stating Reasons. If the City disapproves any Design Document or Budget in whole or in part, the City's written disapproval notice will state the reason or reasons and will recommend changes and make other recommendations. If the City conditionally approves a Design Document package in whole or in part, the conditions will be stated in writing.

(d) Resubmittal by Tenant. Upon City's disapproval or conditional approval of any Design Document or estimated Budget, Tenant shall cause to be prepared and shall submit to City a revised Design Document or estimated Budget, as applicable, which shall respond to the matters specified by City in City's disapproval or conditional approval notice and shall clearly indicate which portions of the plans or Budget remain unchanged from the previously submitted plans. City shall respond to the revised Design Document or revised estimated Budget in the manner described above.

(e) Conflicts Between Project and Other Requirements. City will not withhold its approval of elements of the Design Documents or changes in the Design Documents required by any other governmental agency with jurisdiction over the Project if all of the following occur: (i) the City receives written notice of the required change; (ii) the City is afforded at least thirty (30) days to discuss such element or change with Tenant's architect and the governmental agency having jurisdiction over the Project and requiring the element or change; (iii) Tenant's architect cooperates fully with the City and with the governmental agency having jurisdiction in seeking reasonable modifications of the requirement, or reasonable design modifications of the Improvements, or some combination of modifications, so that a design solution reasonably satisfactory to the City may be achieved despite the imposition of the requirement; and (iv) any conditions imposed in connection with the requirements comply with Article 15 [Compliance with Laws].

(f) Good Faith Efforts to Attempt to Resolve Disputes. Tenant and City recognize that conflicts may arise during the preparation and review of the Design Documents, and that such conflicts may delay the critical path of the Phase, thereby adding unnecessary expense. Both parties agree to use their diligent good faith efforts to reach a solution expeditiously that is consistent with the intent expressed in subparagraph i. of Section 5.3(c), and that is mutually satisfactory to Tenant and City.

5.6. Qualifications of General Contractor; Bidding for Major Trades

Tenant's general contractor for the Phase shall (1) have substantial recent experience in the construction of similar improvements in the San Francisco Bay Area, (2) be licensed by the State of California (as evidenced by Tenant's submission to City of Tenant's contractor's state license number), and (3) have the capacity to be bonded by a recognized surety company to assure full performance of the construction contract for the work shown on the Final Construction Documents (as evidenced by Tenant's submission to City of a commitment or other writing satisfactory to City issued by a recognized surety company confirming that Tenant's contractor is bondable for construction projects having a contract price not less than the contract price under the construction contract for the Improvements). Tenant shall cause Tenant's general contractor to solicit bids from not less than three (3) subcontractors for each major trade working on the Improvements. When Tenant's contractor has received responses to its bid request,

Tenant's contractor will analyze the same and provide City with a copy of Tenant's contractor's bid analysis (including copies of the actual subcontractor responses), recommended winning bidders and estimated budget for the Improvements, based upon the selected subcontractors' bids and including Tenant's contractor's fee for overhead and profit, the estimated cost of General Conditions, and a reasonable contingency.

5.7. Approval of Final Construction Documents, Budget, Financing, and Construction Contract

(a) Required Submittals. No later than ninety (90) days before the commencement of construction, Tenant shall submit the items described below for City's review and approval.

i. Final Construction Documents.

ii. Budget: a final Budget, which must include line items for soft costs (including all pre-development costs, permits and fees, architectural and engineering costs), financing costs, and hard construction costs, furniture, fixtures and equipment costs, and costs of tenant improvements (if any) to be constructed by Tenant allocated between space to be occupied by Tenant and by any Subtenants.

iii. Sources and Uses: a statement and appropriate supporting documents certified by Tenant to be true and correct and in form reasonably satisfactory to the City showing sources and uses of funds, including corresponding assumptions, sufficient to demonstrate that: (A) Tenant has or will have adequate funds to complete the Improvements and service the debt in accordance with the Budget; and (B) funds have been spent for uses described in the Budget or are committed and available for that purpose.

iv. Commitments: with regard to all debt financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its reasonable discretion) and no provisions requiring acts of Tenant prohibited in this Lease or prohibiting acts of Tenant required in this Lease, for the financing of that portion of the Budget intended to be borrowed by Tenant, certified by Tenant to be a true and correct copy or copies thereof, from a Bona Fide Institutional Lender (or lenders), and, if required by any construction lender(s), must include commitments for permanent financing.

v. Other Financing: a detailed description of all predevelopment, construction and permanent financing necessary to complete the Phase, including documentation reasonably satisfactory to City for all financing other than debt financing necessary to complete the Phase, including permanent financing, partnerships or joint ventures and other sources of Tenant capital, each certified by Tenant to be true and correct.

vi. Construction Contract: adequate evidence of a "**Construction Contract**" on commercially reasonable terms for construction of the Improvements described in the Final Construction Documents: (A) with a contract sum or guaranteed maximum price consistent with the approved Budget and financing, (B) requiring contractor to obtain performance and payment bonds guaranteeing in full the contractor's performance and payment of subcontractors under the Construction Contract; (C) naming City and its boards, commissions, directors, officers, agents, and employees as co-indemnitees with respect to Tenant's contractor's obligation to indemnify and hold harmless Tenant and its directors, officers, agents, and employees from all Losses directly or indirectly arising out of, connected with, or resulting from the contractor's performance or nonperformance under the Construction Contract; (D) requiring Tenant and Contractor (as applicable) to obtain and maintain insurance coverages reasonably acceptable to City, including general liability and builder's risk insurance coverage that names City and its directors, officers, agents, and employees as additional insureds under the terms of the policies, (E) identifying City as an intended third party beneficiary of the Construction Contract, with the right to enforce the terms and conditions of

the Construction Contract and pursue all claims thereunder as if it were an original party thereto; (F) consenting to the assignment of the Construction Contact to the City, in whole or in part, including but not limited to the assignment of (i) all express and implied warranties and guarantees from the contractor, all subcontractors and suppliers, (ii) all contractual rights related to the correction of nonconforming work, and (iii) the right to pursue claim(s) for patent and latent defects in the work and the completed project; and (G) providing for the contractor's(s') obligation, for a period of at least one (1) year after the final completion of construction of the Improvements included in the Phase, to correct, repair, and replace any work that fails to conform to the Final Construction Documents (as the same may be revised during construction pursuant to properly approved change orders) and damage due to: (i) faulty materials or workmanship; or (ii) defective installation by such contractor(s) of materials or equipment manufactured by others.

(b) Approval Process. Within thirty (30) days after Tenant submits all of the documents described in Section 5.7(a) above, City will notify Tenant in writing of its approval or disapproval (including the reasons for disapproval). City's failure to notify Tenant of its approval or disapproval within five (5) business days of receipt of a written notice from Tenant that such approval or disapproval was not received within this period will constitute approval of the Required Submittals.

5.8. During Construction

(a) Good Construction and Engineering Practices. Once construction with respect to a Phase has commenced, such construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake and cause its contractor to undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant, while performing any construction with respect to the Project, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(b) On-Site Observations. A California licensed architect or engineer, as appropriate, shall make on-site observations of all construction of the Improvements and shall provide certificates consistent with then-prevailing professional practices when required by the City.

(c) Semi-Monthly Updates. During periods of construction Tenant shall submit to City at such times requested by City but at least twice per month, written progress reports including a tracking of the Budget in the form of a consolidated one-page summary report including, without limitation, backup detail and pending and approved change order requests showing the impact to the Budget and the estimated impact to the anticipated completion date for such Phase, and if requested by City, additional related or supporting information, in form and detail as may be required reasonably by City, including, to the extent applicable, updates of the items described in Section 5.7(a).

(d) Construction Draws. Tenant shall submit to City for informational purposes a copy of each draw request submitted to a financial institution or escrow account manager, sent to City no later than five (5) days after such draw request is submitted.

(e) Changes in Final Construction Documents or Construction Contract. Tenant will not make or cause to be made any material changes in the approved Final Construction Documents or the Construction Contract without the City's express prior written

approval, to be granted or withheld in City's reasonable discretion. Prior to making any changes to the Final Construction Documents or Construction Contract that Tenant considers to be non-material, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant must notify the City in writing. If City, in its reasonable discretion, determines that the noticed changes are material, then the changes will be subject to the City's approval. So long as City is not capricious or acting in bad faith, City's determination of whether changes are material will be conclusive. All material changes to the Final Construction Documents must be requested in writing by Tenant and must be submitted with a written description of, and a set of plans highlighting, the requested changes, together with Tenant's contractor's good faith estimate of the increase or decrease in the cost of the Improvements and the estimated delay (if any) which would result from incorporating the proposed change. City will respond to Tenant within five (5) business days after receipt of Tenant's complete request. If City fails to respond to such request within such five (5) business day period, Tenant may submit a second written notice to City requesting City's approval or disapproval within five business (5) days after Tenant's second notice. If the City fails to respond within such second five (5) business day period, such changes will be deemed approved, provided that the original request met the requirements of this Section. If, following City's approval or deemed approval of the proposed change and estimated cost, Tenant desires to incorporate the change into the Improvements, then Tenant shall cause the Final Construction Documents to be revised and shall execute a change order for such change on Tenant's contractor's standard form therefor, and the term "Final Construction Documents" shall thereafter be deemed to refer to the plans as so revised.

5.9. Timing and Extensions

(a) Schedule of Performance. Tenant shall use its best efforts to complete the milestone tasks, including, without limitation, commencing and completing construction of each Phase of the Project, by the respective dates specified in the Schedule of Performance or within such extension of time as the City may grant in writing or as otherwise permitted by this Lease, subject to Force Majeure.

(b) Force Majeure.

i. The Schedule of Performance shall be extended for delay caused by Force Majeure.

ii. If Tenant determines that Force Majeure will or may prevent Tenant from commencing construction of any Phase in accordance with the Schedule of Performance or performing any other act in accordance with the Schedule of Performance, then Tenant shall notify City in writing of the event or condition constituting Force Majeure and shall propose equitable adjustments to the Schedule of Performance, together with a written explanation of how the proposed adjustments were calculated.

iii. Within thirty (30) days after receipt of Tenant's written notice, City shall provide a written response to Tenant either (1) requesting additional information as reasonably required to analyze Tenant's request, or (2) agreeing with or disputing Tenant's determination of the occurrence of Force Majeure, and, in the event City agrees with Tenant's determination of Force Majeure, either approving Tenant's requested adjustments to the Schedule of Performance or proposing alternative adjustments to the Schedule of Performance. Provided that Tenant is not in default of its obligations under this Lease and City agrees with Tenant's determination of the occurrence of Force Majeure, then City shall approve a reasonable, equitable adjustment to the Schedule of Performance. If City fails or declines to respond to Tenant within thirty (30) day period described above, then Tenant may at Tenant's election provide written notice to City that no notice was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "REQUEST TO EXTEND SCHEDULE OF PERFORMANCE FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO

RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the requested adjustment to the Schedule of Performance shall be deemed approved if City does not respond in writing within ten (10) days after such notice.

iv. If City requests additional information, Tenant shall promptly provide such information, together with a renewed request for an adjustment to the Schedule of Performance, and the provisions of Section 5.9(b)(iii) shall apply to such renewed request. If Tenant and City disagree on the occurrence, duration or impact of Force Majeure or on the proposed adjustments to the Schedule of Performance, then Tenant and City shall attempt in good faith to meet no less than two (2) times during the thirty (30) day period following City's written response to Tenant, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. During any such period, each Party shall promptly provide the other with additional information on request.

(c) Other Extensions.

i. If and at such time as Tenant determines it will be unable, for reasons other than Force Majeure, to commence a Phase in accordance with the Schedule of Performance or perform any other act in accordance with the Schedule of Performance due to a Significant Deviation From Economic Model, then, as soon as reasonably practicable, Tenant shall prepare and submit to City an updated Development Plan containing: (1) the information described in Section 5.2(a); (2) the reasons Tenant will be unable to commence such Phase or perform such other act in accordance with the Schedule of Performance; and (3) Tenant's proposed adjustments to the Schedule of Performance.

ii. Within thirty (30) days after receipt of Tenant's updated Development Plan, City shall provide a written response to Tenant either (1) requesting additional information as reasonably required to analyze Tenant's request, or (2) agreeing with or disputing Tenant's determination of the occurrence of a Significant Deviation From Economic Model, and, in the event City agrees with Tenant's determination of a Significant Deviation From Economic Model, either approving Tenant's requested adjustments to the Schedule of Performance or proposing alternative adjustments to the Schedule of Performance. Provided that Tenant is not in default of its obligations under this Lease and City agrees with Tenant's determination of the occurrence of a Significant Deviation from Economic Model, then City shall approve a reasonable, equitable adjustment to the Schedule of Performance. If City proposes alternative adjustments to the Schedule of Performance, then City's notice to Tenant shall include a written explanation of the reason(s) therefor. If City fails or declines to respond to Tenant within thirty (30) day period described above, then Tenant may at Tenant's election provide written notice to City that no notice was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "REQUEST TO EXTEND SCHEDULE OF PERFORMANCE FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the requested adjustment to the Schedule of Performance shall be deemed approved if City does not respond in writing within ten (10) days after such notice.

iii. If City requests additional information, Tenant shall promptly provide such information, together with a renewed request for an adjustment to the Schedule of Performance, and the provisions of Section 5.9(c)(ii) shall apply to such renewed request. If Tenant and City disagree on the occurrence, duration or impact of a Significant Deviation From Economic Model or on the proposed adjustments to the Schedule of Performance, then Tenant and City shall attempt in good faith to meet no less than two (2) times during the thirty (30) day period following City's written response to Tenant, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. During any such period, each Party shall promptly provide the other with additional information on request.

(d) Dispute Resolution. If Tenant and City are unable to resolve any disagreement over the occurrence or duration of Force Majeure or a Significant Deviation From Economic Model or the reasonable adjustments to the Schedule of Performance required in connection therewith, then Tenant and City, by mutual agreement, may submit such dispute to non-binding arbitration, mediation or other alternate dispute resolution mechanism ("ADR") of non-judicial dispute resolution. The Party requesting ADR shall give written notice of its request, specifying the requested ADR procedure, to the other Party, who shall notify the requesting Party of its agreement or refusal to proceed within a reasonable time after receipt of the requesting notice. If the parties agree to proceed, they shall select a mutually acceptable individual, with qualifications appropriate to the subject matter of the dispute, to conduct the designated ADR, or, if the parties cannot agree on such individual, they shall submit the dispute for the applicable ADR to a commercial ADR service. In all events, the proceedings shall be conducted only in a manner acceptable to both parties. The parties may enter into operating memoranda from time to time to establish procedures for the initiation and conduct of such ADR mechanisms. Within thirty (30) days after selection of the individual conducting the ADR, such individual shall determine the resolution of the matter. In making this determination, such individual's review shall be confined to (i) the applicable terms and conditions of this Lease; (ii) the parties' written notices to each other, as required by this Section 5.9, and (iii) any additional written information and correspondence exchanged between the parties during consultation period following City's decision to propose alternative adjustments to the Schedule of Performance.

(e) Prolonged Delay. Notwithstanding anything in this Section 5.9 to the contrary, if commencement of construction of a Phase or any other milestone in the Schedule of Performance connected with such Phase is delayed for reasons other than Force Majeure for a period in excess of one (1) year beyond the time periods set forth in the most recently approved Schedule of Performance set forth in Exhibit G to this Lease, then City may decline to grant further adjustments to the Schedule of Performance. In such event, Tenant shall, upon request by City, transfer to City or City's designee all funds in the Project Development Account and shall refrain from making additional deposits to the Project Development Account, and at City's sole election such delay may be an Event of Default under this Lease, giving City all right and remedies provided under Article 28 of this Lease.

5.10. Submittals After Completion

(a) As-Built Documents. Tenant shall deliver to City one complete set of as-built plans, specifications and surveys with respect to the Project within ninety (90) days after Completion of the Improvements in any Phase.

(b) Certified Construction Costs. Within ninety (90) days after Completion of the Improvements in any Phase, Tenant shall deliver to City an itemized statement of all construction costs (which costs shall include all tenant improvement work, to the extent applicable) incurred by the Tenant in connection with the construction of such Phase of the Improvements in accordance with the final construction drawings, certified as true and accurate by an independent certified public accountant (the "**Certified Construction Costs**"). Tenant shall keep accurate books and records of all construction costs incurred in accordance with accounting principles generally accepted in the construction industry. Within sixty (60) days after receipt of the statement of Certified Construction Costs, City shall have the right to inspect Tenant's records regarding the construction of the relevant Improvements and the costs incurred in connection therewith. If the City disagrees with the statement of Certified Construction Costs, City may request that such records may be audited by an independent certified public accounting firm mutually acceptable to the City and Tenant, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services,

for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. Tenant shall pay the entire cost of the audit, including City's costs in connection therewith.

5.11. Prevailing Wages and Working Conditions

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

(b) Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract for Covered Construction the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract for Covered Construction will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call City's Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will pay, and will require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents, to persons performing services for the following activity on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Trade Show and Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11). If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City will have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books, and records pertaining to the applicable services and may interview any individual who provides, or has provided, those services.

6. RECONFIGURED STREETS; VACATION, DEDICATION AND IMPROVEMENTS

6.1. Vacation of Former Street Property and Kirkwood Segment

(a) Application for Vacation. In connection with the proposed lease of the Former Street Property and the Kirkwood Segment, City's Director of Property submitted an application to City's Department of Public Works ("DPW") for vacation of the Former Street Property and the Kirkwood Segment as a public right of way. The Department of Public Works has advised the City's Real Estate Division that there are no in-place public utility facilities that are in use that would be affected by vacation other than the facilities of the Utility Operators identified in Exhibit C-2. City will address the in-place functioning utilities to the extent required by the Vacation Ordinance prior to the effective date of the vacation with respect to the Former Street Property so that the continued function and capacity of such facilities will not be affected by the vacation. City's Board of Supervisors has approved the vacation of the Kirkwood Segment, has approved the vacation of the Former Street Property on the conditions specified in the Vacation Ordinance, and has approved the transfer of jurisdiction of the Former Street Property and the Kirkwood Segment to City's Department of Real Estate.

(b) Effectiveness of Vacation with Respect to Former Street Property. The vacation of the Former Street Property shall become operative on the Effective Date (the "**Vacation Date**").

(c) Delivery of Former Street Property. City shall deliver the Former Street Property to Tenant and the Former Street Property shall be added to the Premises under this Lease on the Former Street Property's Vacation Date (the "**Additional Premises Commencement Date**").

6.2. Surrender and Dedication of Relinquished Premises; Design and Construction of Surrounding Street Improvements

Tenant performed the Surrounding Street Improvements associated with 901 Rankin, as described in Exhibit E, as part of Phase I of the Project. Tenant will perform or cause to be performed, if not previously completed, the Surrounding Street Improvements associated with the Central Market Site, as described in Exhibit E, in accordance with the Schedule of Performance set forth in Exhibit G. Tenant will work with City's Planning Department on a streetscape design plan or plans for the Surrounding Street Improvements, and will obtain the Planning Department's approval of such plan or plans prior to commencing the work, consistent with the conditions described in Exhibit I-2. Tenant will perform the Surrounding Street Improvements under permits or other agreements issued by DPW in accordance with the terms and conditions of such permits or other agreements. The Parties anticipate that promptly upon the Director of DPW's issuance of a completeness determination or the City Engineer's issuance of a certificate of completion (the "**Completeness Determination**") the City's Board of Supervisors will accept the Surrounding Street Improvements for public use and maintenance subject to the provisions of San Francisco Administrative Code Section 1.52 and will dedicate the applicable increments of Relinquished Premises for public street use (the "**Street Increment Acceptance and Dedications**"). Tenant shall cooperate with City in the Street Increment Dedications and reimburse City for its costs incurred in connection therewith.

6.3. Remapping

Tenant shall apply for a new parcel map or maps to accommodate and support the new development pattern for the Project, generally consistent with the parcel configuration shown in the drawing entitled "Proposed Parcels, San Francisco Wholesale Produce Market," prepared by Martin M. Ron Associates, Land Surveyors and attached as Exhibit E-1. Execution of this Lease by the Director of Property on behalf of the City does not mean that DPW or the Board of Supervisors and Mayor have approved or will approve such parcel maps. City's Director of Property shall cause City staff at the Department of Real Estate to cooperate in good faith with

Tenant's application for one or more new subdivision maps for the Premises, to the extent consistent with the Scope of Development, the Separate Parcel Leases, and this Lease and at Tenant's sole cost and expense.

7. LEASING SCHEDULE AND MARKET RENT SCHEDULE

7.1. Leasing Schedule and Market Rent Schedule.

(a) Preparation; Considerations. Prior to entering into the first Sublease, and at least once every five (5) years thereafter, Tenant shall prepare and submit to City for its review a leasing schedule (the "**Leasing Schedule**") that (i) identifies basic information about the various types of space that are or will be available for sublease, such as location, type, use and amount of space, and existing condition and equipment, and (ii) establishes a range of proposed Sublease rental rates and related Sublease terms (e.g. periodic rent increases, tenant improvement allowances and other concessions and rent inducements, term lengths, etc.) for the various types of space.

(b) Submittal. Tenant shall submit the Leasing Schedule to City for review, together with Tenant's determination of Market Rent for each category of space covered by the Leasing Schedule (the "**Market Rent Schedule**"), a copy of the current Rent Roll, and a summary of the supporting data used to determine the Market Rent for the various types of space contained in the proposed Leasing Schedule.

(c) Market Rent. For purposes of this Lease, the term "**Market Rent**" shall mean the Net Effective Rental Rate that would be payable in an arms length negotiation for space of comparable size, age, condition and functionality, suitable for the Permitted Uses, and situated either in the SFWPM or other similar, reputable, established food-oriented markets or districts, or in other comparable warehouse or distribution spaces or districts in the San Francisco Bay Area sub-markets, taking into account typical concessions. Market Rent shall include the periodic rental increases, if any, that would be applicable to the space covered in the Leasing Schedule.

7.2. City Review of Market Rent Determination.

(a) City Disapproval Right. No later than thirty (30) days after City's receipt of the Market Rent Schedule, City may provide Tenant with written notice that City disagrees with Tenant's determination of Market Rent for one or more categories of space covered by the Market Rent Schedule, together with a written explanation of the reason(s) therefor and the provisions of Section 7.3 below shall apply. City's explanation shall identify the data City used to support its own determination of Market Rent.

(b) Failure to Disapprove. If City does not disapprove the Market Rent Schedule within the 30-day period described above, Tenant may at Tenant's election provide written notice to City that no disapproval of the Market Rent Schedule was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "MARKET RENT APPROVAL REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED", Tenant's Market Rent determinations in the Market Rent Schedule shall be deemed approved and become effective if City does not disapprove any aspect of the Market Rent Schedule within ten (10) days of such notice.

7.3. Disputes Regarding Market Rent Schedule.

(a) Consultation Period. During the fourteen (14) day period following City's disapproval notice (the "Consultation Period"), Tenant and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. Tenant and City may agree in writing to extend the Consultation Period

for a reasonable period to resolve their disagreement. During the Consultation Period each Party shall promptly provide the other with additional information on request.

(b) Market Rent Determination. If Tenant and City do not reach agreement as to the disputed Market Rent within the Consultation Period, the following shall apply:

i. Tenant and City shall each select one appraiser to determine Market Rent. Unless the Parties confirm different qualifications for the appraisers by the end of the Consultation Period, each such appraiser shall be an "MAI" designated appraiser with experience appraising rental rates for industrial properties in the San Francisco Bay Area sub-markets. Each appraiser shall arrive at a determination of the Market Rent and submit his or her conclusions to Tenant and City within forty five (45) days of the expiration of the Consultation Period described in Section 7.3(a).

ii. If only one appraisal is submitted within the requisite time period, then the Party that made such submittal may at such Party's election provide written notice to the other Party that no appraisal was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "APPRAISAL VALUE REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN DEEMED VALUE," the one appraisal received shall be deemed to be the Market Rent if the other Party does not provide an appraisal within ten (10) days of such notice. If both appraisals are submitted within such time period or within such 10-day notice period, and if the two appraisals so submitted differ by twenty percent (20%) or less of the higher of the two, then the average of the two shall be the Market Rent. If the two appraisals differ by more than twenty percent (20%) of the higher of the two, then the two appraisers shall immediately select a third appraiser, with the qualifications specified above, who will within ten (10) days of his or her selection, choose either Tenant's or City's appraiser's determination of the Market Rent and provide the reasoning for such selection. In determining whether the two appraisals differ by more than twenty percent (20%), the parties shall separately compare each category of space having a different rental rate, if applicable. All appraisals and determinations hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the MAI. Tenant and City shall pay the cost of the appraiser selected by such Party and one-half of the cost of the third appraiser, provided that City's costs shall be reimbursed by Tenant in accordance with the provisions of Section 27.3 of this Lease.

8. ASSIGNMENT AND SUBLETTING

8.1. Assignment.

(a) Consent of City. Except as otherwise expressly permitted in Sections 8.1(b) and (c), Tenant, its successors and permitted assigns shall not Transfer any interest in this Lease, without the prior written consent of City, which consent shall not be withheld, delayed or conditioned unreasonably by City after completion of the Project but may be withheld by City in its sole discretion prior to completion of the Project. Notwithstanding anything to the contrary set forth in this Lease, the Premises shall remain subject to this Lease regardless of any Transfer made at any time or from time to time, whether or not City approved such Transfer.

(b) Mortgaging of Leasehold. Subject to the limitations, rights and conditions set forth in Section 44 [Mortgages] hereof, Tenant shall have the right, without City's consent, to Transfer its interest in this Lease to a Mortgagee or other purchaser at a foreclosure sale under the provisions of a Mortgage.

(c) Conditions. Any Transfer described in Section 8.1(a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof (the "**Transfer Conditions**"):

i. Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant (including, without limitation, the provisions of Section 9 and Section 46.1(c) hereof), and any other agreements or documents entered into by and between City and Tenant relating to the Project.

ii. The Transfer is made for a legitimate business purpose and not to deprive City of the benefits of this Lease. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however effected or occurring, and whether voluntary or involuntary, by operation of law or otherwise, foreseen or unforeseen, shall operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that City would have had, had there been no such Transfer.

iii. All instruments and other legal documents effecting the Transfer shall have been submitted to City for review, including the agreement of sale, transfer, or equivalent, and City shall have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned.

iv. Tenant shall have complied with the provisions of Section 8.1(d) below.

v. There shall be no Event of Default or Unmatured Event of Default (as those terms are defined below) on the part of Tenant or any of the other documents or obligations to be assigned to the proposed transferee, or if not cured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to City in its sole and absolute discretion.

vi. The proposed transferee (A) has demonstrated to City's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable Law from transacting business or entering into contracts with City; (C) is subject to the jurisdiction of the courts of the State of California; and (D) is not in default with respect to any obligations that it has to City.

vii. The proposed Transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion.

viii. Tenant deposits with City sufficient funds, in City's reasonable opinion, to reimburse City for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. Subject to Section 44 [Mortgages], no Transfer of any interest in this Lease made with City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to City, within thirty (30) days after Tenant entered into such Transfer, an executed counterpart of the agreement affecting the Transfer containing an agreement, a memorandum of which shall be in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on Tenant's part to be performed under this Lease (except as otherwise provided in Section 8.1(i) below), and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve

such transferee from such obligations or limit City's rights or remedies under this Lease or under applicable Law). The form of such instrument of Transfer shall be subject to City's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of a Transfer of Tenant's entire interest in this Lease, approved by City under Sections 8.1(a), (c) and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by City to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of City to any further Transfer.

(f) Reports to City. At such time or times as City may reasonably request, Tenant must furnish City with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other persons or entities have a beneficial interest in Tenant, their names and the extent of such interest. Tenant's furnishing of such information, however, will not relieve Tenant from liability for its failure to comply with the provisions of this Lease.

(g) Determination of Whether Consent is Required. At any time Tenant may submit a request to City for the approval of the terms of a Transfer of this Lease (all of the foregoing being collectively referred to herein as a "**Proposed Transfer**") or for a decision by City as to whether in its opinion a Proposed Transfer requires City consent under the provisions of this Section 8.1. Within thirty (30) days of the making of such a request and the furnishing by Tenant to City of all documents and instruments with respect thereto as shall be reasonably requested by City, City shall notify Tenant in writing of City's approval or disapproval of the Proposed Transfer or of City's determination that the Proposed Transfer does not require City's consent. If City disapproves the Proposed Transfer, or determines that it requires the consent of City, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 8.1 will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 8.3, or (ii) the granting of any security interest expressly permitted by this Lease for financing development of the Improvements, subject to compliance with Article 44 [Mortgages] and other applicable terms of this Lease.

(i) Assignment to Accommodate New Markets Tax Credit Financing. City acknowledges that Tenant may desire to convey its interest in this Lease, in the form of a sublease or assignment ("**Tax Credit Assignment**") to a qualified active low-income community business Affiliate of Tenant ("**QALICB**") for the purpose of taking advantage of New Markets Tax Credits financing. In such event, Tenant may further desire to sublease back from the QALICB the interest in this Lease assigned pursuant to the Tax Credit Assignment. If such arrangement does not involve Tenant's sublease back of all of the interest in the Lease that QALICB assumed pursuant to the Tax Credit Assignment, then, pursuant to the Tax Credit Assignment, the QALICB shall assume all rights, duties, obligations and interest of Tenant under the Lease. No such conveyance to facilitate New Markets Tax Credit financing shall be subject to the terms of Section 8.3, but shall instead be subject to the terms of this Section 8.1. The City Administrator may amend any provision in this Article 8 if the City Administrator determines, in consultation with the City Attorney, that such amendment is necessary or desirable to facilitate transactions required for the Project to benefit from the use of New Markets Tax Credits and furthers the City's interest in the operation of the Premises, and does not materially reduce the rent or materially increase the liabilities or obligations of City under this Lease and is in compliance with all applicable laws, including the City's Charter.

8.2. Assignment of Rents.

Tenant hereby assigns to City all rents and other payments of any kind, due or to become due from any present or future Subtenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Article 44 of which City has been made aware in writing until such time as City has terminated this Lease, at which time the rights of City in all rents and other payments assigned pursuant to this Section 8.2 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to City the rents so collected (less the actual and reasonable cost of collection) to the extent necessary to pay City any Rent, through the date of termination of this Lease. Notwithstanding the foregoing assignment, Tenant shall have the right to collect, use for any purpose (subject to the terms of this Lease) and retain the balance thereof, of all such assigned rents and other payments of any kind, due or to become due from any present or future Subtenant, at all times prior to the commencement of legal proceedings to terminate this Lease due to an Event of Default. City shall apply any net amount collected by it from such Subtenants (after the payment of Operating Expenses required for the on-going operation of the SFWPM) to the payment of Rent due under this Lease or for the payment of any other amounts under this Lease owed to City by Tenant.

8.3. Subletting by Tenant.

(a) Subletting. Subject to this Section 8.3, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to enter into or amend Subleases from time to time that, by their terms, are subject to and in compliance with the provisions of this Lease without the necessity of obtaining the consent of City, to such persons or entities and upon such terms and conditions which are consistent with the provisions of this Lease. Except as specifically provided in this Section 8.3, Tenant shall not enter into a Sublease that is inconsistent with the then current Leasing Schedule or with the Sublease requirements set forth in this Section 8.3, including, without limitation, Section 8.3(b).

(b) Requirements for Conforming Subleases Not Requiring Consent. In addition to any other requirement set forth in this Section 8.3, the following conditions must be satisfied with respect to any Sublease for which City's consent shall not be required: (A) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses, (B) the Subtenant and the Sublease are expressly subject to all the terms and provisions of this Lease, (C) the term of the Sublease, including any extension options, shall not exceed twenty (20) years and does not extend beyond the term of this Lease, (D) there exists no Event of Default or Unmatured Event of Default under the Lease, (E) the Subtenant indemnifies City for any loss or damage arising in connection with the Sublease in form set forth in Exhibit H, (F) Tenant remains liable under this Lease, (G) the Subtenant provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City, (H) the proposed Sublease is pursuant to a bona fide arms-length transaction as reasonably determined by City based upon information reasonably provided to City and is not with an Affiliate of Tenant, and (I) the Sublease includes the provisions set forth in Exhibit H. The foregoing conditions are sometimes referred to as the "Sublease Conditions."

(c) Requirements Regarding Market Rent. Tenant shall use good faith efforts to achieve Market Rent in Subleases whenever possible and to enter into Subleases with terms that are reasonable in light of the market conditions existing at the time of such Sublease. Notwithstanding the above, all Subleases shall have a Net Effective Rental Rate that is not less

than ninety percent (90%) of Market Rent for the applicable category of space, as shown on the then-current Market Rent Schedule unless Tenant expressly proposes, and City approves, an Acknowledged Non-Conforming Sublease, as set forth in Section 8.3(g) below.

(d) Pre-Execution Deliveries to City. Prior to executing a Sublease, Tenant shall submit a summary of the key terms of the proposed Sublease (i.e., location, proposed use, square footage of the demised premises, length of term, rental rate, tenant improvement allowances and leasing concessions) to City together with a calculation of the Net Effective Rental Rate for such proposed Sublease for review by the City for conformance with the then-current Market Rent Schedule and Permitted Uses. If the Net Effective Rental Rate for the proposed Sublease is less than Market Rent for the applicable category of space, summary shall contain an appendix that describes why Tenant determined that the proposed Net Effective Rental Rate is appropriate for such category of space. If the Net Effective Rental Rate is less than ninety percent (90%) of Market Rent for such category of space, as shown on the then-current Market Rent Schedule, then such proposed Sublease shall be subject to the provisions of Section 8.3(g) below

(e) Nonconformance with Permitted Uses or Other Sublease Conditions. If City determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease, as described in Section 8(g) below) is or may be inconsistent with the Permitted Uses or any other Sublease Condition, then City may, no later than ten (10) business days after receipt of the summary of key terms:

i. disapprove such Sublease, in its sole discretion, by providing written notice to Tenant describing the claimed inconsistencies; or

ii. request additional information from Tenant regarding the reason(s) why the proposed Sublease should be approved despite such inconsistency(ies).

(f) Nonconformance with Minimum Rent Requirement. If City determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease) has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space, as shown on the then-current Market Rent Schedule, then City may, no later than ten (10) business days after receipt of the summary of key terms, notify Tenant that Tenant must resubmit such proposed Sublease as an Acknowledged non-Conforming Sublease in accordance with the provisions of Section 8.3(g) below.

(g) Acknowledged Non-Conforming Subleases. In order to meet certain goals of this Lease, including the maintenance of a diverse and healthy mix of Subtenants, it may be necessary or desirable, from time to time, for Tenant to enter into particular Subleases that are not consistent with the Permitted Uses or have a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space (each, an "**Acknowledged Non-Conforming Sublease**"). If Tenant proposes to enter into an Acknowledged Non-Conforming Sublease, then Tenant shall submit, in addition to the summary of key terms required under Section 8.3(d) above, a written explanation of the reason(s) why the proposed Acknowledged Non-Conforming Sublease should be approved despite such inconsistency(ies). Such reasons may include, but shall not be limited to, evidence that then-current Market Rent is less than the applicable rent set forth in the Market Rent Schedule.

i. City may, in its sole discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a use other than a Permitted Subtenant Use by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

ii. City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a rental rate that is inconsistent with

the then current Market Rent Schedule by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

iii. City may, in its reasonable discretion, request additional information from Tenant regarding the reason(s) why the Acknowledged Non-Conforming Sublease should be approved.

(h) Cooperation. Tenant and City shall use good faith efforts to promptly resolve any dispute about whether a Sublease is inconsistent with the Permitted Uses or other Sublease Conditions or has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space.

(i) No Execution of Subleases Disapproved or Subject to Information Requests. Tenant shall not enter into any proposed Sublease for which Tenant has timely received a disapproval notice or a request for additional information unless City subsequently approves such proposed Sublease in writing.

(j) Deemed Approval. If City fails or declines to respond to Tenant within the applicable ten (10) business day period described above, then Tenant may at Tenant's election provide written notice to City that no disapproval was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "SUBLEASE APPROVAL REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Sublease shall be deemed approved if City does not disapprove the Sublease within ten (10) days of such notice.

(k) Post-Execution Deliveries to City; Rent Rolls. Tenant shall provide City with a copy of each Sublease (and each assignment of Sublease and sub-Sublease) within ten (10) business days after execution, amendment or extension thereof, respectively, and, concurrently with delivery to City of the new, amended or extended Sublease and upon the termination of each Sublease, Tenant shall provide City with a current rent roll, which shall summarize key terms of each Sublease, show current vacancies, and include such other matters as reasonably required by City (a "**Rent Roll**").

8.4. Reasonable Grounds for Withholding Consent.

Where a Transfer or Sublease requires City's reasonable consent, it shall be reasonable (1) for City to withhold its consent if Tenant has not supplied sufficient information (including supplemental materials reasonably requested by City) to enable City to make a reasonable determination whether any applicable Transfer Condition or Sublease Condition has been satisfied, and (2) if Tenant is then in default of any of its obligations under this Lease, for City to condition its consent on the cure of such defaults as City may specify in its notice conditionally approving such Transfer or Sublease.

8.5. Non-Disturbance of Subtenants, Attornment, Relevant Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). All Non-Disturbance Agreements shall comply with the provisions of this Section 8.5(a) and of Section 8.5(b). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term; (iii) the Sublease contains provisions whereby the Subtenant agrees

to comply with applicable provisions of Section 47.2 [Non-Discrimination] and Section 47.5 [Tobacco Product Advertising Prohibition]; (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement; and (v) the Subtenant shall have delivered to City an executed estoppel certificate certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, and (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in such certificate. In addition, with respect to Subleases having both a subleased premises of more than fifteen thousand (15,000) square feet and having a term of more than ten (10) years (including options to extend the term), City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is entered into; provided, however, that City acknowledges and agrees that the rental terms of Subleases that propose a Net Effective Rental Rate of at least ninety percent (90%) of Market Rent, as set forth in the most recently approved Market Rent Schedule, with an adjustment of rent at or before the end of the initial ten (10) years to at least ninety-five percent (95%) of then-Market Rent, shall be deemed reasonable and acceptable for purposes of City's review under this Section 8.5(a). City shall in no event be required to enter into a Non-Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Nothing in this Section 8.5 shall preclude City in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that (i) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to City (provided City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and (ii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City, provided, however that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid, shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

9. OPERATIONS AND MANAGEMENT

9.1. Operating Standards.

Tenant shall operate or cause Manager to operate the Premises in a commercially reasonable manner consistent with (i) achieving the Project Goals, (ii) establishing Sublease rental rates in accordance with the requirements of Article 7, (iii) maximizing other Gross Revenues, subject to prevailing market conditions and circumstances, and (iv) maintaining a commercially reasonable cost structure that permits Tenant to construct the Project in accordance with the provisions of this Lease, pay all reasonable Operating Expenses, meet the debt service requirements and coverage ratios required by lenders for the Project, if applicable, and maintain the Accounts described in Section 9.3 below. Tenant shall be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and

operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants, to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards, including, but not limited to, (a) routine and extraordinary repair and maintenance of the Improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, (e) security services, (f) marketing the Premises, selection of Subtenants and negotiation of Subleases, (g) enforcement of reasonable rules and regulations for the conduct of Subtenants and others present on the Premises, (h) collection of rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants with the terms, covenants and conditions of their Subleases (i) placement of insurance and payment of premiums and securing certificates of insurance from Subtenants and persons working on the Premises, and (j) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

9.2. Management.

(a) Management Agreement or Manager; Replacement. Tenant, at its election, shall either manage the Premises and negotiate and enter into Subleases by its staff or shall engage one or more third-party entities to manage and market the Premises. Tenant shall manage the Premises, whether directly or indirectly, in a commercially reasonable manner consistent with comparable produce markets within the United States and consistent with (a) best practices of facility management as defined by the International Facility Management Association (IFMA), and (b) best practices of transaction management as defined by the International Right of Way Association (IRWA). The managing employee or agent (the "**Manager**") must have a demonstrated ability to manage facilities like the SFWPM. If City determines in its reasonable judgment that the SFWPM is not being operated, managed or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the SFWPM. Tenant may elect, by written notice to City, to cause the Manager to cure the defects in performance, in which case such cure must begin as soon as practicable and in all events within forty five (45) days after City's notice and must be completed within seventy-five (75) days after the date of City's notice. If Tenant does not provide timely written notice of Tenant's election to cause the Manager to cure the defects in performance, or if City reasonably determines that the Manager has not cured the defects at the end of the cure period, City, at City's election, may provide Tenant with notice that City will require the selection of a replacement Manager, and City and Tenant shall thereupon work together collaboratively to select a third-party replacement Manager. City shall not unreasonably withhold its consent to a proposed replacement Manager with the requisite skill, experience, and demonstrated ability to manage facilities like the SFWPM. If City and Tenant do not agree on a replacement Manager within ninety (90) days after the date of City's notice, then City shall have the sole right to make the selection (provided, however, that the Manager selected by City shall possess the requisite skill, experience and demonstrated ability to manage facilities like the SFWPM), and Tenant shall engage the Manager selected by City on commercially reasonable terms. If applicable, Tenant shall promptly seek approval of any proposed substitute Manager by any Mortgagee whose consent is required. Upon approval of the Manager by City and all other entities with approval rights, Tenant shall promptly dismiss the then Manager, and shall appoint the approved substitute Manager. Two (2) years following engagement of the third party Manager selected by City, provided that Tenant is not then in default under this Lease, Tenant shall have the right to (i) select a new third party management entity, provided that City shall have the right to reasonably disapprove Tenant's selection if City determines by written notice to Tenant setting forth the reasons therefor, that Tenant's selection lacks the requisite skill, experience or demonstrated ability to manage facilities like the SFWPM, or (ii) resume direct management of

the Premises, provided that if the Manager that was previously replaced under this Section was a direct employee of Tenant, Tenant first demonstrates to the satisfaction of City that Tenant can directly, through the proposed Manager employee, properly operate, manage and sublease the SFWPM in accordance with the requirements and standards of this Lease notwithstanding the earlier deficiency in performance. Any contract for the operation or management or leasing of the SFWPM entered into by Tenant (a "**Management Agreement**") shall provide that such Management Agreement can be terminated as set forth above without penalty. No act or omission of the Manager pursuant to the Management Agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease.

(b) Preparation and Submittal of Reports. Tenant shall prepare or cause to be prepared and submitted to City all budgets, financial reports, inspection reports and other materials required by this Lease, including, without limitation, the Inspection Report described in Section 16.1(b) below and the annual submittal of the insurance provision of Tenant's then-standard Sublease required by Section 4 of Exhibit H, together with quarterly reports of claims filed against Tenant, 30/60/90 day delinquency reports of Subtenants, and copies of default notices from Tenant to Subtenants.

9.3. Financial Operations and Reporting

(a) Establishment and Maintenance of Operating and Reserve Accounts.

i. Generally. Tenant shall establish, fund and maintain the bank accounts required to fulfill its obligations under this Section 9.3(a) (collectively, the "**Accounts**") with one or more depository institutions reasonably acceptable to City and approved by City in writing. The following depository institutions shall be deemed approved hereunder: (i) any institution approved by the Controller for deposit by City of City funds, (ii) any institution in which Tenant's deposits will be afforded full FDIC deposit insurance coverage for entire balance in the accounts held in such institution, and (iii) as to any Reserve Account (as defined in Section 9.3(a)(vii), below) required by a Community Development Entity (as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended) in connection with New Markets Tax Credit financing, any depository institution making an investment in such Community Development Entity. Tenant shall respect any limit on the size of the funds held in any account(s) as shall be established from time to time by the Controller for City funds with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Any interest accruing on the funds in any Account shall be added to such Account. Funds from the operation of the Premises shall not be commingled with other funds. Tenant shall cause each person who has authority to withdraw or transfer funds from any Account to be bonded or otherwise insured.

ii. Approval Required for Certain Payments. Tenant must obtain the approval of City's Director of Property prior to issuing checks or other instruments of withdrawal drawn against any Account in amounts greater than or equal to $100,000.00, and the approval of City's Director of Property and Controller prior to issuing checks or other instruments of withdrawal drawn against any Account in amounts greater than or equal to $250,000.00 (such limits, the "**Payment Caps**"), including payments made to construct or maintain facilities under any Separate Parcel Lease that have not already been included in an approved Budget, but excluding payments (i) in favor of the San Francisco Tax Collector, (ii) to utility operators in the event Tenant provides certain central utilities (e.g., central refrigeration); (iii) from the Project Development Account made in accordance with an approved Budget; (iv) from any Account other than the Project Development Account for the construction or maintenance of facilities under a Separate Parcel Lease made in accordance with an approved Budget, provided that the Separate Parcel Tenant provides quarterly accounting reports to City describing the actual costs and expenditures and status of construction, and if applicable, proposed financing plan to account for unexpected costs, in a form approved by City; or (v) made in the normal course in favor of any Mortgagee, which shall not be subject to

the Payment Caps. The Payment Caps shall each be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "**Index**"), which is published most immediately preceding the anniversary of the Commencement Date over the Index in effect on the Commencement Date.

iii. Operating Account. Tenant must deposit all Gross Revenues promptly after receipt into a segregated depository account (the "**Operating Account**") established exclusively for the operation of the SFWPM.

iv. Operating Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Operating Reserve Account**") from which Tenant shall withdraw funds solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums or other expenses which are payable other than monthly, abnormally high vacancies and other expenses that vary seasonally.

v. Project Development Account. Tenant shall establish and maintain a separate depository account (the "**Project Development Account**") for the payment of Project Development Costs. The funds in the Project Development Account shall be used only for the payment of Project Development Costs and shall not be used for Operating Expenses, Capital Repairs and Replacements (as defined below) or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City's sole discretion.

vi. Replacement Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Replacement Reserve Account**") in the amount reasonably adequate for the payment of all reasonably anticipated capital repairs and improvements which are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the buildings on the Premises ("**Capital Repairs and Replacements**"). The funds in the Replacement Reserve Account shall be used by Tenant only for Capital Repairs and Replacements, and shall not be used to fund Project Development Costs or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City's sole discretion. The insufficiency of any balance in the Replacement Reserve Account shall not abrogate Tenant's obligation to fulfill all preservation and maintenance covenants in this Lease.

vii. Other Reserve Accounts. In addition to the Operating Reserve Account and the Replacement Reserve Account, Tenant shall establish and maintain a reserve account for tenant improvements, leasing commissions and related costs to be incurred from time to time to enter into Subleases of the Premises (the "**Leasing Reserve Account**") and such other reserve accounts as shall be advisable for the prudent operation of the Premises in Tenant's good faith judgment, including but not limited to reserve accounts required by a Community Development Entity in connection with New Markets Tax Credit financing. The Operating Reserve Account, Replacement Reserve Account, Leasing Reserve Account and any other reserve account established in connection with the operation of the Premises is sometimes referred to herein as a "**Reserve Account**" or collectively as the "**Reserve Accounts**."

viii. Purpose of Reserve Accounts: Funding Levels and Limits. Tenant shall fund each Reserve Account in the amount reasonably adequate to pay for all reasonably anticipated costs to be paid from such account, consistent with the practices of other prudently, well-managed produce markets, industrial and distribution centers, and food processing facilities in the San Francisco Bay Area of a like age and quality. City's Controller may review the adequacy of deposits to the Replacement Reserve Account periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in any Reserve Account is insufficient to fund the cost of the likely expenditures which will be required to be

made from such account, City may require an increase in the amount of monthly deposits into such Reserve Account (subject to the rights of Mortgagees) upon thirty (30) days prior written notice to Tenant, and Tenant shall thereupon make such adjustments. City's Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly deposits into such Reserve Accounts.

(b) Contract Standards; Contracts with Related Parties. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Premises, Tenant shall attempt to secure the best price reasonably obtainable. Tenant shall not enter into any agreement or arrangement for the furnishing to Tenant of goods or services with any person or entity related to or affiliated with Tenant, Manager or any Subtenant, unless such agreement or arrangement has been approved in advance by City's City Administrator in writing after full disclosure of such relationship, which approval shall not be unreasonably withheld if Tenant demonstrates that the sums payable under the proposed contracts do not exceed the amounts normally payable for similar goods and services under similar circumstances and that the agreement is otherwise consistent with an arms-length transaction.

(c) Books and Records. Tenant shall keep accurate books and records in accordance with the standards of financial accounting of the Governmental Accounting Standards Board. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated. If Tenant operates all or any portion of the Premises through a third-party Manager, Tenant shall cause such third-party Manager to adhere to the foregoing requirements regarding books, records and accounting principles. Tenant shall maintain complete and accurate accounting records of all construction costs for the Project for a period of no less than four (4) years after the date of the issuance of the last certificate of completion for the Project. Promptly (but in no event exceeding thirty (30) days) following a written request from City, Tenant shall make requested Books and Records (or copies thereof) available for inspection and audit by City during customary business hours at a location within the City reasonably satisfactory to City.

(d) Reports. Tenant shall deliver to City annually (and, during the construction of any Improvements, quarterly) a statement from the depository institutions in which the Accounts are held, showing the then current balance in such Accounts and any activity on such Accounts which occurred during the immediately prior Lease Year. In the event that Tenant has withdrawn funds from any Reserve Account within the immediately prior Lease Year (or quarter, if applicable), Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City.

(e) Inspection and Audit. City shall have the right to inspect Tenant's Books and Records at any time on notice to Tenant, and shall have audit rights as described in Section 12.2.

(f) Security Interest. Tenant hereby grants to City a lien and security interest in the Accounts to secure the performance by Tenant of all of Tenant's obligations under this Lease. Tenant shall execute, deliver, file and refile, at Tenant's expense, any instruments, financing statements, continuation statements, or other security agreements that City may require from time to time to confirm the lien granted herein. Tenant hereby warrants and represents that the Accounts shall be free and clear of all other liens and encumbrances except only liens granted to a Mortgagee as permitted under Article 44. Tenant shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such the lien

granted hereby if requested by City, including, without limitation, a security agreement and a depository account control agreement. Subject to the rights of a Mortgagee of which City has been made aware in writing, upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City shall have the immediate right of possession of the funds in the Accounts. City hereby subordinates its interest in the Accounts to the interests of a Mortgagee of which City has been made aware in writing, which subordination is self-operative. The requirements set forth in this Section are the minimum requirements imposed on Tenant in connection with the Accounts and City acknowledges that a Mortgagee may impose the same or further requirements with respect thereto, and that sums deposited with or at the direction of a Mortgagee for the purposes for which a Reserve Account has been established shall be deemed deposited in such Reserve Account to avoid Tenant being required to maintain duplicative reserves.

(g) Joint Control Agreement. At any time upon the recommendation of the City Controller, City may require by sixty (60) days advance written notice to Tenant that Tenant cause the depositary bank in which one or more Accounts are held to enter into a "joint control agreement," on commercially reasonable terms and conditions, in which such depositary bank agrees that it will require the consent of City in the circumstances described in Section 9.3(a)ii.

(h) Transfer of Project Development Account to City. The Project Development Account will be established in a manner which permits transfer to City or City's designee upon notice from City to the depository institution that City elects to cause the transfer of such account due to a prolonged delay in construction as described in Section 5.9(e), subject to the rights of Mortgagees and other provisions set forth in Section 44 [Mortgages].

(i) Transfer of Accounts at Lease Expiration or Termination. Upon the expiration or earlier termination of this Lease all funds in the Accounts shall be transferred to City or City's designee.

10. INTENTIONALLY OMITTED

11. POTENTIAL CERTIFICATES OF PARTICIPATION

Tenant, through City, may elect to finance portions of the Project with proceeds from the execution, sale and delivery of certificates of participation (the "**Certificates of Participation**"), a financing mechanism that will require fee simple title, subject only to accepted conditions of title, to be taken in the name of a nominee of City (the "**Nominee**") which, as landlord, will lease the Property to City. The Nominee, which will be a bank or other fiduciary, will act as trustee for holders of the Certificates of Participation. Tenant hereby consents to the use of a Nominee to take title to the Property. Following the Board of Supervisor's enacting a resolution approving the sale of Certificates of Participation or other debt to finance a Project Phase, City shall use diligent efforts to effect such execution, sale and delivery of the Certificates of Participation and to complete all other action that is necessary in connection therewith, provided that Tenant understands and acknowledges that the terms and conditions of the execution and delivery of such Certificates of Participation or other debt, including that the debt be secured by a current appraisal of the market value of the Property, must be acceptable to City, the Board of Supervisors and the Mayor of the City and County of San Francisco, in their sole discretion. Other than as expressly provided above in this subparagraph with respect to City using its diligent efforts following Board of Supervisor approval, City makes no representation, warranty or assurance such Certificates of Participation or other debt will be issued, delivered or sold. Subject to Tenant's reasonable approval thereof, Tenant agrees to execute and deliver to City upon request, at no material cost to City, any and all certificates, agreements, authorizations or other documents as City may deem reasonably necessary or appropriate in connection with the execution, delivery and sale of the Certificates of Participation or other debt, provided that such certificates, agreements, authorizations and other documents shall not increase Tenant's obligations or diminish Tenant's rights under this Lease. Subject to the foregoing and the other

terms and conditions hereof, City may, at its option, initiate a validation proceeding in Superior Court with respect to such Certificates of Participation or other debt instruments. Tenant understands and acknowledges that if such a validation proceeding is initiated, the Certificates of Participation or other debt instruments will not be executed until a judgment in favor of City is issued in such proceeding and the applicable appeal period expires without written challenge and without the filing of a notice of appeal.

12. RENT

12.1. Tenant's Covenant to Pay Rent; Base Rent.

During the Term of this Lease, Tenant shall account for all Gross Revenues and Operating Expenses under the terms and conditions set forth below and shall pay Rent for the Premises to City at the times and in the manner provided in this Article 12. Commencing on the Commencement Date and continuing through the date immediately preceding the Stabilization Date (defined below), on or before the fifteenth (15th) day of each calendar month Tenant shall pay Base Rent in an amount equal to Net Revenues for the previous calendar month less sums deposited into the Project Development Account during such calendar month. Except as otherwise set forth in this Lease, it is anticipated that prior to the Stabilization Date Tenant will deposit all Net Revenues into the Project Development Account. After Stabilization Date, on or before the fifteenth (15th) day of each calendar month Tenant shall pay Base Rent in an amount equal to Net Revenues for the previous calendar month. At Tenant's request and to the extent approved by the Director of Property in consultation with the City Controller, in his or her reasonable discretion, Tenant may from time to time be allowed to prepay some or all of the debt under one or more financing instrument, and in such case such prepayments shall be treated as Debt Service for the purpose of computing Base Rent; provided, however, that nothing in this Section 12.1 shall prohibit Tenant from prepaying debt in the normal course in connection with any refinancing of existing debt, including but not limited to conversion of construction loans to permanent take-out financing.

12.2. Net Revenue Payments.

(a) Definitions. The following terms shall be defined as set forth below.

i. "**Capital Grant Funds**" means all grant funds received by Tenant to pay any portion of the Project Development Costs. (The Parties acknowledge that operational grant funds will be treated as Gross Revenue unless the provisions of the grant dictate otherwise.)

ii. "**Debt Service**" means debt service, including, without limitation, regular payments of interest, amortization of principal, and all financing costs, points and fees actually paid by Tenant on any loans, Certificates of Participation (COP), Qualified Low-Income Community Investments under the New Markets Tax Credits Program, or any other financing vehicle obtained by Tenant in connection with the development of the Project, but excluding any voluntary prepayment of amounts due thereunder, except as approved by City in accordance with the provisions of Section 12.1.

iii. "**Gross Revenues**" means the following items determined on a cash basis in accordance with GAAP: all payments, revenues, income, rental receipts, common area maintenance (CAM) fees, gate receipts, parking charges, proceeds and amounts of any kind whatsoever actually received by Tenant or on behalf of Tenant arising from Tenant's leasehold interest in the Premises, including Subtenant Rent, and third party fees, but excluding all Capital Grant Funds, loan proceeds, checks returned for insufficient funds, refunds and payments received made in the ordinary course of business, proceeds from casualty and public liability insurance, condemnation awards payable for Tenant's business, proceeds from returns to or exchanges with suppliers, shippers, or vendors, and security deposits received from Subtenants, except to the extent and as they are applied to Subtenants' obligations under the Subleases.

Except with respect to any Separate Parcel Lease for which there has been a Dispossession Event, Gross Revenues include any payments made to Tenant or any Separate Parcel Tenant under any Separate Parcel Lease and any related agreements.

iv. "**Net Revenues**" means Gross Revenues less: (A) Operating Expenses and (B) Debt Service.

v. "**Operating Expenses**" means expenses, fees and costs of any kind or nature whatsoever, incurred in connection with the operation, management, ownership, insurance, maintenance or repair of the Premises paid for by Tenant with no reimbursement from any subtenant, licensee, other occupant of the Premises or from grantors, donors or any other entity or person. Operating Expenses shall include, without limitation (A) the cost of utilities (including any deposit); (B) the cost of security services; (C) the cost of janitorial services; (D) the cost of marketing the Premises (including advertising, reletting, lease inducements, lease buyouts, rent subsidies, moving expenses, tenant improvements, LEED or similar "green building" consultants engaged by Tenant to assist Subtenants in connection with tenant improvements, fees and other costs incurred in connection with any application, registration or certification of Subtenants' Sublease premises with any green building rating organization (e.g., USGBC) and hazardous materials remediation or restoration, if applicable; (E) insurance premiums for all insurance policies carried by Tenant on the Premises or in connection with the use or occupancy thereof; (F) wages, salaries, payroll taxes and other labor costs and employee benefits; (G) management fees, broker commissions and fees and common area maintenance (CAM) expenses; (H) accounting, consulting and legal expenses; (I) deposits into the Operating Reserve Account, Replacement Reserve Account, and any other Reserve Account other than the Project Development Account for the payment of Debt Service, reasonable retenanting reserves, and reasonable reserves for insurance premiums, property taxes and other expense items; (J) required permits, certificates and licenses; (K) any and all taxes, impositions and/or assessments levied against or charged to the Premises or Tenant's interest therein pursuant to this Lease or any covenants, conditions and restrictions, easements, or access and maintenance agreements now or hereafter of record; (L) refunds owed to Subtenants for excess repayment of operating expenses or common area maintenance (CAM) charges; and (M) Tenant's Organizational Expenses (subject to the limits set forth in Section 12.2(a)vi below). The computation of Operating Expenses shall be made in accordance with GAAP. Such expenses shall be reasonable and no higher than market rates, and all dealings with affiliates, board members and employees of Tenant shall be disclosed to the City in the Annual Statement. Except with respect to any Separate Parcel Lease for which there has been a Dispossession Event, Operating Expenses include any expenses incurred by Tenant or any Separate Parcel Tenant under any Separate Parcel Lease and any related agreements.

vi. "**Tenant's Organizational Expenses**" means the reasonable costs of operating the entity which is Tenant. Tenant shall operate the entity in a manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient, cost effective and consistent with Tenant's mission, corporate purposes, applicable Laws and this Lease, at all times avoiding lavish, extravagant or excessive expenditures.

vii. "**Project Development Costs**" means all costs and expenses incurred by Tenant to develop all Phases of the Project including related off-site improvements, including, without limitation, predevelopment, entitlement, design, planning, construction, financing, and professional services costs, abatement of hazardous materials, and any other item that is reasonably necessary to complete the Project.

viii. "**Project Development Account**" has the meaning set forth in Section 9.3(a).v.

ix. "**Stabilization Date**" means the first day of the first month after the completion of all Phases of the Development Project, after which the Net Revenues have been positive for a period of three (3) consecutive months.

(b) Agreement to Pay; Determination. Base Rent shall be payable monthly in arrears in accordance with the following terms and conditions. On or before the tenth (10th) day of each full calendar month of the Term of this Lease following the Commencement Date and the tenth (10th) day of the calendar month immediately following the expiration or termination of this Lease, Tenant shall deliver to City a statement certified as correct by an officer of Tenant and otherwise in form satisfactory to City, showing Net Revenue and deposits into the Project Development Account during the last preceding calendar month, as required to determine the Base Rent, if any, payable for such calendar month (a "**Monthly Income Statement**"). On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City a statement (the "**Annual Statement**"), certified as correct by an officer of Tenant, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Statement shall set forth financial statements in accordance with Governmental Accounting Standards Board (GSAB) standards which will include a balance sheet, statement of activities or income statement, statement of cash flows, and include applicable footnotes and disclosures for the Lease Year just concluded. Except with respect to any Separate Parcel Lease for which there has been a Dispossession Event, the accounting and reporting requirements set forth in this subparagraph shall apply to Tenant and any Separate Parcel Tenant, and shall be aggregated into a single statement that covers the Premises and each Separate Parcel Premises, unless requested otherwise by City.

(c) Audit.

i. Tenant agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make its Books and Records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "**City representative**"), for the purpose of examining such Books and Records to determine the accuracy of Tenant's reporting of all information required for the purposes of calculating Gross Revenues and Net Revenues pursuant to the terms of this Lease and for Tenant's compliance with the requirements of Section 9.3. Tenant shall cooperate with City representative during the course of any audit. Such Books and Records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts. If an audit is made within such four-year period and City claims that errors or omissions have occurred, the Books and Records shall be retained and made available until those matters are resolved. If Tenant operates all or any part of the Premises through a third-party Manager, Tenant shall require each such third-party Manager to provide City with the foregoing audit right with respect to their respective Books and Records.

ii. If an audit reveals that Tenant has understated its Net Revenues or overstated its deposits into the Project Development Account for such audit period, Tenant shall pay City, within thirty (30) business days after demand, the difference between the amount City identified in the audit as Base Rent which would have been payable for such period and the amount of Base Rent actually paid by Tenant to City for such audit period. Further, such misstatement of Net Revenues or of deposits into the Project Development Account may be evidence of a defect in the operation and management of the Premises under Section 9.2(a), which could result in a replacement of the Manager in accordance with the provisions of such Section.

12.3. Manner of Payment of Rent.

Tenant shall pay all Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place

as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand", "promptly following notice", "upon receipt of invoice", or the like, then such Rent shall be due thirty (30) days following the giving by City of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

12.4. No Abatement or Setoff.

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim.

12.5. City Costs.

Within sixty (60) days following receipt of a written invoice from the City Tenant shall from time to time pay to the City as Additional Rent the actual costs incurred by City during the Term in connection with the implementation, management or enforcement of this Lease (in City's proprietary role and not its role as a regulatory agency), as determined on a time and materials basis. City will provide Tenant with annual estimate of projected annual reimbursable costs in connection with Tenant's preparation of an annual operating budget, provided such estimate shall not limit Tenant's obligations hereunder. If requested by Tenant, City shall provide such documentation as may be reasonably necessary to substantiate the costs for which City seeks to be reimbursed, including a brief non-confidential description of work completed by the City Attorney or outside counsel. If Tenant in good faith disputes any portion of an invoice, then within sixty (60) calendar days of receipt of the invoice Tenant shall provide written notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Tenant shall have no right to withhold the disputed amount.

12.6. Late Payments.

Tenant acknowledges and agrees that, in addition to and without limiting any of City's rights or remedies hereunder, if (i) an installment of Base Rent is not paid within ten (10) days following the date such payment is due more than three (3) times in any calendar year, or (ii) two consecutive monthly installments of Base Rent are not paid within ten (10) days following the date such payment is due, or (iii) an installment of Base Rent or a payment of Additional Rent is not paid within thirty (30) days following the written notice from City such payment is due, then such late payments shall be evidence of a defect in the operation and management of the Premises under Section 9.2(a), which could result in a replacement of the Manager in accordance with the provisions of such Section.

12.7. Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, shall be deemed Additional Rent. City shall have the same rights, powers and remedies, whether provided by Law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent.

12.8. Net Lease.

It is the purpose of this Lease and intent of City and Tenant that all Rent shall be absolutely net to City, so that this Lease shall yield to City the full amount of the Rent at all times during the Term, without deduction, abatement or offset and at no cost to City, except as otherwise expressly set forth herein. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be specifically set forth herein, shall City be expected or required to incur any expense or make any

payment of any kind with respect to this Lease, a Separate Parcel Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Section 13.1(c), Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of City's estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

13. TAXES AND ASSESSMENTS

13.1. Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property located on the Premises or Tenant's leasehold estate, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 13.1(c)). Subject to the provisions of Section 14 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 14.

i. Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease may create a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor. Tenant further acknowledges that any Sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership, within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

ii. Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may be reasonably requested by City to enable City to comply with such requirements.

(b) Other Impositions. Without limiting the provisions of Section 13.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 13.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant

whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other person or entity may have acquired pursuant to this Lease. Subject to the provisions of Section 14, Tenant shall pay or cause to be paid all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition, except to the extent such fine, penalty, interest or cost relates to nonpayment or delinquency of taxes separately assessed, levied or imposed on any Personal Property of any Subtenant. As used herein, "**Impositions**" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation all community benefits district assessments imposed on the Premises. Notwithstanding the foregoing provisions to the contrary, Tenant shall not be responsible for paying any transfer taxes resulting from the City's transfer of its fee ownership interest in the Premises or any business or gross rental taxes assessed to the City.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

13.2. City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 14, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, City, at its sole option, may (but is not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, City shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which City intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify City that it is contesting such Imposition pursuant to Section 14, then City may thereafter pay such Imposition, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within ten (10) business days following demand.

14. CONTESTS

14.1. Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person or entity to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to City. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final

determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in any instance where City's interest in the Property may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If City is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Property, City, at the request of Tenant and at no cost to City, with counsel selected and engaged by Tenant, subject to City's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. City, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Property. Except as provided in the preceding sentence, City shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 23, Tenant shall Indemnify City for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which City may be legally obligated to pay.

14.2. City's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, City may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require City to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. City shall give notice to Tenant within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. If City undertakes any such contest, and any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, City shall be responsible for complying with such condition as a condition to its right to contest. City shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and City shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Property may be subjected to such lien or claim. City shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Tenant is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of City and at no cost to Tenant, with counsel selected and engaged by City, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

15. COMPLIANCE WITH LAWS

15.1. Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to City, (i) with all applicable Laws (including Regulatory Approvals), (ii) with all Mitigation and Improvement Measures, and (iii) with the requirements of all policies of insurance required to be maintained pursuant to Section 24 of this Lease. The foregoing sentence shall not be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 4.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit City's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to City, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Section 15.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 15.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Article 20 or 21, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, except to the extent provided in Article 20 or 21, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

(c) Proof of Compliance. Tenant shall promptly upon request provide City with evidence of its compliance with any of the obligations required under this Section.

15.2. Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity as the holder of fee title to the Property and not in its regulatory capacity. Tenant understands that the entry by City into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where City will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires City's approval under

Article 18, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of City, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with City in Tenant's efforts to obtain such Regulatory Approval, and City shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that City shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than City, if City is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of City whether on or off the Property, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. No such approval by City shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, City shall join, where required, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that City shall have no obligation to join in any such application or execute the permit if City does not approve the conditions imposed by any regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of City (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and City shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 23, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

16. REPAIR AND MAINTENANCE

16.1. Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to City, the Premises, in condition and repair as is appropriate to maintain a first class produce market and distribution center in compliance with all applicable Laws and the requirements of this Lease.

(b) Inspection Reports. Not less frequently than once every seven (7) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises in good order and repair and to keep the Improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify capital repairs and improvements which are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises ("**Replacements**") as well as routine maintenance and repairs. If at any time City determines that repairs, improvements or replacements which are not detailed on the Inspection Report are advisable to keep the Premises in good order and repair or to prevent deterioration ("**Additional Replacements**"), City may send Tenant written notice of the need for such Additional Replacements.

(c) Maintenance and Repair. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Replacements and Additional Replacements, except as otherwise provided in Article 20 or

Article 21. Tenant shall make such repairs with materials, apparatus and facilities at least equal in quality, design standards, public safety and durability to the materials, apparatus and facilities repaired, replaced or maintained. Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

(d) No Obligation of City; Waiver of Rights. As between City and Tenant, Tenant shall be solely responsible for the condition, repair, and maintenance of the Premises, including any and all Improvements, from and after the Commencement Date. City shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any existing or future Law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

(e) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than City) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Project is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 24, asserting that the requirements of such insurance policy or policies are not being met.

17. IMPROVEMENTS

17.1. Tenant's Obligation to Construct the Project.

Tenant shall construct the Project in accordance with, and subject to all the terms, covenants, conditions and restrictions in this Lease. Any Subsequent Construction shall be performed in accordance with Article 18.

17.2. Title to Improvements.

During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but, except as otherwise set forth in this Lease, excluding trade fixtures and, other Personal Property of Tenant and its Subtenants other than City), will vest in City without further action of any party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove trade fixtures and other Personal Property from the Premises in the ordinary course of business; provided, however, that if the removal of Personal Property causes material damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to City.

18. SUBSEQUENT CONSTRUCTION

18.1. City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Article 18, provided that Tenant shall not do any of the following, without City's prior written approval (which approval may be withheld by City in its sole discretion):

i. Construct additional buildings or other additional structures, other than to replace or Restore those previously existing, the approval and construction of which shall be governed by a separate instrument entered into with City;

ii. Increase the bulk or height of any Improvements beyond the bulk or height approved for the Project;

iii. Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law); and

iv. Materially decrease the building area within the Premises in a manner which would adversely affect the Gross Revenues generated.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires City's approval under Section 18.1(a) above, Tenant shall notify City of such planned Subsequent Construction. City shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Subsequent Construction within the thirty (30) day period described above, then Tenant may submit a second written notice to City that such objection was not received within the period provided by this Section 18.1(b) and requesting City's response within five (5) business days after Tenant's second notice. If the City fails to object to such planned Subsequent Construction within such five (5) business day period, then Tenant shall proceed with compliance with the procedures for approval and performance of the Subsequent Construction as set forth below.

(c) Permits. Tenant acknowledges that the provisions of this Section are subject to Sections 15.1(a) and 18.7. In particular, Tenant acknowledges that City's approval of Subsequent Construction (or the fact that Tenant is not required to obtain City's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the City itself in its regulatory capacity.

18.2. Minor Alterations.

Unless otherwise required under Section 18.1(a), City's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, or equipment which do not materially affect the structural integrity of the Improvements, or (b) any other Subsequent Construction which does not require a building permit, approval from the Planning Department or other departments of the City (collectively, "**Minor Alterations**").

18.3. Tenant Improvements.

Except as otherwise specifically provided hereunder, City's approval hereunder shall not be required for the installation of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from City, acting in its regulatory capacity.

18.4. Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires City's approval under this Article 18, Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following City's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "**Construction Documents**"). City may waive the submittal requirement of Schematic

Drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If City notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 18.5, City shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection, and City shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If City fails to approve, conditionally approve or disapprove the Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 18.4, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved, provided that Tenant first submits a second written notice to City that such approval or disapproval was not received within the period provided by this Section 18.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second notice prior written notice that Tenant intends to deem said Construction Documents so approved and City fails to respond within such ten (10) day period, provided that the original request met the requirements of this Section.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of the Construction Documents, City and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. City and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to City can receive prompt and speedy consideration.

18.5. City Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's written objections. Tenant shall resubmit such revised portions to City as soon as possible after receipt of the notice of disapproval. City shall approve or disapprove such revised portions in the same manner as provided in Section 18.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to City. If Tenant desires to make any substantial change in the Final Construction Documents after City has approved them, then Tenant shall submit the proposed change to City for its reasonable approval. City shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to City. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

18.6. Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to City written progress reports when and as reasonably requested by City.

18.7. Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City:

i. City shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which City has an approval right under Section 18.1);

ii. Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Article 15;

iii. Tenant shall have submitted to City in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to City of Tenant's ability to pay such costs as and when due; provided, however, that the threshold amount set forth in this Section 18.7(iii) shall be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "Index"), which is published most immediately preceding the most recent anniversary of the Commencement Date over the Index in effect on the Commencement Date.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. City shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. The City and its Agents shall conduct their activities in such a way as to minimize interference with operations of Tenant and its Subtenants to the extent reasonably practicable. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in connection with Subsequent Construction (other than tenant improvements performed by Subtenants) shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, or cause to be included, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest general prevailing rate of wages for the labor so performed and shall use reasonable and diligent efforts to enforce such contract provisions. Tenant further agrees that highest prevailing wage shall be determined in accordance with the applicable provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22 of the San Francisco Administrative Code that relate to payment of prevailing wages. At City's written request, Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements (other than tenant improvements performed by Subtenants) to document compliance with this Section 18.7(e).

18.8. Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

18.9. As-Built Plans and Specifications.

With respect to any Subsequent Construction costing One Hundred Thousand and No/100 Dollars ($100,000.00) as indexed, or more, for which City's approval was required under Article 18, Tenant shall furnish to City one set of as-built plans and specifications with respect to such Subsequent Construction (reproducible transparencies and CAD files) within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

19. UTILITY SERVICES

City, in its proprietary capacity as fee owner of the real property comprising the Premises and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

20. DAMAGE OR DESTRUCTION

20.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage or Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes hereof, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, (i) which would materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) the repair of which would exceed twenty-five percent (25%) of the funds in the Replacement Reserve Account, or (iii) exceeds the amount of any deductible for the applicable insurance policy maintained by Tenant, Tenant shall promptly, but not more than thirty (30) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

20.2. Intentionally Omitted.

20.3. Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 20.4, and such casualty arises from a risk required to be covered by insurance described in this Lease, then, provided that the funds in the Replacement Reserve Account, plus the amount of funds payable to the Replacement Reserve Account but not yet deposited, immediately prior to the event of damage or destruction ("**Replacement Reserve Account Funds**"), together with the Property Related Insurance proceeds and the applicable deductible payable by Tenant in connection with such Property Related Insurance (Tenant shall apply funds from all reserve accounts to the extent necessary to pay such deductibles) (collectively, "**Tenant's Restoration Funds**") are sufficient for such purpose, as mutually determined by Tenant and City ("**Sufficient Restoration Funds**"), then subject to Section 20.4, Tenant shall, within a reasonable period of time, including such time as may be necessary or desirable for Tenant to obtain all Regulatory Approvals, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws (including, but not limited to, any required code upgrades). All Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 18 relating to Subsequent Construction and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

20.4. Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs, or if, a change in Laws has occurred which prohibits the Premises from being rebuilt as a produce wholesaling and distribution center, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (i) electing to commence and complete Restoration of the Improvements substantially to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Laws (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 20.4(b)). Tenant shall provide City with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand of repayment or acceleration of a Mortgage from any Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. Except in the case of Uninsured Casualty, as a condition to making such election, Tenant shall pay or cause to be paid to City, immediately upon receipt thereof, the proceeds of the rental interruption or business interruption insurance required hereunder arising out of or in connection with the casualty causing such Major Damage or Destruction to the extent attributable to the Rent payable

to City under this Lease for the duration of such event of damage or destruction or Major Damage or Destruction. If Tenant elects to Restore the Improvements, all of the provisions of Article 18 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements substantially to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction. For purposes hereof, "**Uninsured Casualty**" will mean any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds the Replacement Reserve Account Funds, and which is not insured (or required to be insured) under the policies of insurance that Tenant is required to carry under Article 24 hereof; or (2) an event of damage or destruction occurring at any time during the Term which is covered under any of Tenant's insurance policies required to be maintained pursuant to this Lease for which Sufficient Restoration Funds are not available.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 20.4(a) above, Tenant shall do all of the following:

i. In Tenant's Casualty Notice electing to terminate described in Section 20.4(a), Tenant shall provide evidence of the estimated cost of Restoration, and, in the case of earthquake or flood damage, the amount by which the cost of Restoration plus the amount of any applicable policy deductible and the Replacement Reserve Account Funds exceed insurance proceeds payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder); and

ii. City may elect, to the extent of Tenant's Restoration Funds, to require that Tenant cause the Improvements to be repaired to the extent required to alleviate any condition caused by such event of damage or destruction that could cause an immediate threat to public safety, as reasonably determined by City ("**Safety Restoration Work**"). Any remaining balance of Tenant's Restoration Funds shall be payable as follows: (w) first, to City (or Tenant, if such work is performed by, or on account of, Tenant at its cost) for the Safety Restoration Work; (x) second, to the Mortgagee demanding payment thereof in accordance with its Mortgage and applicable Law (in order of lien and not pro rata), that portion of the remaining casualty proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Mortgagee and secured by the Mortgage under the loan documents therefor; (y) third, to City in the amount owed to City, if any, by Tenant on account of Tenant's obligations hereunder as of the date of the event of damage or destruction; and (z) fourth, the balance of the proceeds shall be divided pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest as defined in Section 21.3(b).

(c) City's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 20.4(a), then City may, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, free of any existing Subleases (unless otherwise assumed by City), or (ii) continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed Tenant's Restoration Funds and require Tenant to Restore the Premises in accordance with Section 20.4(b); provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment; or (iii) continue the Lease in effect and undertake the Restoration of the Premises itself, without contribution from Tenant, provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment. If City elects to continue the Lease in accordance with this Section 20.4(c), then Rent shall abate until the Premises is delivered to Tenant with the

Restoration substantially complete for resumption of operation of the Premises as a produce wholesaling and distribution center.

20.5. Effect of Termination.

Provided that there shall not have occurred any Event of Default (or Unmatured Event of Default) under this Lease that has not been waived in writing by City, if Tenant elects to terminate the Lease under Section 20.4(a) above, and City elects not to continue the Lease in effect as allowed under Section 20.4(c), then, on the date that Tenant shall have fully complied with all other provisions of Section 20.4(b) to the reasonable satisfaction of City, this Lease shall terminate. Upon such termination, except otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination; provided, however, that the following provisions shall survive such termination: (i) all indemnification provisions contained in this Lease with respect to matters arising before the effective date of any such termination only, and (ii) any rights of the Parties or Mortgagee to receive insurance proceeds in accordance with this Lease. In addition, termination of this Lease under this Article 20 shall not limit the right of a Mortgagee to a New Lease under Article 44.10(d) unless such Mortgagee has agreed otherwise. At City's request following any termination, Tenant shall promptly deliver to City a duly executed and acknowledged quitclaim deed with respect to all of Tenant's interests related to this Lease and the Premises suitable for recordation and in form and content satisfactory to City.

20.6. Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by City, Tenant and, subject to Article 44, any Mortgagee or not yet collected, shall be paid to and retained by the party entitled thereto in accordance with this Lease.

20.7. Event of Default.

Subject to Article 44, if there shall have occurred an Event of Default (or Unmatured Event of Default) under this Article 20 that has not been waived in writing by City, City shall receive all Property Related Insurance proceeds to the extent required to satisfy Tenant's obligations under this Article 20.

20.8. Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all Property Related Insurance proceeds paid to City or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Article 20 or Article 44 or as otherwise approved by the City.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 20 or in Article 44, and if Tenant Restores the Improvements, any insurer paying compensation under any Property Related Insurance policy required to be carried hereunder shall pay such proceeds to (i) a trustee (which shall be a bank or trust company, designated by City within thirty (30) days after written request by Tenant, having an office in San Francisco), or (ii) the Mortgagee that is the holder of any Mortgage which is a lien against the Improvements, or a trustee reasonably acceptable to the City designated by such Mortgagee, at the option of such Mortgagee. However, such trustees or Mortgagee shall pay to Tenant, from time to time as the work of Restoration shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such Restoration. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration of any buildings and other Improvements destroyed or damaged, which may exceed the amount

received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured.

Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. If any proceeds are held by a trustee pursuant to this Section 20.8(b), the trustee or Mortgagee, as applicable, shall hold all insurance proceeds in an interest-bearing, federally insured account, and all interest thereon shall be added to the proceeds. Provided that no Event of Default (or Unmatured Event of Default) that has not been waived by City shall exist on the date of such Restoration, the Improvements shall have been Restored in accordance with the provisions of this Section 20.8(b) and all sums due under this Lease shall have then been paid in full, and any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

20.9. No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

21. CONDEMNATION

21.1. General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Article 21.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Article 21, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 21, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

21.2. Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to the payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that all indemnification provisions hereof shall survive any such termination with respect to matters arising before the effective date of such termination.

21.3. Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Article 21, a Condemnation of less than the entire Premises or of less than Tenant's leasehold estate, or of property located outside the Premises that substantially or materially eliminates access to the Premises where no alternative access can be constructed or made accessible, shall be a "**Substantial Condemnation**", and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to City) if Tenant reasonably determines that such Condemnation renders the Project unsuitable, untenantable and economically infeasible for its intended use as described in this Lease; provided, however, a Condemnation described above shall not be a Substantial Condemnation, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Project unsuitable, untenantable and economically infeasible for its intended use as described in this Lease, as the case may be, can be cured by the performance of Restoration, and (i) the cost of such Restoration does not exceed the portion of the Award fairly allocable to severance damages suffered by Tenant plus Tenant's Restoration Funds, as applicable, or (ii) City (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within ninety (90) days (subject to extension as provided below) after receipt of Tenant's termination notice that City agrees, at its cost and expense, to pay all amounts by which the cost of such Restoration exceeds the amount of the Tenant's severance damages and such Restoration can be completed within eighteen (18) months after the date of the Substantial Condemnation in City's reasonable judgment. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Article 18 and Section 21.4, within a reasonable time, subject to events of Force Majeure. City's right to exercise the option described in clause (ii) above shall be conditioned upon City and Tenant reaching an agreement with respect to the schedule for performance of required work, the timing of payments of City's contribution to the costs of such work (to the extent not available from City's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, City shall have no right to exercise such right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 21.2 or Section 21.3(a) (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and in accordance with all applicable Laws, Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to City. Any Award in connection with a Partial Condemnation shall be payable to Tenant to be applied to the Restoration, with the balance of such Award payable pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest, as defined below. Any such Restoration shall be performed in accordance with the provisions of Article 18.

For purposes of this Lease: (1) "**City's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of City's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements; and (2) "**Tenant's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of Tenant's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements.

21.4. Awards.

Except as provided in Sections 21.3(b) and 21.5, Awards and other payments to either City or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between City and Tenant as follows:

(a) first, if this Lease is not terminated as a result of such Condemnation, to the costs of Restoration;

(b) second, to the extent of Tenant's share of the Net Award and Payment, to the Mortgagee pursuant to the Mortgage for payment of all amounts outstanding thereunder, together with such Mortgagee's reasonable out of pocket expenses and charges in connection with collection of the Net Award and Payment, including, but not limited to its reasonable Attorneys' Fees and Costs incurred in the Condemnation;

(c) third, City and Tenant shall each be allocated the value of their respective interests in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. The values of City's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award, and the amounts distributed to the Mortgages pursuant to Section 21.4(b), shall be deducted from the value of Tenant's interest in the Premises;

(d) fourth, to City from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to City under this Lease for periods prior to the Condemnation Date;

(e) fifth, to Tenant from the share otherwise allocated to City, in an amount equal to any sum which City has agreed to pay towards the cost of Restoration under clause (ii) of Section 21.3(a).

21.5. Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Condemnation.

21.6. Safety Restoration Work; Personal Property; Goodwill; Relocation Benefits.

Notwithstanding any provision to the contrary in this Article 21, prior to any termination of this Lease in connection with a Substantial Condemnation or Partial Condemnation, Tenant shall conduct Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable. Provided that Tenant completes the Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable, City shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants, the loss of business or loss of goodwill by Tenant or any of its Subtenants, or relocation benefits or moving expenses for Tenant or any of its Subtenants.

22. LIENS

22.1. Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises, Tenant's

leasehold estate or the Accounts, other than the following (collectively, the "**Permitted Title Exceptions**"): (i) this Lease, other permitted Subleases and any exceptions to title existing as of the Effective Date and not caused or suffered to arise by Tenant or Tenant's use and occupancy of the Premises, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Article 14, (iii) Mortgages permitted under Article 44, (iv) Mortgages encumbering the subleasehold interests of Subtenants approved by City, provided such Mortgage is permitted under Article 44; and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 14. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

22.2. Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of City, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by City or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or City's fee interest in the Premises for or on account of labor, services or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow City from time to time to post a notice of non-responsibility on the Premises. Subject to Section 14.1 above, if Tenant does not, within sixty (60) days following the Imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and City shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable expenses incurred by City in connection therewith shall be payable to City by Tenant within thirty (30) days following written demand by City. City shall include reasonable supporting documentation with any such demand.

23. INDEMNIFICATION

23.1. Indemnification.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Tenant's use or operation of the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of persons or loss of or damage to property occurring near or around the Premises which is caused directly or indirectly by Tenant or any of Tenant's Agents, Invitees or Subtenants; (iii) any use, non-use, possession, occupation, operation, maintenance, management or condition of the Premises, or any part thereof; (iv) any use, non-use, possession, occupation, operation, maintenance, management or condition of property near or around the Premises by Tenant or any of Tenant's Agents, Invitees or Subtenants; (v) any latent, design, construction or structural defect relating to the Project and any subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents, Invitees or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; (viii) any civil rights actions with respect to the Project due to

Tenant's operation of the Premises other than in accordance with this Lease; and (ix) any claim or dispute relating to the creation of a Separate Parcel Lease and any dispute between Tenant and a Separate Parcel Tenant relating to the Produce Market financing, use, management or operations, including but not limited to claims or disputes arising out of any reciprocal easement agreement, CC&R, or similar agreement. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws, or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to February 1, 2013, and to the extent not arising from the negligence or willful misconduct of Tenant or any of its Agents, Invitees or Subtenants. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

23.2. Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 23.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. In the event that it is determined conclusively by a court of law with jurisdiction (and all possible periods for appeal have expired) that no Indemnified Party is entitled to the indemnification provided in Section 23.1 above, and provided that the provision of the defense of such Indemnified Party is not provided by any policy of insurance that Tenant is required to carry under the terms of this Lease (or would not have been provided but for Tenant's default in its obligations to maintain such insurance), then Tenant may offset from the next installments of Net Revenues the reasonable and actual out-of-pocket expenses incurred by Tenant in connection with the defense of the Indemnified Party following Tenant's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

23.3. Not Limited by Insurance.

None of the other provisions of this Lease shall limit the indemnification obligations under Section 23.1 or any other indemnification provision of this Lease.

23.4. Survival.

Tenant's indemnity obligations under this Lease shall survive the expiration or sooner termination of this Lease.

23.5. Other Obligations.

The agreement to Indemnify set forth in this Article 23 and elsewhere in this Lease is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City under this Lease.

23.6. Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim,

City shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Tenant of an invoice therefor.

23.7. Release of Claims Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the City and any and all Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises arising from the City's or any Indemnified Party's exercise of any of their rights or obligations in connection with this Lease, but excluding any claims to the extent arising from the gross negligence or willful misconduct of City or the Indemnified Parties.

24. INSURANCE

24.1. Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 18.1(a)), the following types and amounts of insurance:

i. Builders Risk Insurance. At all times prior to Completion of the Project, and during any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by City, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction with no coinsurance penalty provision, including all materials and equipment incorporated into the Improvements, and in transit or storage off-site, against hazards including earthquake (subject to the provisions of Section 24.1(b)(iii)), water damage (including, if appropriate and if available at commercially reasonable rates, groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 24.1(b)(iv)), the Builder's Risk policy shall identify the City as the sole payee, with any deductible not to exceed Ten Thousand Dollars ($10,000) (except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 24.1(a)(i) and the insurance required under Section 24.1(a)(vii) may be required in order to comply with the requirements of Section 24.1(b)(iii) and Section 24.1(b)(iv).

ii. Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain, or shall cause to be maintained by Manager, property insurance policies with coverage at least as broad as Insurance Services Office ("ISO") form CP 10 30 06 07 ("Causes of Loss - Special Form"), including earthquake, subject to the provisions of Section 24.1(b)(iii), and flood, subject to the provisions of Section 24.1(b)(iv), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage) with any deductible not to exceed Ten Thousand Dollars ($10,000) (except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 24.1(a)(ii) and the insurance required under Section 24.1(a)(vii) may be required in order to comply with the requirements of Section 24.1(b)(iii) and Section 24.1(b)(iv). In addition to the foregoing, Tenant shall insure its Personal Property in such amounts as Tenant deems reasonably appropriate (provided, however, that a Mortgagee which is a Bona Fide Institutional Lender shall be permitted to self-insure such Personal Property) and City shall have no interest in the proceeds of such Personal Property insurance.

iii. Commercial General Liability Insurance. Tenant shall, and shall cause Manager to, maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 12 07, insuring against claims for bodily injury (including death), property damage, personal injury, advertising liability, contractual liability and products and completed operations, occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto, such insurance to afford protection in the following amounts: (A) during construction in an amount not less than Five Million Dollars ($5,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 23.1 and any other indemnity of City by Tenant) independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage, with an umbrella policy of Ten Million Dollars ($10,000,000); (B) from and after Completion in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"); (C) if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then from and after Completion, liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (D) Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to Tenant's base policies.

iv. Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars ($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

v. Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

vi. Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars ($1,000,000) per occurrence.

vii. Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to the Property Related Insurance provisions, with a coverage period of not less than eighteen (18) months, and with an annual limit of not less than Five Million Dollars ($5,000,000).

viii. Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence

combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

ix. Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with any deductible not to exceed Ten Thousand Dollars ($10,000) each claim during any period for which such professional services are engaged and for five (5) years following the completion of any such professional services.

x. Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for a first class produce wholesaling and distribution center in San.

(b) General Requirements. All insurance required under this Lease:

i. Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

ii. As to property and boiler and machinery insurance shall name City as loss payee as its interest may appear, and as to both property and liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." Tenant shall cause such additional insured endorsements to be issued on Form CG2010(1185).

iii. As to earthquake insurance only:

(1) during the Term of this Lease; unless City reasonably agrees with Tenant that earthquake insurance is not generally commercially available at commercially reasonable rates, such insurance shall be in an amount at least equal to the lesser of (i) the maximum amount as is available at commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates), and (ii) one hundred percent (100%) of the maximum probable loss that would be sustained by the Premises (based on the full value of the Improvements) as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale (which maximum probable loss shall be determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to City), with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation);

(2) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the Improvements;

iv. As to flood insurance only, unless City reasonably agrees with Tenant in writing that flood insurance is not generally available at commercially reasonable rates:

(1) during construction of any Phase of the Project or any other Improvement, such insurance shall be in an amount at least equal to the maximum amount as is available at commercially reasonable rates from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation) except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates);

(2) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates;

(3) rates for all flood insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one tenth of one percent (.1%) of the then-current full replacement cost of the Improvements;

v. Shall be evaluated by City and Tenant for adequacy not less frequently than every five (5) years. Following consultation with Tenant, City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, City shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In any such event, Tenant shall promptly deliver to City a certificate evidencing such new insurance amounts and meeting all other requirements under this Lease with respect thereto;

vi. Intentionally omitted;

vii. As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

viii. Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 24.1(a)(i), (ii) and (v);

ix. Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

x. Except for professional liability insurance which shall be maintained in accordance with Section 24.1(a)(ix), if any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

xi. Shall for Property Related Insurance only, provide that all losses payable under all such policies that are payable to City shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of City to Maintain Insurance. Tenant shall furnish City certificates with respect to the policies required under this Section, together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy. Tenant shall provide City with thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to the City. If at any time Tenant fails to maintain the insurance required pursuant to Section 24.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) business days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. Tenant shall require that liability insurance policies that Tenant requires to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, include Tenant and City (using the wording described in Section 24.1(b)(ii)) as additional insureds, as their respective interests may appear.

24.2. City Entitled to Participate.

With respect to Property Related Insurance, City shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Million Dollars ($5,000,000) covered by the insurance required to be carried hereunder; provided, however, that City's consent shall not be unreasonably withheld, conditioned or delayed.

24.3. Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 24.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

25. HAZARDOUS MATERIALS

25.1. Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws. Tenant shall comply and cause (i) all persons or entities under any Sublease, (ii) all Invitees or other persons or entities entering upon the Premises, and (iii) the Premises and the Improvements, to comply with all Hazardous Materials Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Project. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in

strict compliance with all applicable Laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials in, on or under the Premises that are required by Law or prudent business practices to be Handled for Remediation purposes; provided that Tenant Handles such pre-existing Hazardous Materials in compliance with all applicable Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 25.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Article 25) and all communication with any person or entity relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Article 25).

(c) City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld, conditioned or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. City shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If City disapproves of any such Hazardous Materials Remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to the reasonable satisfaction of City, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the **"Pesticide Ordinance"**) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

25.2. Hazardous Materials Indemnity.

Without limiting the indemnity in Section 23.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other person or entity directly or indirectly arising out of (A) the Handling, transportation or Release of Hazardous Materials by Tenant, its Agents, Invitees or any Subtenants or any person or entity on or about the Premises (other than City and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than City and its Agents and Invitees) to comply with Hazardous Materials Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 25.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage. Tenant acknowledges and agree that it has an immediate obligation to defend City as set forth in Section 23.2.

26. DELAY DUE TO FORCE MAJEURE

26.1. Delay Due to Force Majeure.

The impact of Force Majeure on the deadlines set forth in the Schedule of Performance is set forth in Section 5.9 above. Further, certain cure periods for Tenant's failure to perform shall be extended by a period of time equal to the duration of the Force Majeure event as provided in Section 28.1(a) below.

27. CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

27.1. City May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an imminent danger to public health or safety, as reasonably determined by City, City may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, City first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of City constitutes a Condemnation or an impairment of Tenant's contract with City.

27.2. City May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any party other than City (other than any Imposition, with respect to which the provisions of Section 13.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from City for a period of thirty (30) days, subject to Force Majeure (or, if Section 24.1(c) is applicable, which failure continues for five (5) business days after written notice from City), and is not the subject of a contest under Article 14, then, City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

27.3. Tenant's Obligation to Reimburse City.

If pursuant to the terms of this Lease, City pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse City within thirty (30) days following demand (or by such earlier date specifically provided herein with respect to a particular cost or expense), as Additional Rent, the sum so paid, or the reasonable expense incurred by City in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of City's demand until payment is made. City's rights under this Article 27 shall be in addition to its rights under any other provision of this Lease or under applicable Laws.

28. EVENTS OF DEFAULT; TERMINATION

28.1. Events of Default.

Subject to the provisions of Section 28.2, the occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to commence construction of the Project in accordance with the Schedule of Performance, or after commencement of any Phase fails to prosecute diligently to obtain all Regulatory Approvals, all elements of financing, the construction of the Improvements to be constructed in such Phase on or before the required completion dates set forth in the Schedule of Performance (in each case as such dates shall have been extended due to Force Majeure or Significant Deviation From Economic Model, if applicable), or abandons or substantially suspends construction for more than thirty (30) consecutive days, and the failure, abandonment or suspension continues for a period of: (i) thirty (30) days following the date of written notice from the City as to failure to commence construction; or (ii) sixty (60) days following the date of written notice from the City as to abandonment, suspension or a failure to complete construction of the Improvements, if any (provided that, if ,within such cure period, Tenant gives notice to City that such failure is due to delay caused by Force Majeure, then such cure period shall be extended by a period of time equal to the duration of the Force Majeure event; provided, that within thirty (30) days after the beginning of any such Force Majeure event, Tenant shall have first notified City of the cause or causes of such delay, and provided further that Tenant continues diligently to prosecute such cure or the resolution of such event of Force Majeure); or

(b) Tenant does not submit the Construction Documents, Budgets, or other documents that are required to be submitted under the provisions of Article 5 within the times provided in Article 5,and Tenant does not cure such default within fifteen (15) days after the date of written demand by City specifying the items missing or due;

(c) Tenant fails to pay any Rent to City when due, which failure continues for ten (10) days following written notice from City (it being understood and agreed that the notice required to be given by City under this Section 28.1(c) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such section); provided, however, City shall not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;

(d) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(e) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or

any material part of the property of Tenant, which appointment is not dismissed within sixty (60) days;

(f) Tenant makes a general assignment for the benefit of its creditors;

(g) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, or otherwise abandons or ceases to use the Premises for the uses permitted hereunder which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from City;

(h) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from City; or

(i) Tenant violates any provision of Article 9 or fails to perform any other obligation to be performed by Tenant under such Article at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within sixty (60) days after such written notice from City.

(j) Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease and such violation continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15)-day period, if Tenant does not within such fifteen (15)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within thirty (30) days after such written notice from City;

(k) Tenant engages in or allows any use not permitted hereunder or engages in any activity prohibited by Section 4.5(a)(ii), and such activity continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15)-day period, if Tenant does not within such fifteen (15)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within thirty (30) days after such written notice from City;

(l) Tenant fails to maintain its status as a tax exempt non-profit entity and such failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, and provided such failure is curable, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from City; provided, however, that if Tenant's failure to maintain its status as a tax exempt non-profit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, such failure shall be an Event of Default only under the terms and conditions set forth in Section 46.1(c) below; or

(m) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period

commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

Unless otherwise provided above, there shall be no cure period for a default on the part of Tenant.

28.2. Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

29. REMEDIES

29.1. City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of City following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by Law or the terms of this Lease), City shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies of City for any Event of Default by Tenant under the prevailing wage provisions (described in Section 5.11 and Section 18.7(e) above), the First Source Hiring Program (described in Section 47.10 below) shall be limited to the remedies provided in such programs. All of City's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

29.2. Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, City has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations). In the event City elects this remedy, City shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of City's rights, including the right to collect Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, City may (i) enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to City for all costs City incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term unless such obligations are otherwise specified in this Lease to remain in effect after the termination or expiration of the Term.

(b) No Termination without Notice. No act by City allowed by this Section 29.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a

subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If City elects to relet the Premises as provided in Section 29.2(a), the rent that City receives from reletting shall be applied to the payment of:

i. First, all costs incurred by City in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

ii. Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to City, in addition to or other than Rent due from Tenant;

iii. Third, Rent, due and unpaid under this Lease;

iv. After deducting the payments referred to in this Section 29.2(c), any sum remaining from the rent City receives from reletting shall be held by City and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by City. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which City incurred in reletting, remain after applying the rent received from the reletting as provided in Section 29.2(c)(i)-(iii), Tenant shall pay to City, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to City the Rent due under this Lease on the dates the Rent is due, less the rent City has received from any reletting which exceeds all costs and expenses of City incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

29.3. Right to Terminate Lease.

(a) Damages. Subject to the rights of a Mortgagee pursuant to Article 44, City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination and termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

i. The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

ii. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

iii. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

v. "The worth at the time of the award", as used in Section 29.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 29.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises pursuant to this Section 29.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding anything in Section 8, to the contrary, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without City's written consent, which may be given or withheld in City's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 44.

29.4. Continuation of Subleases and Other Agreements.

Following an Event of Default and termination of Tenant's interest in this Lease, and subject to the terms of any non-disturbance agreements entered into by City, City shall have the right, at its sole option, to assume any and all Subleases and agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement. Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City, or cause to be executed, acknowledged and delivered to City, such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing Subleases and other agreements then in force, as above specified.

30. EQUITABLE RELIEF

30.1. City's Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, City shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

30.2. Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

31. NO WAIVER

31.1. No Waiver by City or Tenant.

No failure by City or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of City or Tenant with respect to any other then existing or subsequent breach.

31.2. No Accord or Satisfaction.

No submission by Tenant or acceptance by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

32. DEFAULT BY CITY; TENANT'S REMEDIES

32.1. Default by City; Tenant's Exclusive Remedies.

City shall be deemed to be in default hereunder only if City shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot reasonably be cured within such thirty (30)-day period, City shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by City described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all Losses incurred by Tenant as a direct result of City's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on City or its Agents; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder any Losses other than Tenant's Losses as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by City hereunder, and (iii) Tenant shall have no remedy of self-help.

33. NO RECOURSE AGAINST SPECIFIED PERSONS

33.1. No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that except as otherwise specified in this Section 33.1, Tenant will have no recourse with respect to, and City shall not be liable for, any obligation of City under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of City's fee interest in the Premises (as encumbered by this Lease). By Tenant's execution and delivery hereof and as part of the consideration for City's obligations hereunder, Tenant expressly waives such liability.

33.2. Tenant's Recourse Against City.

No commissioner, officer, director or employee of City, or any other Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any default by City, and Tenant agrees that it will have no recourse with respect to any obligation or default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

33.3. City's Recourse Against Tenant.

No member, officer, director, shareholder, agent or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

34. LIMITATIONS ON LIABILITY

34.1. Limitation on City's Liability Upon Transfer.

In the event of any transfer of City's interest in and to the Premises, City, subject to the provisions hereof (and in case of any subsequent transfers, the then transferor), will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of City, but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that such subsequent transferor assumes the covenants and obligations of City hereunder.

34.2. Mutual Release.

Tenant and City, as a material part of the consideration of this Lease, each hereby waives and releases any and all claims against each other and their respective Agents (and, with respect to the Tenant's waiver and release, also against the Indemnified Parties) for any indirect, special, consequential or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) in connection with this Lease and the Premises, regardless of whether such party has been informed of the possibility of such damages or is negligent for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of such party. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the foregoing waiver and release.

35. ESTOPPEL CERTIFICATES BY TENANT

35.1. Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to City (or at City's request, to a prospective purchaser or mortgagee of City's interest in the Property), within fifteen (15)

business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder or under any reciprocal easement agreement, CC&R, or similar agreement, which has not been cured, except as to defaults specified in such certificate, and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by City. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by City, and any purchaser, prospective purchaser, mortgagee or prospective mortgagee of the Premises or any part of City's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease.

36. ESTOPPEL CERTIFICATES BY CITY

36.1. Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of City's knowledge (limited to only that of the Director of Property) (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), (d) the amount of the security deposit (if any) being held by City under this Lease, and (e) any other matter actually known to City, directly related to this Lease and reasonably requested by the requesting Party. In addition, if requested, City shall attach to such certificate a copy of this Lease and any amendments thereto, and include in such certificate a statement by City that, to the best of its knowledge (limited to only that of the Director of Property), such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. Any such certificate may be relied upon by Tenant or any Subtenant, prospective Subtenant, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease, and in the case of a prospective Mortgagee or prospective permitted transferee, shall be in substantially the form requested by such party if agreed upon by City.

37. APPROVALS BY CITY

37.1. Approvals by City.

The City Administrator or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the City Administrator determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by City of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable Law, including the City's Charter.

37.2. Fees for Review.

Within thirty (30) days after City's written request, Tenant shall pay City, as Additional Rent, City's costs, including, without limitation, Attorneys' Fees and Costs incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment or Sublease, Mortgage, estoppel certificate, Non-Disturbance Agreement or Subsequent Construction. Tenant shall pay such costs regardless of whether or not City consents to such proposal, except only in any instance where City has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

38. NO MERGER OF TITLE

38.1. No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same party may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all parties having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

39. QUIET ENJOYMENT

39.1. Quiet Enjoyment.

Subject to the terms and conditions of this Lease and applicable Laws, City agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under City. Notwithstanding the foregoing, City shall have no liability to Tenant in the event any defect exists in the title of City as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

40. SURRENDER OF PREMISES

40.1. Expiration or Termination.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to City the Premises in good order and in clean and operable condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder, and free of any liens or encumbrances except for any Permitted Title Exceptions. Except as provided elsewhere in this Lease, including, without limitation in Section 40.1(c) below, the Premises shall be surrendered exclusive of any Personal Property pursuant to Section 17.2. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 40.1(c) and Section 40.1(d) below. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination.

(b) Subleases and Agreements. Upon any termination of this Lease, City shall have the right to terminate all Subleases hereunder and any and all agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement, except for those Subleases with respect to which City has entered into Non-Disturbance Agreements, and any and all agreements for the maintenance or operation of the Premises with respect to which City has agreed to assume pursuant to Section 29.4.

(c) Personal Property. If an Event of Default exists at the expiration or termination of this Lease, title to the Personal Property, shall vest in City without any further

action by any Party, subject to the rights of a Mortgagee in such Personal Property which are superior to the rights of City pursuant to the terms of this Lease. If no Event of Default exists at the expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other Personal Property. At City's request, Tenant shall remove, at no cost to City, any Personal Property belonging to Tenant which then remains on the Premises. If the removal of such Personal Property causes damage to the Premises, Tenant shall promptly repair such damage, at no cost to City.

(d) Safety Restoration Work. Upon the expiration or termination of this Lease resulting from an event of damage or destruction pursuant to Section 20.4, a Condemnation event under Section 21, or an Event of Default pursuant to Article 28, upon written instructions from City, Tenant shall, at Tenant's sole cost and expense, complete all Safety Restoration Work, and return the Premises to City in a clean condition. Such Safety Restoration Work shall be conducted in accordance with the provisions of this Lease relating to construction on the Premises, including without limitation, Article 18.

41. HOLD OVER

41.1. Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. In any such event, at City's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at the Rent in effect at the expiration of the Term, payable on a monthly basis.

42. NOTICES

42.1. Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given and effective (i) on the date of receipt or refusal if delivered by a reputable overnight delivery service, all fees for such delivery prepaid, or if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or (ii) if mailed, on the date that is three business days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Tenant:	The SF Market 2095 Jerrold Avenue Suite 212 San Francisco, CA 94124 Attention: Michael Janis
with a copy to:	Farella Braun + Martel LLP The Russ Building 235 Montgomery Street, 17th Floor San Francisco, CA 94104 Attention: CJ Higley

To City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attention: Director of Property Re: SF Produce Market Facsimile: (415) 552-9216
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attention: Real Estate/Finance Team Re: SF Produce Market Facsimile: (415) 554-4755

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile.

42.2. Form and Effect of Notice.

Every notice given to a Party or other party under this Section must state (or shall be accompanied by a cover letter that states):

(a) the section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 42.2.

43. INSPECTION OF PREMISES BY CITY

43.1. Entry.

Subject to the rights of Subtenants, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that City may have a right to perform under Section 27, or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of City to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon City any obligation, or liability, for the care, supervision or repair of the Premises. City agrees to use reasonable efforts to minimize interference, to the extent practicable, with the activities and tenancies of Tenant,

Subtenant and their respective Invitees. If City elects to perform work on the Premises pursuant to Section 21, City shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided City uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

43.2. Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of City's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

43.3. Notice, Right to Accompany.

City agrees to give Tenant reasonable prior notice of City's entering on the Premises for the purposes set forth in Section 43.1 and 43.2, except in an emergency. Such notice shall be not less than forty-eight (48) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany City or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for City's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Section 43.1 and 43.2.

43.4. Rights with Respect to Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant to include a provision similar to this Section 43 in its Sublease) to require each Subtenant to permit City to enter its premises for the purposes specified in this Section 43.

44. MORTGAGES

44.1. No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Article 44, Tenant shall not:

i. engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease; or

ii. place or suffer to be placed upon Tenant's leasehold estate in the Premises, the Accounts or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 22.1.

(b) No Subordination of Fee Interest or Rent. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Property or the Premises in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in the Premises, nor its right to receive Rent, to any Mortgagee of Tenant; notwithstanding the foregoing, the City Administrator may amend any provision in this Article 44 if the City Administrator determines that such amendment is necessary or desirable to facilitate transactions required for the Project to benefit from the use of New Markets Tax Credits, is in the best interest of the City, furthers the City's interest in the operation of the Premises, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Article 44 shall be deemed to be a violation of this covenant on the date of

its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

44.2. Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to compliance with this Article 44, at any time and from time to time, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind to the extent permitted hereby; provided, however, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent under this Lease, and for the performance of all other obligations contained in this Lease. Notwithstanding anything to the contrary in this Lease, Tenant and each and every Subtenant shall have the right to assign, mortgage or encumber and grant a security interest in and to its personal property located in the Premises to any lender, equipment lessor or other financier, provided that such party provides written notice thereof to City within ten (10) business days of granting such security interest.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. The foregoing shall not limit any rights specifically granted to a Mortgagee in any non-disturbance agreement entered into among City, Tenant and a Mortgagee pursuant to Section 44.2(e).

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time. If at any time there is more than one (1) Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Article 44 to the exclusion of the holder of any junior Mortgage; provided, however, that if the holder of the senior Mortgage fails to exercise the rights set forth in this Article 44, each holder of a junior Mortgage shall succeed to the rights set forth in this Article 44 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 44. No failure by the senior Mortgagee to exercise its rights under this Article 44 and no delay in the response of any Mortgagee to any notice by City shall extend any cure period or Tenant's or any Mortgagee's rights under this Article 44. For purposes of this Section 44.2 (c), in the absence of an order from a court with jurisdiction that is properly served on City, a title report prepared by a reputable title company licensed to do business in the State of California and having offices in the City, setting forth the order of priority of lien of the Mortgages, may be relied on by City as conclusive evidence of priority.

(d) No Invalidation of Lien of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including the use of any proceeds of any debt, the repayment of which is secured by a Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of a Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards expressed in Article 9 above.

(e) Agreements Regarding Personal Property. Upon the request of Tenant, or any Subtenant, City shall enter into any commercially reasonable written agreement with Tenant and its Mortgagee or other lessor and/or lender for Tenant's or such Subtenant's Personal Property, wherein City shall agree to subordinate any landlord lien rights it may have in and to such Personal Property to the interest of Mortgagee, lessors and/or lenders therein and waive any claim that the same are part of the Premises by virtue of being affixed thereto but only to the

extent that the provisions of this Lease authorize Tenant to remove such Personal Property upon the expiration or earlier termination of this Lease. As a condition to entering into such agreement, Tenant shall reimburse City for all its costs associated with reviewing, negotiating and approving such agreement. Additionally, such agreement shall (a) contain a requirement that each such Mortgagee, lessor and/or lender give proper notice to City (i) of any such default by Tenant, and (ii) prior to any entry of the Premises to remove any Personal Property due to such default and City's approval of the timing thereof, (b) prohibit the sale of such Personal Property on the Premises, (c) contain an agreement by such Mortgagee, lessor and/or lender to repair any damage to the Premises caused by such entry and removal and Indemnify City for Losses related to such entry and removal, and (d) provide that such agreement will terminate with respect to any of Personal Property that is not removed from the Premises within thirty (30) days after the expiration or any earlier termination of this Lease or the applicable Sublease, regardless of whether full payment or performance by Tenant or such Subtenant under its agreement with such Mortgagee, lessor and/or lender has then yet occurred.

44.3. Notice of Liens.

Tenant shall notify City promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

44.4. Purpose of Mortgage.

(a) Purpose. A Mortgage shall be made only for the purposes of securing the financing of the construction of the Improvements and subsequent repairs, alterations, or improvements to the Project and permanent take-out financing, or refinancing any of the foregoing, and for no other purpose except as may be approved in writing by the City Administrator, in consultation with the City Controller but otherwise at his her sole discretion, and any Mortgage made for such other purpose shall be subject to such other conditions and restrictions as the City Controller deems reasonably prudent. No Mortgage shall be cross-collateralized with any other debt of the Tenant or any other party. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would directly or indirectly be an obligation or security of City.

(b) Statement. City agrees after request by Tenant to give to any Mortgagee or proposed Mortgagee a statement in recordable form as to whether a Mortgage is permitted hereunder, or if permitted subject to conditions, then listing all such conditions (a "**Mortgage Confirmation Statement**"). In making a request for such Mortgage Confirmation Statement, Tenant shall furnish City true, accurate and complete copy of the promissory note evidencing the loan secured by the Mortgage and a copy of the Mortgage and any other documents or information as are required reasonably by City to permit City to make the determination whether such Mortgage is permitted hereby, together with a draft of the form and content of the Mortgage Confirmation Statement proposed by Tenant or such Mortgagee. If a Mortgage Confirmation Statement provided by City confirms (or confirms with conditions) that such Mortgage is permitted hereunder, such a statement shall conclusively establish that the Mortgage is permitted hereunder and shall stop City from asserting against Tenant or the Mortgagee anything to the contrary or from declaring an Event of Default by Tenant for entering into such Mortgage in compliance with any applicable conditions if the financing contemplated by the Mortgage is accomplished as was proposed, but other than the foregoing estoppel, such a statement shall create no liability for the City. City shall deliver to Tenant an executed Mortgage Confirmation Statement (in form and content approved by City, with such modifications or additions as such prospective Mortgagee may reasonably request and City shall reasonably approve) within thirty (30) days following receipt by City of the financing documents reasonably requested by City. If City does not provide the Mortgage Confirmation Statement by such date, Tenant may provide City with written notice of such failure, together with another copy of the draft of the Mortgage

Confirmation Statement proposed by Tenant or the Mortgagee. If City fails to deliver a Mortgage Confirmation Statement within ten (10) business days after such notice, then Tenant may at Tenant's election provide a second written notice to City that Mortgage Confirmation Statement was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "MORTGAGE CONFIRMATION STATEMENT REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE STATEMENT BEING DEEMED APPROVED," if City does not provide a Mortgage Confirmation Statement within five (5) business days after such second written notice from Tenant, City shall be deemed to have approved the draft Mortgage Confirmation Statement provided by Tenant without conditions. Tenant shall pay City's costs for all Attorneys' Fees and Costs and other costs, including staff time, incurred in connection with reviewing the financing documents and preparing the Mortgage Confirmation Statement within ten (10) days following demand, and notwithstanding any provision in this Section 44.4(b) to the contrary, if City demands such reimbursement prior to the deadline provided above for City's deemed approval of the proposed Mortgage Confirmation Statement, City may condition delivery and deemed approval of the Mortgage Confirmation Statement on receipt of such reimbursement.

44.5. Interest Covered by Mortgage.

A Mortgage may attach to any and all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other property rights and interests of Tenant arising under this Lease, including, without limitation, Tenant's interests in all insurance policies carried by Tenant and all Awards and other payments on account of Condemnation, provided that the Mortgagee agrees in writing that, except to the extent provided in the following sentence, the proceeds from all property insurance covering the Improvements and all Awards and other payments on account of Condemnation shall be used or paid over to Restore the Improvements or perform Safety Restoration Work as provided in this Lease. Notwithstanding the foregoing, the City Administrator may consent to provisions in the Mortgage permitting the application of insurance proceeds and Awards to the outstanding loan balance under circumstances in which the failure to so apply the proceeds and Awards would result in a material impairment to the Mortgagee's security interest, as demonstrated to the City Administrator's or a neutral third party's reasonable satisfaction, provided that the City Administrator determines that such conditions are necessary or desirable to facilitate transactions required to provide construction or other funding for the Project, are commercially reasonable and are fair to Tenant and City. As provided in Section 44.1(b), Tenant may not in any manner encumber City's interest in or under this Lease or City's fee simple interest in the Property or City's personal and other property in, on or around the Property.

44.6. Institutional Lender; Other Permitted Mortgagees.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, (ii) any Community Development Entity, as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended, or (iii) any other lender which shall have been approved by City in its sole and absolute discretion. In any instances in which City's consent is so required, City shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and City sends no notification of disapproval within such period.

44.7. Rights Subject to Lease.

(a) Subject to Lease. All rights acquired by a Mortgagee under any Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease

and to all rights of City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of such Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing.

(b) Construction and Restoration Obligations.

i. Notwithstanding any provision of this Lease to the contrary, no Mortgagee, including any such Mortgagee who obtains title to the leasehold or any part thereof as a result of foreclosure proceedings or action in lieu thereof, (but excluding (i) any other party who thereafter obtains title to the leasehold or any interest therein from or through such Mortgagee), or (ii) any other purchaser at a foreclosure sale shall be obligated by the provisions of this Lease to complete the Project or Restore the Improvements, subject to Section 44.10(c); provided, however, (A) except as provided in Section 44.7(b)(ii) nothing in this Section or any other Section or provisions of this Lease shall be deemed or construed to permit or authorize any such Mortgagee to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided or authorized in this Lease, as hereafter amended or extended from time to time, and (B) in the event that Mortgagee obtains title to the leasehold estate and chooses not to complete the Project or Restore the Improvements, it shall so notify City in writing of its election within sixty (60) days following its acquisition of the leasehold estate and shall use good faith efforts to sell its leasehold interest to a purchaser that shall be obligated, as applicable, to complete the Project or Restore the Improvements to the extent this Lease obligates Tenant to so Restore, but in any event Mortgagee shall use good faith efforts to cause a sale to occur within one (1) year following written notice to City of its election not to complete the Project or Restore (the "**Sale Period**"). If Mortgagee fails to sell its leasehold estate using good faith efforts within the Sale Period, such failure shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to Restore the Improvements to the extent this Lease obligates Tenant to so Restore. If Mortgagee agrees to complete the Project or Restore the Improvements, then all such work shall be performed in accordance with all the requirements set forth in this Lease, and Mortgagee must submit evidence reasonably satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligations.

ii. Notwithstanding the provisions of Section 44.7(b)(i), if Mortgagee proposes that the Premises be used for uses other than the Permitted Uses ("**Proposed Uses**"), then City may, but shall not be obligated to, extend the Sale Period to three (3) years (the "**Extended Sale Period**"). If City so extends the Sale Period, then during the Extended Sale Period Mortgagee shall diligently pursue re-entitlement of the Premises for the Proposed Uses, including the pursuit of required Regulatory Approvals and/or the marketing of the Premises to a purchaser that would use the Premises for the Proposed Uses. If Mortgagee fails to diligently pursue re-entitlement of the Premises during the Extended Sale Period, and such failure shall continue for sixty (60) days after written notice from City, then, upon additional written notice from City, the Extended Sale Period shall be deemed to have expired and Mortgagee shall be obligated to complete or Restore the Improvements, as applicable, to the extent this Lease obligates Tenant to so complete or Restore. Tenant acknowledges that any proposed amendments to this Lease to allow Proposed Uses shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion.

44.8. Required Provisions of any Mortgage.

Every Mortgage permitted under this Lease shall provide: (a) that the Mortgagee shall give written notice to City (in the same manner as provided in Article 42) of the occurrence of any event of default under the Mortgage at the same time that such Mortgagee notifies Tenant thereof; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

44.9. Notices to Mortgagee.

(a) Copies of Notices. City shall give a copy of each notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of City's consent to any Transfer to any Mortgagee that has given to City written notice substantially in the form provided in Section 44.9(b). Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by City, addressed to such Mortgagee at the address last furnished to City. City's delay or failure to give such notice to a Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee for cure. Any such notices to Mortgagee shall be given in the same manner as provided in Article 42.

(b) Notice From Mortgagee to City. Each Mortgagee shall be entitled to receive notices from time to time given to Tenant by City under this Lease in accordance with Subsection (a) above, provided such Mortgagee shall have delivered a notice to City in substantially the following form:

"The undersigned does hereby certify that it is a Mortgagee, as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, acting through the Real Estate Division of the Office of Administrative Services, as landlord, and _____, as Tenant (the "Lease"), of Tenant's interest in the Lease demising the parcels, a legal description of which is attached hereto as Exhibit A and made a part hereof by this reference. The undersigned hereby requests that copies of any and all notices from time to time given under the Lease to Tenant by City be sent to the undersigned at the following address: _____."

If Mortgagee desires to have City acknowledge receipt of Mortgagee's name and address delivered to City pursuant to his Section 44.9 then such request shall be made in such notice from Mortgagee in bold, underlined and capitalized letters.

44.10. Mortgagee's Right to Cure.

If Tenant, or Tenant's successors or assigns, shall mortgage this Lease in compliance with the provisions hereof, then, so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease to pay the Rents due hereunder, to effect any insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act required of Tenant hereunder and to do any act which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease; provided that all such acts shall be performed in compliance with the terms of this Lease. Except after Mortgagee acquires Tenant's interest under this Lease, no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to compliance with the applicable terms of this Lease, each Mortgagee and its agents and contractors shall have full access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to comply with Tenant's obligations under the Lease, to cure a default by Tenant under the Lease or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any notice of default given by City to Tenant and/or Mortgagee in accordance with Section 44.9, the Mortgagee shall have the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of Tenant's cure period, or (ii) the date that City has served such notice of default upon Mortgagee. City shall accept such performance by or at the instance of the Mortgagee as if the same had been done by Tenant. If a non-monetary default cannot reasonably be cured or remedied within such additional thirty (30) day period, such cure period shall be extended at Mortgagee's request so

long as Mortgagee commences the cure or remedy within such period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure, or if such default cannot be reasonably cured or remedied by Mortgagee within such (30) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period shall be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than a monetary Event of Default or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within ninety (90) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified City of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through a receiver) or otherwise acquire Tenant's interest under this Lease, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings and Force Majeure. A Mortgagee, upon acquiring Tenant's interest in this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee to the extent not cured prior to the completion of foreclosure proceedings. The foregoing provisions of this Section 44.10(b) are subject to the following: (A) no Mortgagee shall be obligated to continue possession or to continue foreclosure proceedings after an Event of Default is cured; (B) nothing herein contained shall preclude City, subject to the provisions of this Section 44.10(b), from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Tenant Events of Default during the pendency of such foreclosure proceedings; and (C) such Mortgagee shall agree with City in writing to comply during the foreclosure period with such of the terms, conditions and covenants of this Lease as are reasonably susceptible of being complied with by such Mortgagee, including the payment of all sums due and owing hereunder. Notwithstanding anything to the contrary, including an agreement by Mortgagee given under clause (C) of the preceding sentence, Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, Mortgagee shall have no further liability under such agreement from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease (unless such Event of Default has been cured) and/or any other available remedy as provided in this Lease. Upon any such termination, the provisions of Section 44.10 below shall apply. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (x) have fully cured any monetary Event of Default, (y) continue to pay currently such Rent as and when the same become due, and (z) perform all other obligations of Tenant under this Lease to the extent that such obligations are reasonably susceptible of being performed by Mortgagee, including at any time Mortgagee is in possession of the Premises (which Mortgagee shall be obligated to use reasonable efforts to obtain), the use restrictions set forth in Article 4 above, the operating covenants set forth in Section 9.1 above, and the maintenance and repair obligations set forth in Section 16.1 above. City acknowledges that the requirements of Section 28.1(l) are not reasonably susceptible of being complied with by a Mortgagee.

(c) Construction.

i. Subject to Section 44.7(b), if an Event of Default occurs following any damage or destruction but prior to completion of the Project or Restoration of the Improvements, to the extent this Lease obligates Tenant to so complete the Project or Restore, Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to complete the Project or Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made, unless such Mortgagee expressly assumes Tenant's obligations to complete the Project or Restore the Improvements by written agreement reasonably satisfactory to City and submits evidence satisfactory to City that it has the qualifications and financial responsibility necessary to perform such obligation.

ii. Upon assuming Tenant's obligations to Restore in accordance with Subsection (c)(i) above, Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the construction or Restoration to the date of such assumption plus an additional one hundred twenty (120) days.

(d) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the City on account of an Event of Default or rejection of this Lease by a trustee of Tenant in bankruptcy by Tenant as a debtor in possession, except (i) by Condemnation, or (ii) as the result of damage or destruction as provided in Article 20 (subject to Section 20.5), City shall serve upon the Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City. Each Mortgagee shall thereupon have the option to obtain a new Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

i. Upon the written request of the Mortgagee, within thirty (30) days after service of such notice that this Lease has been terminated, City shall enter into a New Lease of the Premises with the most senior Mortgagee giving notice within such thirty (30) day period or its designee, subject to the provisions set forth in this Section and provided that such Mortgagee assumes Tenant's obligations as sublandlord under the any Sublease then in effect; and

ii. Such New Lease shall be entered into at the sole cost of the Mortgagee thereunder, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). The New Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. The New Lease shall require Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease and any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee other than obligations of Tenant with respect to construction of any Improvements after Completion of the Project, which obligations shall be performed by Mortgagee, if applicable, in accordance with Section 44.10(c). Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease. The provisions of this Section 44.10(d) shall survive any termination of this Lease

(except as otherwise expressly set out in the first sentence of Section 44.10(d)), and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 44.10, may be exercised by or through its nominee or designee (other than Tenant) which is an Affiliate of Mortgagee.

(f) Subleases. Effective upon the commencement of the term of any New Lease executed pursuant to Subsection 44.10(d), any Sublease then in effect shall be assigned and transferred without recourse by City to Mortgagee. Between the date of termination of this Lease and commencement of the term of the New Lease, City shall not (1) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a New Lease, (2) cancel or materially modify any of the existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (3) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. Effective upon the commencement of the term of the New Lease, City shall also transfer to Mortgagee, its designee or nominee (other than Tenant), without recourse, all Personal Property that City has in its possession and with respect to which City has the right to so transfer.

(g) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Mortgages which are permitted hereunder.

(h) Consent of Mortgagee. No modification, termination or cancellation of this Lease shall be effective as against a Mortgagee unless a copy of the proposed modification, termination or cancellation shall have been delivered to such Mortgagee and such Mortgagee shall have approved the modification, termination or cancellation in writing, which approval shall not be unreasonably withheld, conditioned or delayed. No voluntary surrender of the Lease shall be accepted by the City without the approval of Mortgagee. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation or surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(i) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its permitted designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. If a Mortgagee becomes the owner of the leasehold estate under this Lease or under a New Lease, (i) except to the extent further limited by other provisions hereof, such Mortgagee shall be liable to City for the obligations of Tenant hereunder only to the extent such obligations arise during the period that such Mortgagee remains the owner of the leasehold estate, and (ii) in no event will Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and the City will have no recourse against Mortgagee's assets other than its interest herein or therein.

(j) Limitation on Obligation to Cure. Anything herein contained to the contrary notwithstanding, a Mortgagee, and its permitted designee or nominee (other than Tenant), shall have no obligation to cure (i) any Event of Default under this Lease occurring pursuant to Section 28.1(c), (d), (e), (f), (g), (i), (j), (k), (l) or (m) (but with respect to

Section 28.1(c), (i), (j), (k) or (m), only if such covenant or obligation is not susceptible to being cured without possession of the Premises or is otherwise not reasonably susceptible of being cured), or (ii) any other Event of Default by Tenant under this Lease which is not reasonably susceptible of being cured; provided, however, such provisions of this Lease shall apply to and remain effective on a prospective basis notwithstanding Mortgagee's inability to cure such previous Events of Default. All of the defaults listed in clause (i) of this Section 44.10(j) shall be deemed defaults not "reasonably susceptible of being complied with" or "not reasonably susceptible of being cured" for purposes of Section 44.10(b).

(k) Cooperation**.** City, through its City Administrator, and Tenant shall cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by any Mortgagee to implement the provisions and intent of Sections 44.7, 44.8, 44.9 and 44.10; provided that the City Administrator determines that the proposed amendment is in the best interest of the City and is necessary or desirable to effectuate the purpose and intent of such Sections, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

44.11. Assignment by Mortgagee.

Notwithstanding any provision of this Lease to the contrary, including, without limitation, Article 8, foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to Transfer this Lease or such New Lease shall be subject to the restrictions of Article 23. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease obtained pursuant to Section 44.10(d), and in connection with any such Transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 44 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

44.12. Transfer of Mortgage.

City hereby consents to a Transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such Transfer, the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

44.13. Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage.

45. NO JOINT VENTURE

45.1. No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other party, or cause City to be

responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

46. REPRESENTATIONS AND WARRANTIES

46.1. Representations and Warranties of Tenant.

(a) Representations and Warranties. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

i. Valid Existence; Non-Profit Status; Good Standing. Tenant is a nonprofit corporation duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

ii. Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated by this Lease.

iii. No Limitation on Ability to Perform. Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Tenant is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other party is required for the due execution, delivery and performance by the Tenant of this Lease or any of the terms and covenants contained in this Lease, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no pending or threatened suits or proceedings or undischarged judgments affecting Tenant before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant.

iv. Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

v. Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Tenant or any member is a party or by which Tenant's or any member's assets may be bound or negatively affected, (B) any Law, statute, ordinance, regulation, applicable to the Tenant, its business or the Property or (C) the articles of incorporation or the bylaws of the Tenant, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or those with an ownership interest in Tenant, except as set forth in this Lease.

vi. Meeting Financial Obligations. No federal or state tax liens have been filed against Tenant; and Tenant is not in default and has not received notice asserting that it is in default under any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no

involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(b) **Survival**. The representations and warranties in this Section shall survive any termination of this Lease.

(c) **Tenant to Maintain Tax-Exempt Status**. Tenant shall maintain its status as a tax exempt non-profit entity throughout the Term of this Lease. If at any time Tenant becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity, Tenant shall promptly provide City with written notice of such failure, which notice shall indicate Tenant's proposed measures to regain such status, if practicable, and the estimated timeline for regaining such status (the "**Status Change Notice**"). If City becomes aware that Tenant has failed to maintain its status as a tax exempt non-profit entity prior to the date City receives Tenant's Status Change Notice, City shall provide Tenant with written notice of such failure. If Tenant's failure to maintain its status as a tax exempt non-profit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, or if Tenant's Status Change Notice indicates that Tenant does not expect to regain such status within twelve (12) months, then Tenant and City shall attempt in good faith to meet no fewer than two (2) times during the ninety (90) day period following Tenant's Status Change Notice or City's notice to City, as applicable (or within another mutually agreed period), to attempt to resolve any detrimental financial impact of Tenant's loss of status, which may include proposals for Tenant to form a successor entity that would qualify for tax exempt status, proposals for Tenant to transfer its interest in the Lease to a tax exempt entity capable of performing Tenant's obligations under this Lease and the Subleases, or proposed amendments to this Lease that allow the Permitted Uses to continue on the Premises in a manner that is consistent with the Project Goals. Tenant acknowledges that any proposed amendments to this Lease shall be subject to approval by the City's Board of Supervisors in its sole and absolute discretion. If Tenant does not regain its tax exempt status within twelve (12) months after Tenant's Status Change Notice or City's notice to Tenant, as applicable, then at the election of City's Director of Property, in consultation with the City Controller but otherwise at his her sole discretion, upon written notice to Tenant such failure shall be an Event of Default under this Lease.

47. SPECIAL PROVISIONS

47.1. Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Lease shall have the meanings ascribed to them in the cited ordinance. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Article 28 of this Lease, unless (i) such failure is otherwise specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section.

47.2. Non-Discrimination.

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

facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

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

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

47.3. MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

47.4. Tropical Hardwood/Virgin Redwood Ban.

The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for

liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

47.5. Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

47.6. Sunshine Ordinance.

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

47.7. Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Article 41, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

47.8. Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

47.9. Conflicts of Interest.

Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the 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, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by

Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Lease.

47.10. First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions, prior to the Commencement Date, Tenant shall enter into agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements attached hereto as Exhibit L. Tenant shall comply with such First Source Hiring Agreements, with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

47.11. Public Access to Meetings and Records.

If Tenant receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. Tenant agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Lease, partially or in its entirety.

47.12. Resource-Efficient Building Ordinance.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

47.13. Drug Free Work Place.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

47.14. Preservative Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

47.15. Compliance with Disabled Access Laws.

Tenant acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Tenant or contractor, must be accessible to the disabled public. Tenant shall not discriminate against any

person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

47.16. Graffiti.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant shall remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within two (2) business days of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Tenant to comply with this Section of this Lease shall constitute a default of this Lease.

47.17. Notification of Limitations in Contributions.

For the purposes of this Section, a "**City Contractor**" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from 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. Through its execution of this Agreement, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor 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 that contract or twelve (12) months after the date that contract is approved. Tenant 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. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant's board of directors, Tenant's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or

controlled by Tenant, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

47.18. Food Service Waste Reduction.

Tenant will comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Tenant acknowledges that City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) where the Food Service Ware is Compostable and not Fluorinated Chemical Free. The capitalized terms (other than Tenant and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

47.19. Prohibition of Alcoholic Beverage Advertising.

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

47.20. Requiring Health Benefits for Covered Employees.

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. City may notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to

cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract entered into by Tenant will require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars ($25,000) (Fifty Thousand Dollars ($50,000) for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

47.21. <u>San Francisco Packaged Water Ordinance.</u>

Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement,

City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

47.22. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and require all subtenants to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: **(i)** Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; **(ii)** participation in or completion of a diversion or a deferral of judgment program; **(iii)** a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; **(iv)** a Conviction or any other adjudication in the juvenile justice system; **(v)** a Conviction that is more than seven years old, from the date of sentencing; or **(vi)** information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants will post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact City's Real Estate Division for additional information. City's Real Estate Division may

consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

47.23. Vending Machines; Nutritional Standards.

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section 29.22 will be a material breach of this Lease. Without limiting Landlord's other rights and remedies under this Lease, Landlord will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

47.24. All-Gender Toilet Facilities.

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

47.25. Employee Signature Authorization Ordinance.

City has adopted an Employee Signature Authorization Ordinance (San Francisco Administrative Code Sections 23.50–23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant will comply with the requirements of the ordinance, if applicable, including any requirements in the ordinance with respect to its subtenants, licensees, and operators.

47.26. Tenant's Compliance with City Business and Tax Regulations Code

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

47.27. Stormwater Flood Risk Disclosure

Under San Francisco Police Code Article 51, property owners in San Francisco are required to disclose to transferees and prospective transferees (including tenants and prospective tenants) if the leased premises is susceptible to flooding in a 100-year storm, as shown on the San Francisco

Public Utilities Commission's 100-Year Storm Flood Risk Map. The Premises are at risk for flooding in a 100-year storm. Please see Exhibit G to this Lease for additional information.

47.28. Consideration of Salary History.

In addition to Tenant's obligations as an employer under San Francisco Police Code Article 33J, Tenant must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Tenant for work of eight (8) or more hours per week at the Premises, Tenant must not consider the applicant's current or past salary (a "**Salary History**") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Tenant must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement.

Tenant is subject to the posting, enforcement, and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history.

47.29. Contractor Vaccination Requirements.

Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

Tenant has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is or becomes a Contract as defined in the Contractor Vaccination Policy, Tenant agrees that:

(1) Where applicable, Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors (navigate to "Exemptions" to download the form).

48. GENERAL

48.1. Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday or City, State or Federal holiday is deemed extended to the next working day.

(c) Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

48.2. Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease 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, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

48.3. Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of City, Tenant and any Mortgagee, subject to the other terms and provisions of this Lease. Where the term "Tenant," "City" or "Mortgagee" is used in this Lease, it means and includes their

respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee.

48.4. No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other party and shall not be deemed to have conferred any rights, express or implied, upon any other party, except as provided in Article 44 with regard to Mortgagees.

48.5. Real Estate Commissions.

City is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

48.6. Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

48.7. Entire Agreement.

This Lease (including the Exhibits hereto), for so long as such agreement is in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parole evidence of any prior of other agreement shall be permitted to contradict or vary the terms of this Lease.

48.8. Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. No termination, amendment or modification which requires the prior approval of a Mortgagee shall become effective without the prior approval of such Mortgagee, pursuant to Section 44.10(h).

48.9. Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the City and County of San Francisco of the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

48.10. Recordation.

On the Effective Date, Tenant and City shall execute the memorandum of lease in the form attached hereto as Exhibit K (the "**Memorandum of Lease**"), and Tenant shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Promptly upon City's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to City a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to City and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. City may record such

quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

48.11. Extensions by City.

Upon the request of Tenant, City in its sole discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

48.12. Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

48.13. Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

48.14. Effective Date; Amended and Restated Lease.

This Lease shall become effective on the Effective Date. This Lease amends, replaces and restates the 2013 Ground Lease in its entirety. This Lease does not affect any of Tenant's and Landlord's rights and obligations under the 2013 Ground Lease that pre-date this Lease, which will continue to remain in full force and effect in accordance with their terms and applicable Law. By entering into this Lease, neither party waives any rights that may arise or accrue under the 2013 Ground Lease with respect to the period before the Effective Date.

48.15. Severability.

If any provision of this Lease, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other party or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

48.16. Reasonably Prompt Approval.

City and Tenant agree that unless otherwise set forth in this Lease, any approval or consent required to be given by either Party shall be given or denied reasonably promptly; provided that the Party required to give approval or consent receives reasonably complete information or documentation upon which such decision must be made.

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

[No further text this page.]

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

TENANT: SAN FRANCISCO MARKET CORPORATION,
a California nonprofit corporation

By: _____

Name: VIRGINIA HINES

Title: President, Board of Directors

CITY: CITY AND COUNTY OF SAN FRANCISCO, a
municipal corporation

By: _____
ANDRICO PENICK 12/16/22
Director of Property

APPROVED AS TO FORM:

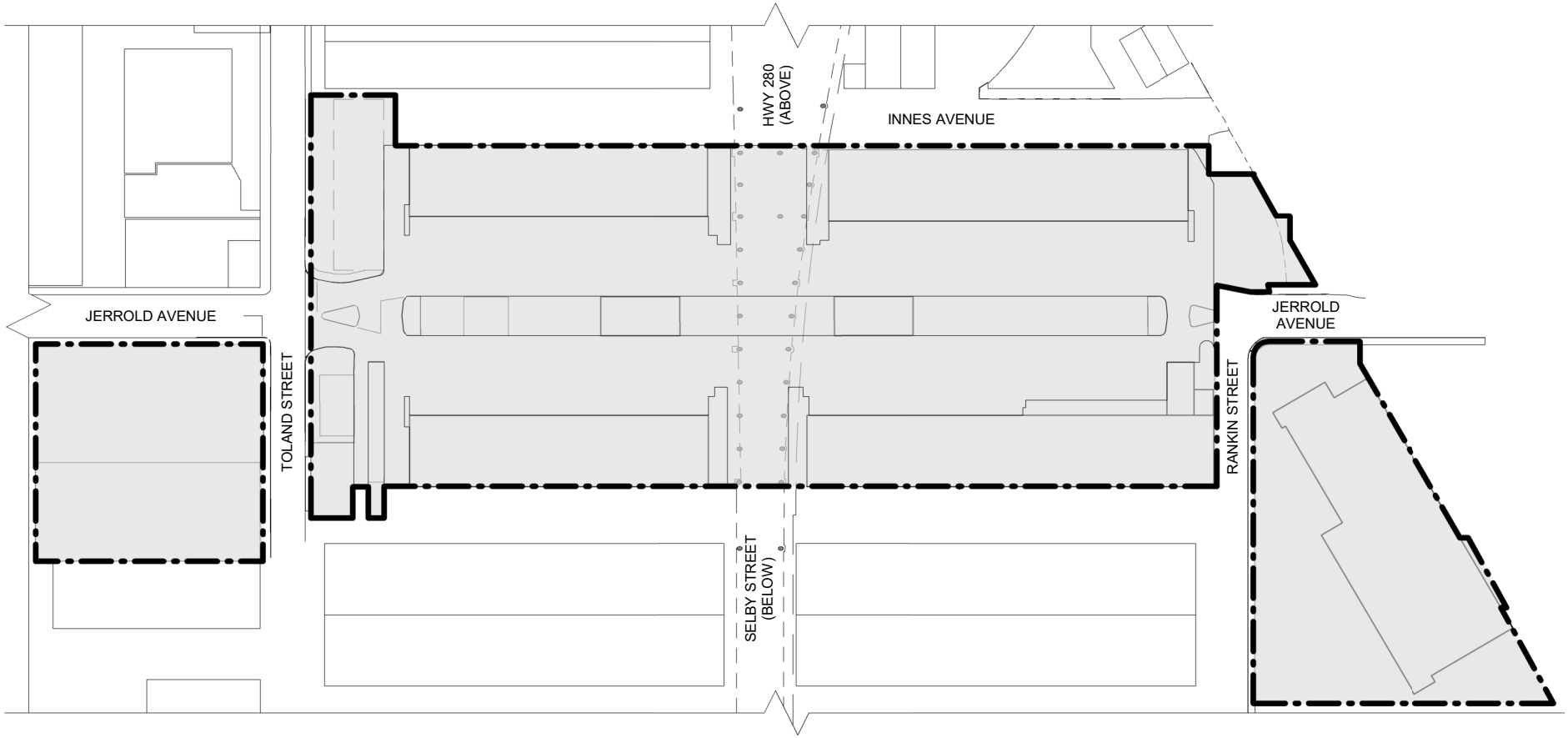
DAVID CHIU, City Attorney

By: _____
Jessica Alfaro-Cassella
Deputy City Attorney

Board of Supervisors Resolution No.: **406-22**

EXHIBIT A

DESCRIPTION OF PREMISES



PREMISES AS OF EFFECTIVE DATE

EXHIBIT A-1.1 PREMISES AS OF EFFECTIVE DATE

N

A-1.1
1" = 225'-0"
10/07/22

EXHIBIT A-1.2

GENERAL DEPICTION OF INITIAL PREMISES

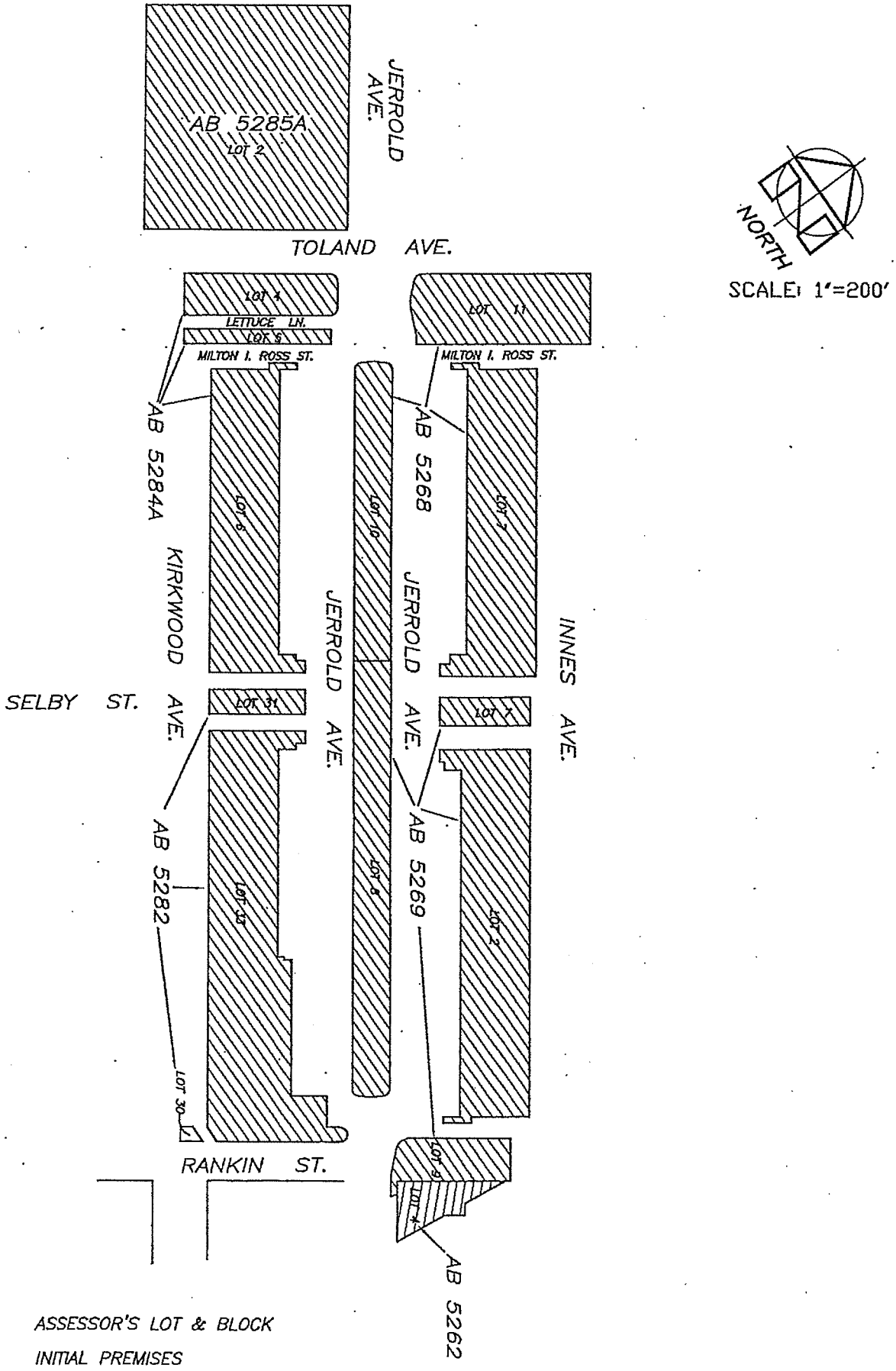


EXHIBIT A-2.1

LEGAL DESCRIPTION
901 RANKIN PREMISES

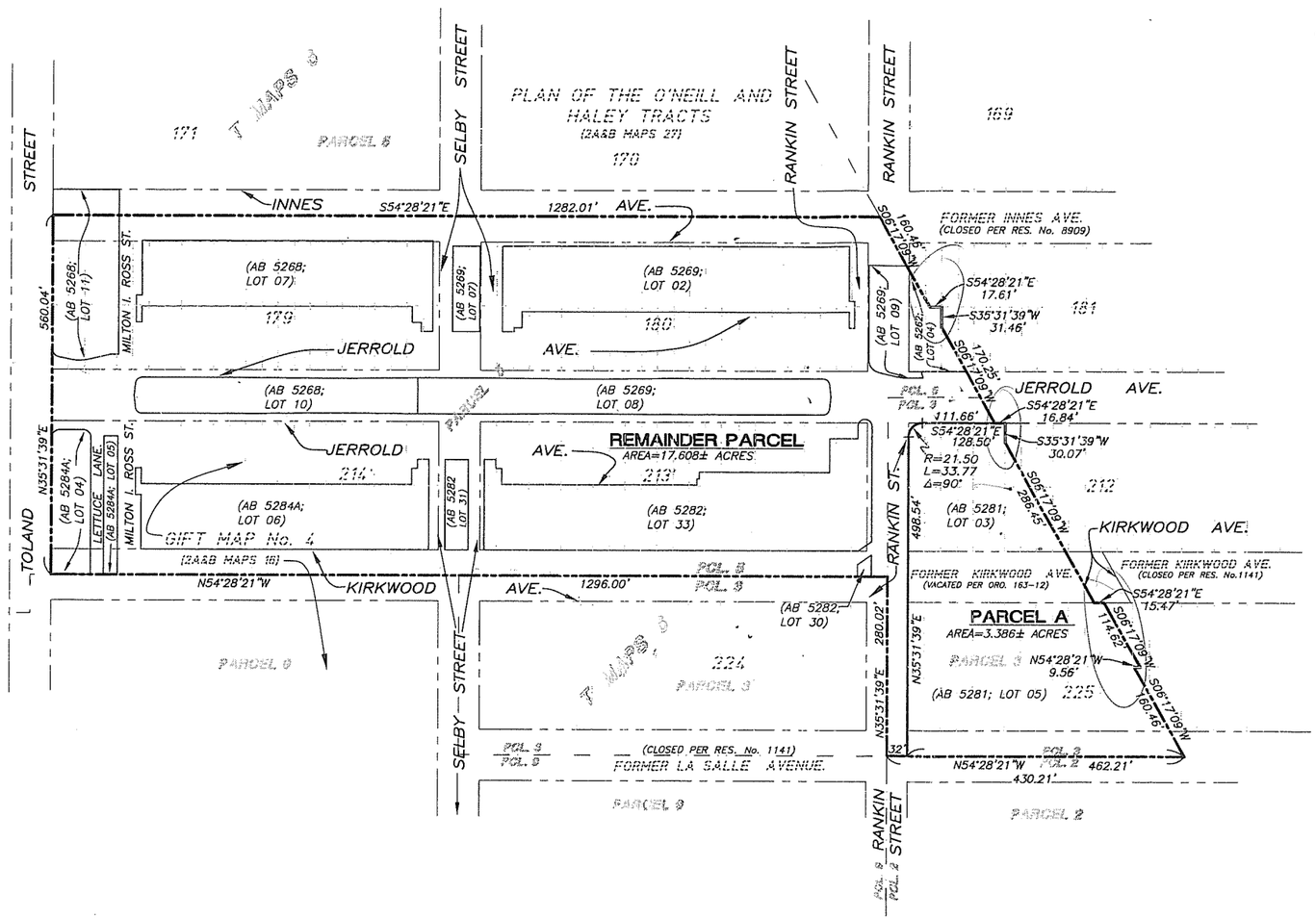
ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL No. 3 AND PARCEL No. 5, AS SAID PARCELS ARE SHOWN AND DELINEATED ON THAT MAP ENTITLED, "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK), SAN FRANCISCO, CALIFORNIA", RECORDED APRIL 25, 1961, IN BOOK "T" OF MAPS, PAGES 6 AND 7, ("T" MAPS 6), IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL B:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF RANKIN STREET (64 FEET WIDE) AND THE CENTERLINE OF FORMER LA SALLE AVENUE (80 FEET WIDE), AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914; THENCE ALONG SAID LINE OF RANKIN STREET NORTH 35°31'39" EAST 498.540 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 21.500 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 33.772 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF JERROLD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF JERROLD AVENUE SOUTH 54°28'21" EAST 128.500 FEET TO THE EASTERLY LINE OF SAID PARCEL No. 3, AS SHOWN ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", ("T" MAPS 6); THENCE ALONG SAID EASTERLY LINE OF PARCEL No. 3, THE FOLLOWING SIX (6) COURSES: 1.) SOUTH 35°31'39" WEST 30.071 FEET, 2.) SOUTH 6°17'09" WEST 286.452 FEET TO THE SOUTHWESTERLY LINE OF KIRKWOOD STREET (80 FEET WIDE), 3.) ALONG THE FORMER SOUTHWESTERLY LINE OF KIRKWOOD AVENUE, AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914, SOUTH 54°28'21" EAST 15.472 FEET, 4.) SOUTH 6°17'09" WEST 114.616 FEET, 5.) NORTH 54°28'21" WEST 9.561 FEET AND 6.) SOUTH 6°17'09" WEST 160.458 FEET TO SAID CENTERLINE OF FORMER LA SALLE AVENUE; THENCE LEAVING SAID EASTERLY LINE OF PARCEL No. 3, ALONG SAID CENTERLINE OF FORMER LA SALLE AVENUE, NORTH 54°28'21" WEST 430.213 FEET TO SAID SOUTHEASTERLY LINE OF RANKIN STREET AND THE POINT OF BEGINNING, CONTAINING 3.386 ACRES, MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTIONS ARE BASED UPON THE CENTERLINE OF TOLAND STREET SHOWN AS "NORTH 35°31'39" EAST" ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)".

STREETS AND AVENUES REFERRED TO IN THE ABOVE PARCEL DESCRIPTIONS ARE AS THEY EXISTED AT THE TIME OF THE SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", PRIOR TO THE SUBSEQUENT VACATIONS AND DEDICATIONS THEREOF.



SURVEY REFERENCE

CHICAGO TITLE COMPANY PRELIMINARY REPORT No. _____.

THE FOLLOWING ARE EXCEPTIONS TO TITLE WITHIN THE ABOVE REFERENCED PRELIMINARY REPORT;

1. EASEMENT GRANTED TO THE STATE FOR FREEWAY PURPOSES, RECORDED MAY 21, 1962 IN BOOK A423, PAGE 802, OFFICIAL RECORDS.

2. COVENANTS, CONDITIONS, TERMS AND PROVISIONS AS DESCRIBED IN THAT GIFT DEED FROM THE CITY OF SAN FRANCISCO MARKET CORPORATION TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED JANUARY 31, 1963 IN BOOK A536, PAGE 405, OFFICIAL RECORDS.

3. EASEMENT FOR THE CONSTRUCTION, RECONSTRUCTION, MAINTENANCE, REPAIR AND USE OF A TWO-LEVEL VIADUCT PUBLIC FREEWAY STRUCTURE GRANTED TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED APRIL 26, 1957 IN BOOK 7059, PAGE 435, OFFICIAL RECORDS.

4. EASEMENT GRANTED TO THE STATE OF CALIFORNIA FOR FREEWAY PURPOSES, RECORDED SEPTEMBER 13, 1965 IN BOOK A963, PAGE 788, OFFICIAL RECORDS.

5. EASEMENT GRANTED TO SOUTHERN PACIFIC COMPANY FOR RAILROAD AND TRANSPORTATION PURPOSES, RECORDED OCTOBER 3, 1962 IN BOOK A484, PAGE 821, OFFICIAL RECORDS.

6. EASEMENT FOR SLUDGE PIPELINE AS SHOWN THAT RECORD OF SURVEY, RECORDED APRIL 25, 1961 IN BOOK "T" OF MAPS, PAGES 6 AND 7, OFFICIAL RECORDS.

7. EASEMENT RESERVED BY THE UNITED STATES OF AMERICA FOR WATER SYSTEM, SEWAGE SYSTEM, ELECTRICAL DISTRIBUTION SYSTEM AND EXISTING RAILROAD DRILL TRACKS, RECORDED JANUARY 31, 1963 IN BOOK A536, PAGE 437, OFFICIAL RECORDS. (THE AFOREMENTIONED DRILL TRACKS HAVE BEEN PARTIALLY REMOVED, DESTROYED OR COVERED AND THUS ARE NOT SHOWN ON THIS SURVEY).

8. MATTERS DISCLOSED IN THAT CERTAIN AGREEMENT BY AND BETWEEN THE CITY & COUNTY OF SAN FRANCISCO AND SOUTHERN PACIFIC COMPANY, RECORDED OCTOBER 28, 1963 IN BOOK A658, PAGE 497, OFFICIAL RECORDS. (A PORTION OR ALL OF THE 20' WIDE RAILROAD EASEMENT DESCRIBED IN PARCEL 7 OF BOOK A484, PAGE 821, MAY BE RELINQUISHED BY VIRTUE OF THIS AGREEMENT).

9. QUITCLAIM DEED GRANTING TO THE CITY & COUNTY OF SAN FRANCISCO, EXISTING SEWER DISTRIBUTION SYSTEM LYING WITHIN THE PUBLIC STREETS AS SAID STREETS ARE SHOWN ON THAT RECORD OF SURVEY, RECORDED APRIL 25, 1961 IN BOOK "T" OF MAPS, PAGES 6 AND 7, SAID QUITCLAIM DEED RECORDED APRIL 15, 1963 IN BOOK A573, PAGE 438, OFFICIAL RECORDS.

BASIS OF SURVEY

THE FOLLOWING MAPS WERE USED AS A BASIS FOR THIS SURVEY:

1. MONUMENT MAP NOs. 292, 293 AND 307, ON FILE IN THE OFFICE OF THE CITY & COUNTY SURVEYOR OF SAN FRANCISCO.

2. "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", RECORDED IN BOOK "T" OF MAPS, PAGES 6 AND 7, SAN FRANCISCO CITY AND COUNTY RECORDS.

3. CALTRANS RIGHT-OF-WAY RECORD MAPS NOs. R-174.6 AND R-174.5, DATED 2-26-63, ON FILE IN THE OFFICE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, DIVISION OF RIGHT OF WAY, OAKLAND, CALIFORNIA.

BASIS OF BEARINGS

THE BEARING SOUTH 54°28'21" EAST ALONG THE RIGHT-OF-WAY LINE OF JERROLD AVENUE AS SHOWN ON THAT RECORD OF SURVEY RECORDED IN BOOK "T" OF MAPS, PAGES 6 & 7.

BASIS OF ELEVATION:

FOUND 3 CUTS ON LOWER STOP COCK OF FIRE HYDRANT AT THE SOUTHEAST CORNER OF JERROLD AVE. AND TOLAND STREET, ELEVATION=4.922 FEET, SAN FRANCISCO CITY DATUM.

GENERAL NOTES

1. ELEVATIONS ARE BASED UPON SAN FRANCISCO CITY DATUM.
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND

(AB 5284A; LOT 06)	ASSESSOR'S BLOCK & LOT NUMBER (FOR TAXATION PURPOSES ONLY)
214	BLOCK No. PER 2A&B MAPS 27
PARCEL 6	PARCEL PER T MAPS 6
———	NEW PARCEL LINES
——— ——— ———	LINE OF QUIET TITLE ACTION PER REEL ____, IMAGE ____.
———	ASSESSOR'S BLOCK AND STREET LINES
——— — — ———	STREET RIGHT-OF-WAY LINES PER "T" MAPS 6 (PRIOR TO SUBSEQUENT WIDENINGS OR VACATIONS)

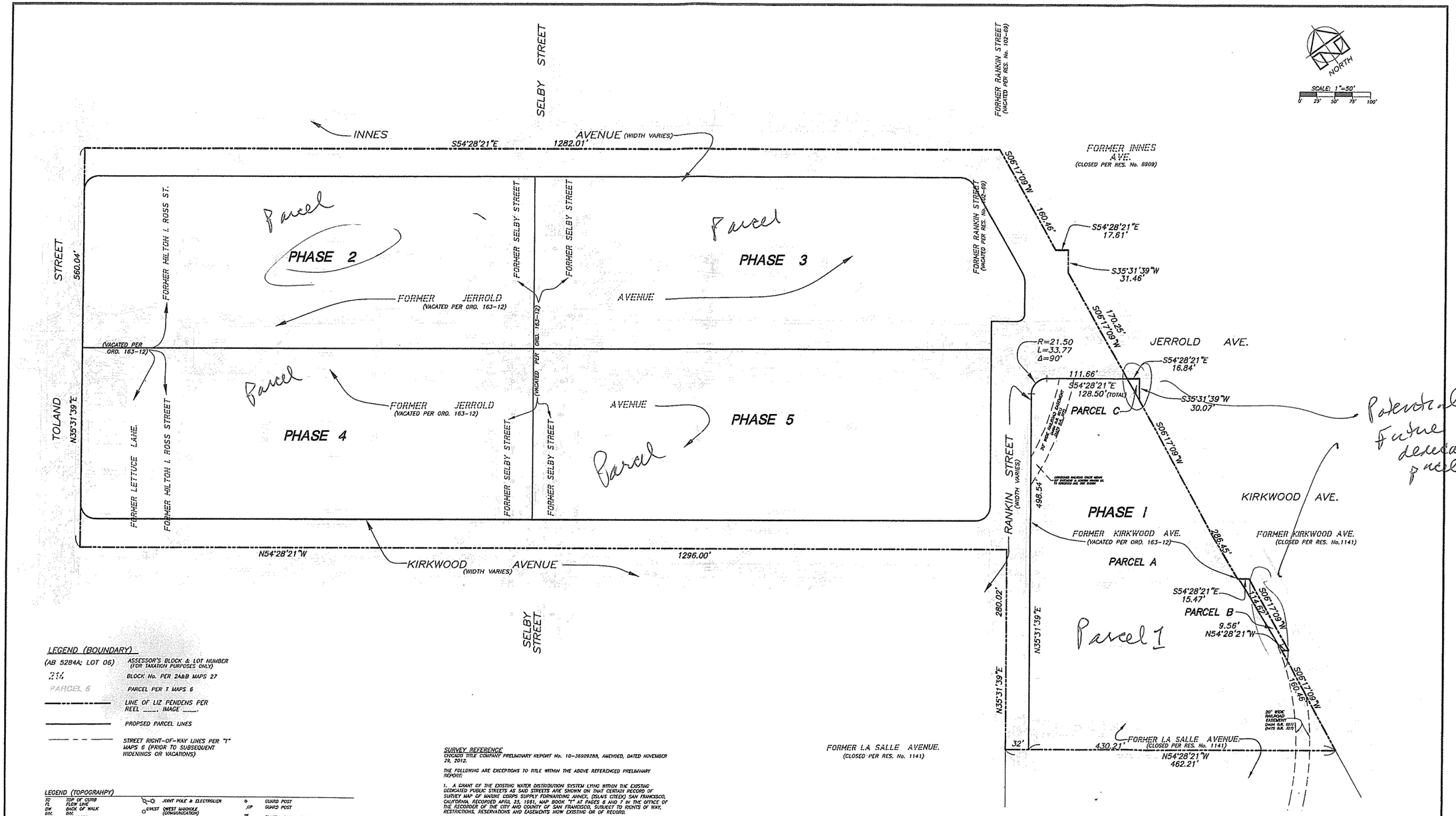
TENTATIVE PARCEL MAP

A SUBDIVISION OF THAT PARCEL OF LAND AS DESCRIBED IN THAT LIS PENDENS, FILED IN SUPERIDIR COURT OF xxxx ON xxxx, RECORDED xxx
CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

SCALE: 1" = 100'	MARTIN M. RON ASSOCIATES LAND SURVEYORS 859 HARRISON STREET, SUITE 200 SAN FRANCISCO, CA 94107 (415) 543-4500	SURV: DD/JR
DATE: 01-XX-13		DES.
SHEET: 2 OF: 2		DRW: JP
JOB NO. S-7340		CHK: BG
		REV NO.

APN: 5284A-004,5284A-005,5284A-006,5268-007,5268-010,5268-011(portion),5282-031,5282-033, 5269-002, 5269-007, 5269-008, 5269-009, 5262-004, 5281-003, 5281-005, and 5282-030. Portions of INNES AVE., KIRKWOOD AVE., JERROLD AVE., RANKIN ST. AND ALL OF MILTON ROSS ST. AND LETTUCE LN.

PROJ\S-7340\S-7340-TPM-sht2.DWG



LEGEND (BOUNDARY)

(AB 5284A; LOT 06)	ASSESSOR'S BLOCK & LOT NUMBER (FOR TAXATION PURPOSES ONLY)
21½	BLOCK No. PER 2A&B MAPS 27
PARCEL 6	PARCEL PER T MAPS 6
———	LINE OF LIZ PENDENS PER REEL ____, IMAGE ____.
———	PROPSED PARCEL LINES
— — — —	STREET RIGHT-OF-WAY LINES PER "T" MAPS 6 (PRIOR TO SUBSEQUENT WIDENINGS OR VACATIONS)

LEGEND (TOPOGRAPHY)

TC	TOP OF CURB		JOINT POLE & ELECTROLIER	⊙	GUARD POST
FL	FLOW LINE			GP	GUARD POST
BW	BACK OF WALK	COMST	CWEST MANHOLE (COMMUNICATION)		
EW	EW			TS	TRAFFIC SIGNAL PULLBOX
CONC	CONCRETE	MTH	MTH MANHOLE (COMMUNICATION)		
ASPH	ASPHALT			CU(S)(S')	UNKNOWN BOX, S'x S' NOW
DWY	DRIVEWAY				
ENT	ENTRANCE	COMM	COMMUNICATION MANHOLE	FP	FLAG POLE
WS	WOOD STEPS	MCI	MCI MANHOLE (COMMUNICATION)	14"	TREE W/DIAMETER
WDL	WOOD LANDING				
CLDG	CONCRETE LANDING	E	ELECTRIC MANHOLE	48"	TREE PIT W/TREE & DIAMETER
PA	PLANTED AREA				
OHL	OVHEAD ELECTRICAL	T	TELEPHONE MANHOLE		SIGN POST
CLF	CHAIN LINK FENCE	UNK	UNKNOWN MANHOLE	STOP	STOP SIGN
HR	HANDICAP RAMP			TR	TRAFFIC SIGN
+ 2.9	SPOT ELEVEMTION	SV	GAS VALVE	STOP 328	STOP & TRAFFIC SIGN
2.9	SPOT ELEVEMTION	BUS	BUS STOP SHELTER	NO PARKING	NO PARKING SIGN
WV	WATER VALVE	BP	BUS STOP SHELTER PULLBOX	3/8	(3) MAILBOXES
FH	LOW PRESSURE FIRE HYDRANT	UC	UNKNOWN COVER	STDP	STANDPIPE
HYD	FIRE HYDRANT	C/O	SEWER CLEANOUT	OHE	OVERHEAD ELECTRIC WIRES
CB	CATCH BASIN	U	UNKNOWN COVER	OHT	OVERSIZED TELEPHONE WIRES
CB	CATCH BASIN	O	LIGHT	OHT&E	OVERHEAD TELEPHONE & ELECTRIC WIRES
CB	CATCH BASIN	R	RISER	OHCATV	OVERHEAD ELECTRIC & TELEVISION WIRES
AD	AREA DRAIN	SR	GAS RISER		
SMH	SEWER MANHOLE	F/P	FIRE/POLICE CALLBOX	E	ELECTRIC LINE
SV	SEWER VENT	T	TELEPHONE PULLBOX	G	GAS LINE
SV	SEWER VALVE	STDP	STAND PIPE	HYD	HOM PRESSURE GAS LINE
		E	ELECTRIC PULLBOX	MCI	MCI LINE (COMMUNICATION)
WM	WATER METER	ER	ELECTRIC RISER	S	SEWER LINE
	JOINT POLE	CT	CALTRANS PULLBOX	SL	STREET LIGHT LINE
	ELECTROLIER	SL	STREET LIGHT PULLBOX	T	TELEPHONE LINE
(D)	DUCT	SFE	SF DEPT. OF ELECTRICITY PULLBOX	TS	TRAFFIC SIGNAL LINE
(P)	PIPE	W	WATER LINE		

SURVEY REFERENCE

CHICAGO TITLE COMPANY PRELIMINARY REPORT No. 10-36909288, AMENDED, DATED NOVEMBER 29, 2012.

THE FOLLOWING ARE EXCEPTIONS TO TITLE WITHIN THE ABOVE REFERENCED PRELIMINARY REPORT:

1. A GRANT OF THE EXISTING WATER DISTRIBUTION SYSTEM LYING WITHIN THE EXISTING DEDICATED PUBLIC STREETS AS SAID STREETS ARE SHOWN ON THAT CERTAIN RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX, (ISLAIS CREEK) SAN FRANCISCO, CALIFORNIA, RECORDED APRIL 25, 1981, MAP BOOK "T" AT PAGES 6 AND 7 IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, SUBJECT TO RIGHTS OF WAY, RESTRICTIONS, RESERVATIONS AND EASEMENTS NOW EXISTING OR OF RECORD.

AS QUITCLAIMED BY THE UNITED STATES OF AMERICA TO THE CITY AND COUNTY OF SAN FRANCISCO, BY INSTRUMENT RECORDED JUNE 29, 1962 IN BOOK A442, PAGE 184 OF OFFICIAL RECORDS.

2. RESERVATION OF WATER SYSTEM, SEWAGE SYSTEM, ELECTRICAL DISTRIBUTION SYSTEM AND EXISTING RAILROAD DRILL TRACKS TOGETHER WITH AN EASEMENT TO MAINTAIN, OPERATE AND REPAIR AND USE SAID DRILL TRACKS, AS PROVIDED IN QUITCLAIM DEED FROM UNITED STATES OF AMERICA TO CITY AND COUNTY OF SAN FRANCISCO, A MUNICIPAL CORPORATION, RECORDED SEPTEMBER 6, 1963, IN BOOK A632, PAGE 397, OFFICIAL RECORDS.

3. COVENANTS, CONDITIONS, TERMS AND PROVISIONS AS DESCRIBED IN THAT GIFT DEED FROM THE CITY OF SAN FRANCISCO MARKET CORPORATION TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED JANUARY 31, 1963 IN BOOK A536, PAGE 405, OFFICIAL RECORDS.

4. EASEMENT GRANTED TO SOUTHERN PACIFIC COMPANY FOR RAILROAD AND TRANSPORTATION PURPOSES, RECORDED OCTOBER 3, 1962 IN BOOK A484, PAGE 821, OFFICIAL RECORDS.

5. EASEMENT RESERVED BY THE UNITED STATES OF AMERICA FOR WATER SYSTEM, SEWAGE SYSTEM, ELECTRICAL DISTRIBUTION SYSTEM AND EXISTING RAILROAD DRILL TRACKS, RECORDED JANUARY 31, 1963 IN BOOK A536, PAGE 437, OFFICIAL RECORDS. (THE AFOREMENTIONED DRILL TRACKS HAVE BEEN PARTIALLY REMOVED, DESTROYED OR COVERED AND THUS ARE NOT SHOWN ON THIS SURVEY; EASEMENT PORTIONS THAT ARE PLOTTABLE ARE LOCATED IN THE REMAINDER PARCEL. THE REMAINING EASEMENTS ARE BLANKET IN NATURE).

6. MATTERS DISCLOSED IN THAT CERTAIN AGREEMENT BY AND BETWEEN THE CITY & COUNTY OF SAN FRANCISCO AND SOUTHERN PACIFIC COMPANY, RECORDED OCTOBER 28, 1963 IN BOOK A568, PAGE 497, OFFICIAL RECORDS.

7. QUITCLAIM DEED GRANTING TO THE CITY & COUNTY OF SAN FRANCISCO, EXISTING SEWER DISTRIBUTION SYSTEM LYING WITHIN THE PUBLIC STREETS AS SAID STREETS ARE SHOWN ON THAT RECORD OF SURVEY, RECORDED APRIL 25, 1981 IN BOOK "T" OF MAPS, PAGES 6 AND 7, SAID QUITCLAIM DEED RECORDED APRIL 15, 1963 IN BOOK A573, PAGE 428, OFFICIAL RECORDS.

NOTE: OTHER EXCEPTIONS CITED IN THIS PRELIMINARY TITLE REPORT ARE NOT REFERENCED BECAUSE THEY LIE WITHIN THE REMAINDER PARCEL. ONLY EXCEPTIONS THAT FALL WITHIN PARCEL "A" ARE PLOTTED OR ADDRESSED.

TENTATIVE FINAL MAP

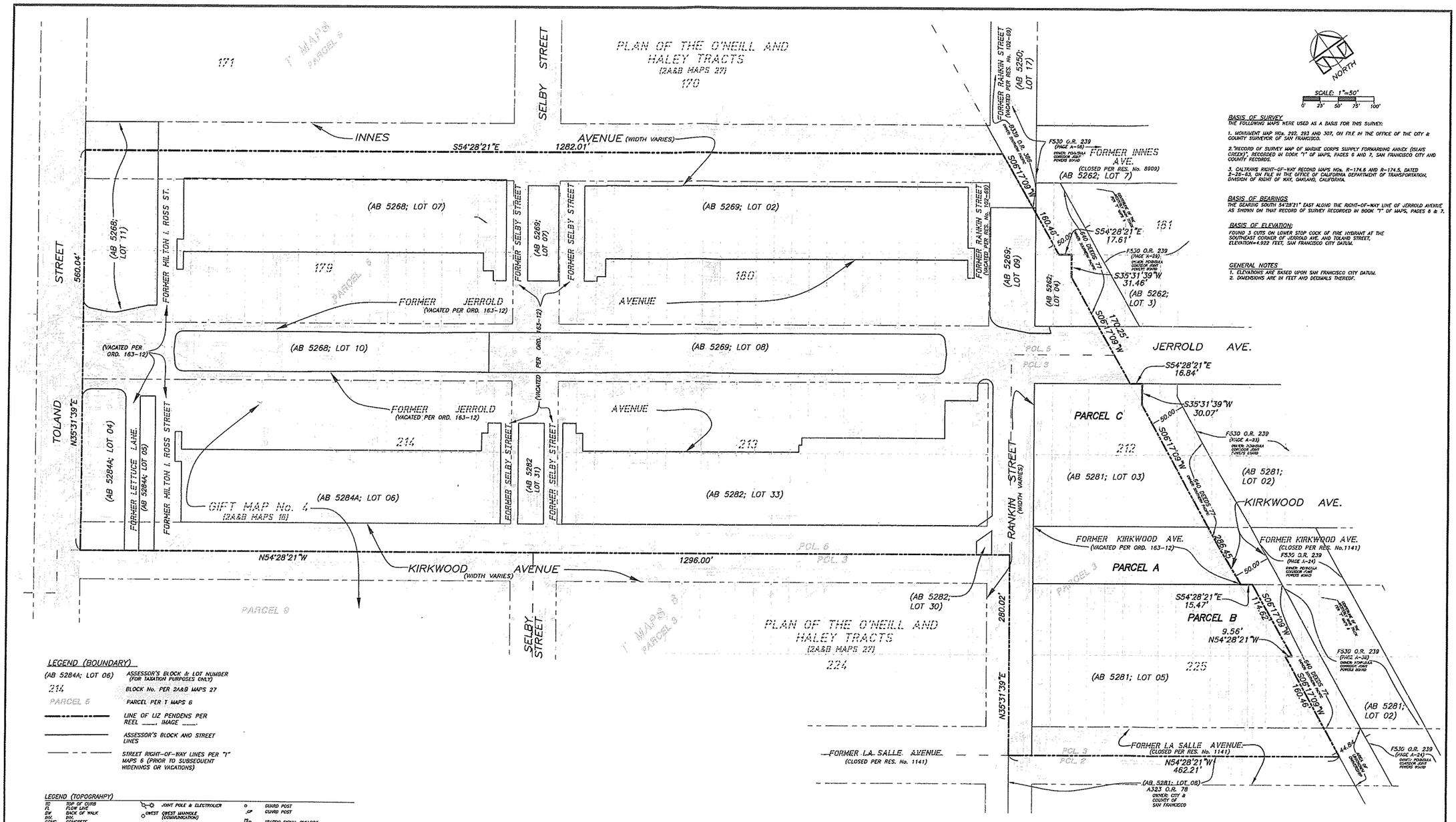
EXISTING TOPOGRAPHY AND PHASED BOUNDARY

A SUBDIVISION OF THAT PARCEL OF LAND AS DESCRIBED IN THAT LIS PENDENS, FILED IN SUPERIOR COURT ON ____, 2013, RECORDED IN REEL ____, IMAGE ____, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

SCALE: 1" = 50'	MARTIN M. RON ASSOCIATES LAND SURVEYORS 659 HARRISON STREET, SUITE 200 SAN FRANCISCO, CA 94107 (415) 543-4500	SURV: DD/JR
DATE: 03-21-13		DES.
SHEET: 2		DRWN: JP
OF: 2		CHCK: BG
JOB NO. S-7340		REV NO.

APN: 5284A-004,5284A-005,5284A-006,5268-007,5268-010,5268-011(portion),5282-031,5282-033, 5269-002, 5269-007, 5268-008, 5269-009, 5262-004, 5261-003, 5261-005, and 5262-030. Portions of INNES AVE., KIRKWOOD AVE., JERROLD AVE., RANKIN ST. AND ALL OF MILTON ROSS ST. AND LETTUCE LN.

PROJS-7340\S-7340-TFM-sht2.DWG



BASIS OF SURVEY
THE FOLLOWING MAPS WERE USED AS A BASIS FOR THIS SURVEY:

1. MONUMENT MAP NOs. 292, 293 AND 307, ON FILE IN THE OFFICE OF THE CITY & COUNTY SURVEYOR OF SAN FRANCISCO.
2. RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (SEARS CREEK), RECORDED IN BOOK "T" OF MAPS, PAGES 6 AND 7, SAN FRANCISCO CITY AND COUNTY RECORDS.
3. CALTRANS RIGHT-OF-WAY RECORD MAPS NOs. R-174.6 AND R-174.5, DATED 2-16-53, ON FILE IN THE OFFICE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, DIVISION OF RIGHT OF WAY, OAKLAND, CALIFORNIA.

BASIS OF BEARINGS
THE BEARING SOUTH 54°28'21" EAST ALONG THE RIGHT-OF-WAY LINE OF JERROLD AVENUE AS SHOWN ON THAT RECORD OF SURVEY RECORDED IN BOOK "T" OF MAPS, PAGES 6 & 7.

BASIS OF ELEVATION:
FOUND 3 CUTS ON LOWER STOP COCK OF FIRE HYDRANT AT THE SOUTHEAST CORNER OF JERROLD AVE. AND TOLAND STREET, ELEVATION=4.922 FEET, SAN FRANCISCO CITY DATUM.

GENERAL NOTES
1. ELEVATIONS ARE BASED UPON SAN FRANCISCO CITY DATUM.
2. DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.

LEGEND (BOUNDARY)

(AB 5284A; LOT 06)	ASSESSOR'S BLOCK & LOT NUMBER (FOR TAXATION PURPOSES ONLY)
214	BLOCK No. PER 2A&B MAPS 27
PARCEL 5	PARCEL PER T MAPS 6
———	LINE OF LIZ PENDENS PER REEL ____, IMAGE ____.
———	ASSESSOR'S BLOCK AND STREET LINES
— — —	STREET RIGHT-OF-WAY LINES PER "T" MAPS 6 (PRIOR TO SUBSEQUENT WIDENINGS OR VACATIONS)

LEGEND (TOPOGRAPHY)

TC	TOP OF CURB		JOINT POLE & ELECTROLIER	○	GUARD POST
FL	FLOW LINE	○ CMST	CMST MANHOLE (COMMUNICATION)	GP	GUARD POST
BW	BACK OF WALK			TS	TRAFFIC SIGNAL PULLBOX
CONC.	CONCRETE	○ MTN	MTN MANHOLE (COMMUNICATION)	CU(S')	UNKNOWN BOX, S'S SIGN
ASPH.	ASPHALT				
DWY.	DRIVEWAY				
ENT.	ENTRANCE	CMH	COMMUNICATION MANHOLE	FP	FLAG POLE
WD.S	WOOD STEPS	○ MCI	MCI MANHOLE (COMMUNICATION)	14"	TREE W/DIAMETER
WD.L	WOOD LANDING				
CONC.	CONCRETE LANDING				TREE PIT W/TREE & DIAMETER
P.A.	PLANTED AREA	E	ELECTRIC MANHOLE		
O.R.	OFFICIAL RECORDS				
CLF	CHAIN LINK FENCE	T	TELEPHONE MANHOLE		SIGN POST
HR	HANDICAP RAMP	UMH	UNKNOWN MANHOLE	STOP	STOP SIGN
+ 2.9	SPOT ELEVATION	CV	GAS VALVE		TRAFFIC SIGN
3/4"	SPOT ELEVEVATION			STOP & 25TH	STOP & TRAFFIC SIGN
WV	WATER VALVE	BSP	BUS STOP SHELTER	NP	NO PARKING SIGN
FH	LOW PRESSURE FIRE HYDRANT	BSP	BUS STOP SHELTER PULLBOX		
HYD	FIRE HYDRANT	UC	UNKNOWN COVER		(3) MAILBOXES
CB	CATCH BASIN	C/O	SEWER CLEANOUT	STDP	STANDPIPE
CB	CATCH BASIN	U	UNKNOWN COVER	OHE	OVERHEAD ELECTRIC WIRES
CB	CATCH BASIN	☼	LIGHT	OHT	OVERHEAD TELEPHONE WIRES
CB	CATCH BASIN	R	RISER	OHT&E	OVERHEAD TELEPHONE & ELECTRIC WIRES
AD	AREA DRAIN	GR	GAS RISER	OHE&TV	OVERHEAD ELECTRIC & TELEVISION WIRES
SMH	SEWER MANHOLE	F/P	FIRE/POLICE CALLBOX	E	ELECTRIC LINE
SV	SEWER VENT	T	TELEPHONE PULLBOX	G	GAS LINE
S	SEWER VALVE	STDP	STAND PIPE	HPG	HIGH PRESSURE GAS LINE
		E	ELECTRIC PULLBOX	MCI	MCI LINE (COMMUNICATION)
WM	WATER METER	ER	ELECTRIC RISER	S	SEWER LINE
	JOINT POLE	CT	CALTRANS PULLBOX	SL	STREET LIGHT LINE
	ELECTROLIER	SL	STREET LIGHT PULLBOX	T	TELEPHONE LINE
(D)	DUCT	SFE	SF DEPT. OF ELECTRICITY PULLBOX	TS	TRAFFIC SIGNAL LINE
(P)	PIPE	W	WATER LINE		

OWNER:
CITY & COUNTY OF SAN FRANCISCO

SURVEYOR/SUBDIVIDER:
BRUCE A. CONDY
MARTIN M. RON ASSOCIATES, INC.
859 HARRISON STREET, SUITE 200
SAN FRANCISCO, CA 94107
TEL: 415-543-4500

SURVEYOR'S STATEMENT:
THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND IS BASED UPON A FIELD SURVEY MADE IN MARCH 2010.

DATE: 3-21-13

BRUCE A. CONDY
PROFESSIONAL LAND SURVEYOR No. 6275
LICENSE EXPIRES 9-30-14

PROFESSIONAL LAND SURVEYOR BRUCE A. CONDY No. 6275 Exp. 09/30/14 STATE OF CALIFORNIA

TENTATIVE FINAL MAP

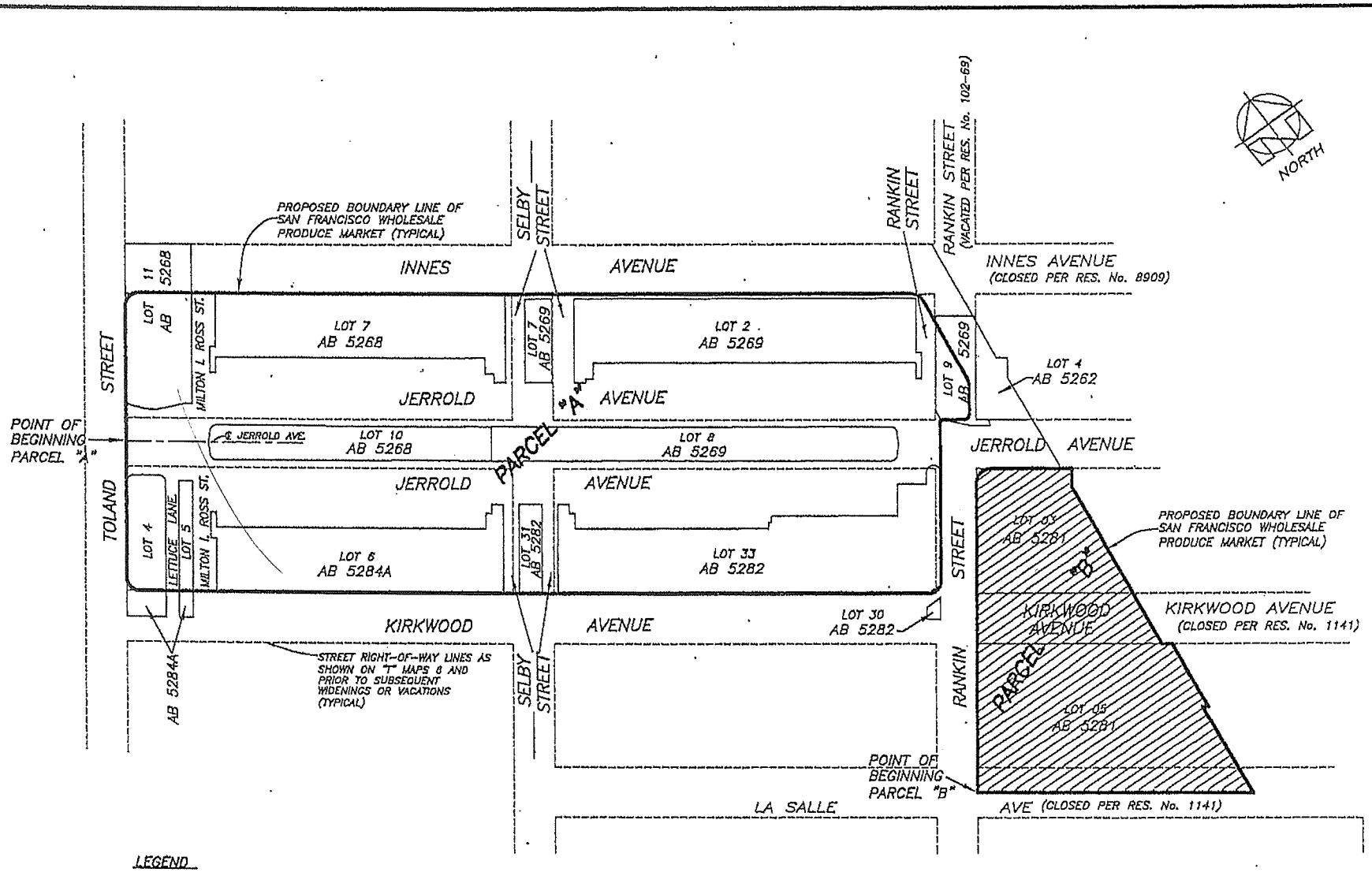
EXISTING TOPOGRAPHY AND BOUNDARY

A SUBDIVISION OF THAT PARCEL OF LAND AS DESCRIBED IN THAT LIS PENDENS, FILED IN SUPERIOR COURT ON _____ 2013, RECORDED IN REEL _____, IMAGE _____
CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA

SCALE: 1" = 50'	MARTIN M. RON ASSOCIATES LAND SURVEYORS 859 HARRISON STREET, SUITE 200 SAN FRANCISCO, CA 94107 (415) 543-4500	SURV: DB/JR
DATE: 03-21-13		DES:
SHEET: 1 OF: 2		DRW: JP
JOB NO. S-7340		CHK: BG
		REV NO.

APN: 5284A-004,5284A-005,5284A-006,5268-007,5268-010,5268-011(portion),5282-031,5282-033, 5269-002, 5269-007, 5269-008, 5269-009, 5262-004, 5281-003, 5281-005, and 5282-030. Portions of INNES AVE., KIRKWOOD AVE., JERROLD AVE., RANKIN ST. AND ALL OF MILTON ROSS ST. AND LETTUCE LN.

PROJ\S-7340\S-7340-TFM-sht1.DWG



SURV.:
DRW.:
CHK.:

EXHIBIT A-2.2

MARTIN M. RON ASSOCIATES
LAND SURVEYORS
859 HARRISON STREET, SUITE 200
SAN FRANCISCO, CA 94107

SCALE: 1"=1
DATE: 2-13-
SHEET 1
OF 1
JOB NO. S-7340

EXHIBIT A-3.1

LEGAL DESCRIPTION
FORMER STREET PROPERTY AND KIRKWOOD SEGMENT

THE FORMER STREET PROPERTY AND KIRKWOOD SEGMENT ARE COMPRISED OF ALL THOSE PORTIONS OF INNES AVENUE, JERROLD AVENUE, KIRKWOOD AVENUE, RANKIN STREET, SELBY STREET, MILTION I. ROSS STREET AND LETTUCE LANE, LYING WITHIN THE PARCELS "A" AND "B" AS DESCRIBED BELOW:

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL No. 3 AND PARCEL No. 5, AS SAID PARCELS ARE SHOWN AND DELINEATED ON THAT MAP ENTITLED, "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK), SAN FRANCISCO, CALIFORNIA", RECORDED APRIL 25, 1961, IN BOOK "T" OF MAPS, PAGES 6 AND 7, ("T" MAPS 6), IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALL THOSE PARCELS OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL A:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF TOLAND STREET (64 FEET WIDE) AND THE CENTERLINE OF JERROLD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF TOLAND STREET, NORTH 35°31'39" EAST 221.020 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.000 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.416 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 1.000 FEET NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF INNES AVENUE (80 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 54°28'21" EAST 1206.765 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS 22.00 FEET, THROUGH A CENTRAL ANGLE OF 60°45'30", AN ARC LENGTH OF 23.330 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 56.000 FEET WESTERLY OF THE EASTERLY LINE OF SAID PARCEL No. 5, AS SHOWN ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", ("T" MAPS 6); THENCE ALONG SAID PARALLEL LINE SOUTH 06°17'09" WEST 138.671 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 30.000 FEET, THROUGH A CENTRAL ANGLE OF 29°14'30", AN ARC LENGTH OF 15.311 FEET; THENCE SOUTH 35°31'39" WEST 44.113 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS 10.000 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 15.708 FEET TO A POINT THE NORTHEASTERLY LINE OF SAID JERROLD AVENUE; THENCE ALONG SAID LINE OF JERROLD AVENUE NORTH 54°28'21" WEST 35.525 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 8.000 FEET SOUTHEASTERLY OF THE NORTHWESTERLY LINE OF RANKIN STREET (64 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 35°31'39" WEST 260.020 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.000 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.416 FEET TO A POINT ON THE NORTHEASTERLY LINE OF KIRKWOOD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF KIRKWOOD AVENUE NORTH 54°28'21" WEST 1232.000 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.000 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.416 FEET TO A POINT ON SAID SOUTHEASTERLY LINE OF TOLAND STREET; THENCE ALONG SAID LINE OF TOLAND STREET NORTH 35°31'39" EAST 220.020 FEET TO SAID CENTERLINE OF JERROLD AVENUE AND POINT OF BEGINNING, CONTAINING 14.126 ACRES, MORE OR LESS.

PARCEL B:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF RANKIN STREET (64 FEET WIDE) AND THE CENTERLINE OF FORMER LA SALLE AVENUE (80 FEET WIDE), AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914; THENCE ALONG SAID LINE OF RANKIN STREET NORTH 35°31'39" EAST 498.540 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 21.500 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 33.772 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF JERROLD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF JERROLD AVENUE SOUTH 54°28'21" EAST 128.500 FEET TO THE EASTERLY LINE OF SAID PARCEL No. 3, AS SHOWN ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", ("T" MAPS 6); THENCE ALONG SAID EASTERLY LINE OF PARCEL No. 3, THE FOLLOWING SIX (6) COURSES: 1.) SOUTH 35°31'39" WEST 30.071 FEET, 2.) SOUTH 6°17'09" WEST 286.452 FEET TO THE SOUTHWESTERLY LINE OF KIRKWOOD STREET (80 FEET WIDE), 3.) ALONG THE FORMER SOUTHWESTERLY LINE OF KIRKWOOD AVENUE, AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914, SOUTH 54°28'21" EAST 15.472 FEET, 4.) SOUTH 6°17'09" WEST 114.616 FEET, 5.) NORTH 54°28'21" WEST 9.561 FEET AND 6.) SOUTH 6°17'09" WEST 160.458 FEET TO SAID CENTERLINE OF FORMER LA SALLE AVENUE; THENCE LEAVING SAID EASTERLY LINE OF PARCEL No. 3, ALONG SAID CENTERLINE OF FORMER LA SALLE AVENUE, NORTH 54°28'21" WEST 430.213 FEET TO SAID SOUTHEASTERLY LINE OF RANKIN STREET AND THE POINT OF BEGINNING, CONTAINING 3.386 ACRES, MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTIONS ARE BASED UPON THE CENTERLINE OF TOLAND STREET SHOWN AS "NORTH 35°31'39" EAST" ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)".

STREETS AND AVENUES REFERRED TO IN THE ABOVE PARCEL DESCRIPTIONS ARE AS THEY EXISTED AT THE TIME OF THE SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", PRIOR TO THE SUBSEQUENT VACATIONS AND DEDICATIONS THEREOF.

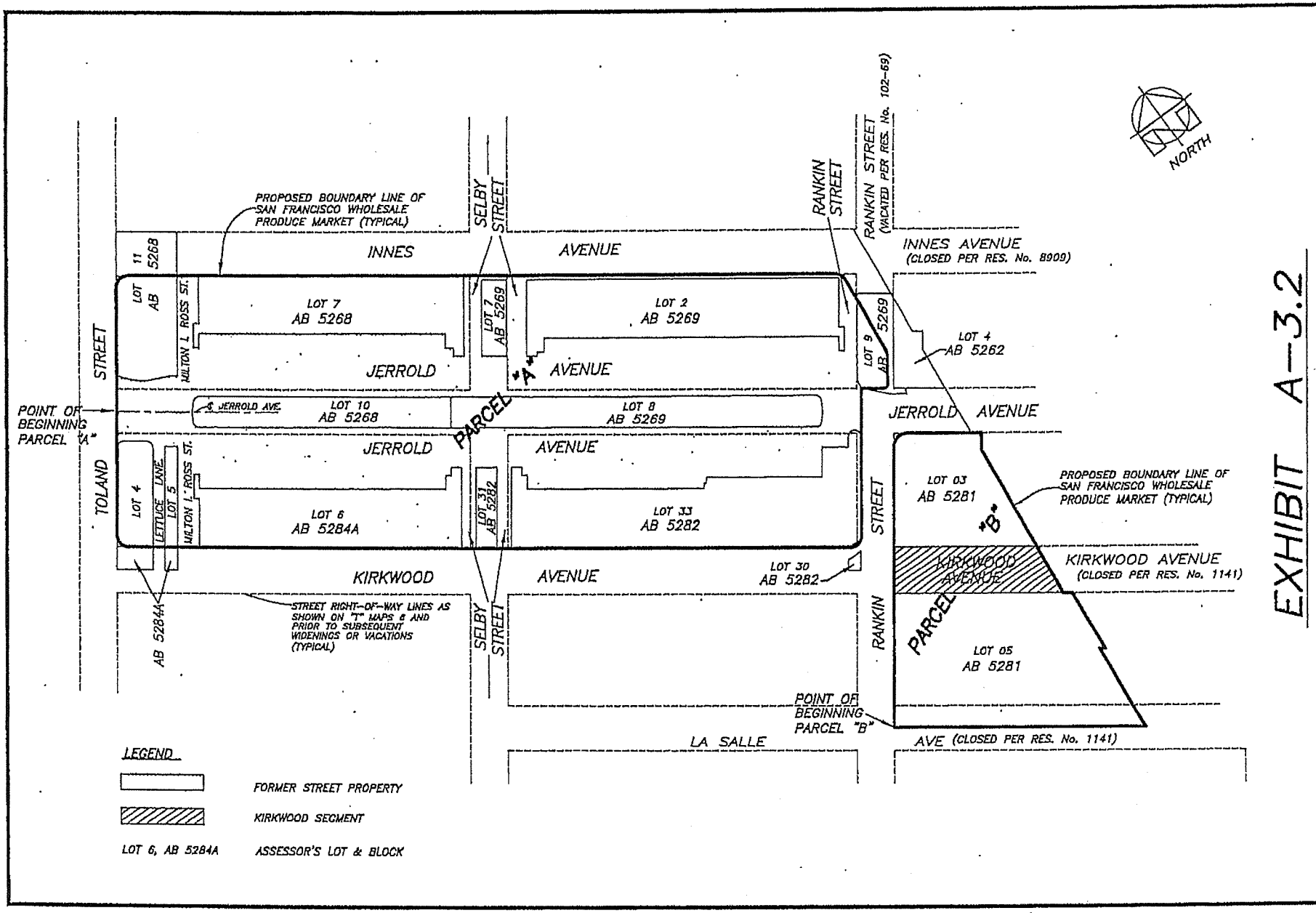


EXHIBIT A-3.2

FORMER STREET PROPERTY WITHIN THE PROPOSED SAN FRANCISCO WHOLESALE PRODUCE MARKET BOUNDARIES

MARTIN M. RON ASSOCIATES
LAND SURVEYORS
859 HARRISON STREET, SUITE 200

SURV.
DRWN
CHK.
SCALE: 1
DATE: 4-
SHEET
OF
JOB
S-7341

EXHIBIT B

RELINQUISHED PREMISES

EXHIBIT B-1.

DESCRIPTION OF RELINQUISHED PREMISES

THE RELINQUISHED PREMISES ARE GENERALLY DEPICTED ON EXHIBIT B-2 AND ARE COMPRISED OF ANY PORTION OF THE INITIAL PREMISES WITHIN THE FOLLOWING PROPERTY:

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS: A PORTION OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THAT QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED SEPTEMBER 4, 1962 IN BOOK A472, PAGE 327, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALSO BEING A PORTION OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN THAT QUITCLAIM DEED FROM THE UNITED STATES OF AMERICA TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED JANUARY 31, 1963 IN BOOK A536, PAGE 437, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALSO BEING A PORTION OF PARCEL No. 3 AND PARCEL No. 5, AS SAID PARCELS ARE SHOWN AND DELINEATED ON THAT MAP ENTITLED, "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK), SAN FRANCISCO, CALIFORNIA", RECORDED APRIL 25, 1961, IN BOOK "T" OF MAPS, PAGES 6 AND 7, ("T" MAPS 6), IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALSO BEING ALL OF BLOCKS 179, 180, 213, 214, PORTIONS OF BLOCKS 181, 212 AND 225, PORTIONS OF 9TH, 10TH 11TH AND 12TH AVENUES, "S" AND "R" STREETS, AS SAID BLOCKS, AVENUES AND STREETS ARE SHOWN ON THAT MAP ENTITLED "PLAN OF THE O'NEILL AND HALEY TRACTS", RECORDED JANUARY 31, 1867 IN BOOK 2A & B OF MAPS, PAGE 27, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALSO BEING A PORTION OF "GIFT MAP No. 4", RECORDED DECEMBER 31, 1861 IN MAP BOOK 2A & B, PAGES 16 THROUGH 19, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

ALL THAT PARCEL OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF TOLAND STREET (64 FEET WIDE) AND THE NORTHEASTERLY LINE OF INNES AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF INNES AVENUE SOUTH 54°28'21" EAST 102.66 FEET; THENCE SOUTH 35°31'39" WEST 40.00 FEET TO THE CENTERLINE OF SAID INNES AVENUE; THENCE ALONG SAID CENTERLINE OF INNES AVENUE SOUTH 54°28'21" EAST 1179.34 FEET TO THE EASTERLY LINE OF SAID PARCEL No. 5 ("T" MAPS 6); THENCE ALONG A PORTION OF SAID EASTERLY LINE OF PARCEL No. 5, AND THE EASTERLY LINE OF SAID PARCEL No. 3 ("T" MAPS 6), THE FOLLOWING ELEVEN (11) COURSES: 1) SOUTH 06°17'09" WEST 160.46 FEET, 2) SOUTH 54°28'21" EAST 17.61 FEET, 3) SOUTH 35°31'39" WEST 31.46 FEET, 4) SOUTH 06°17'09" WEST 170.25 FEET TO THE SOUTHWESTERLY LINE OF JERROLD AVENUE (80 FEET WIDE), 5) ALONG SAID LINE OF JERROLD AVENUE SOUTH 54°28'21" EAST 16.84 FEET, 6) SOUTH 35°31'39" WEST 30.07 FEET, 7) SOUTH 06°17'09" WEST 286.45 FEET TO THE SOUTHWESTERLY LINE OF KIRKWOOD AVENUE (80 FEET WIDE), 8) ALONG THE FORMER SOUTHWESTERLY LINE OF KIRKWOOD AVENUE, AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914, SOUTH 54°28'21" EAST 15.47 FEET, 9) SOUTH 06°17'09" WEST 114.62 FEET, 10) NORTH 54°28'21" WEST 9.56 FEET, 11) SOUTH 06°17'09" WEST

160.46 FEET TO THE CENTERLINE OF FORMER LA SALLE AVENUE (80 FEET WIDE), AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914; THENCE ALONG SAID CENTERLINE OF LA SALLE AVENUE, NORTH 54°28'21" WEST 462.21 FEET TO THE CENTERLINE OF RANKIN STREET (64 FEET WIDE); THENCE ALONG SAID CENTERLINE OF RANKIN STREET NORTH 35°31'39" EAST 280.02 FEET TO THE CENTERLINE OF SAID KIRKWOOD AVENUE; THENCE ALONG SAID CENTERLINE OF KIRKWOOD AVENUE NORTH 54°28'21" WEST 1296.00 FEET TO SAID SOUTHEASTERLY LINE OF TOLAND STREET; THENCE ALONG SAID LINE OF TOLAND STREET, NORTH 35°31'39" EAST 600.04 FEET TO THE POINT OF BEGINNING, CONTAINING 21.088 ACRES, MORE OR LESS.

EXCEPTING THEREFROM, THE FOLLOWING TWO PARCELS:

PARCEL A:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF TOLAND STREET (64 FEET WIDE) AND THE CENTERLINE OF JERROLD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF TOLAND STREET, NORTH 35°31'39" EAST 221.02 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.42 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 1.00 FEET NORTHEASTERLY OF THE SOUTHWESTERLY LINE OF INNES AVENUE (80 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 54°28'21" EAST 1206.76 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS 22.00 FEET, THROUGH A CENTRAL ANGLE OF 60°45'30", AN ARC LENGTH OF 23.33 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 56.00 FEET WESTERLY OF THE EASTERLY LINE OF SAID PARCEL No. 5, AS SHOWN ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", ("T" MAPS 6); THENCE ALONG SAID PARALLEL LINE SOUTH 06°17'09" WEST 138.67 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 30.00 FEET, THROUGH A CENTRAL ANGLE OF 29°14'30", AN ARC LENGTH OF 15.31 FEET; THENCE SOUTH 35°31'39" WEST 44.11 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS 10.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 15.71 FEET TO A POINT THE NORTHEASTERLY LINE OF SAID JERROLD AVENUE; THENCE ALONG SAID LINE OF JERROLD AVENUE NORTH 54°28'21" WEST 35.52 FEET TO A POINT ON A LINE PARALLEL WITH AND PERPENDICULARLY DISTANT 8.00 FEET SOUTHEASTERLY OF THE NORTHWESTERLY LINE OF RANKIN STREET (64 FEET WIDE); THENCE ALONG SAID PARALLEL LINE SOUTH 35°31'39" WEST 260.02 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.42 FEET TO A POINT ON THE NORTHEASTERLY LINE OF KIRKWOOD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF KIRKWOOD AVENUE NORTH 54°28'21" WEST 1232.00 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 31.42 FEET TO A POINT ON SAID SOUTHEASTERLY LINE OF TOLAND STREET; THENCE ALONG SAID LINE OF TOLAND STREET NORTH 35°31'39" EAST 220.02 FEET TO SAID CENTERLINE OF JERROLD AVENUE AND POINT OF BEGINNING, CONTAINING 14.126 ACRES, MORE OR LESS.

PARCEL B:
BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERLY LINE OF RANKIN STREET (64 FEET WIDE) AND THE CENTERLINE OF FORMER LA SALLE AVENUE (80 FEET WIDE), AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914; THENCE ALONG SAID LINE OF RANKIN STREET NORTH 35°31'39" EAST 498.54 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 21.50 FEET, THROUGH A CENTRAL ANGLE OF 90°00'00", AN ARC LENGTH OF 33.77 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF JERROLD AVENUE (80 FEET WIDE); THENCE ALONG SAID LINE OF JERROLD AVENUE SOUTH 54°28'21" EAST 128.50 FEET TO THE EASTERLY LINE OF SAID PARCEL No. 3, AS SHOWN ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", ("T" MAPS 6); THENCE ALONG SAID EASTERLY LINE OF PARCEL No. 3, THE FOLLOWING SIX (6) COURSES: 1.) SOUTH 35°31'39" WEST 30.07 FEET, 2.) SOUTH 6°17'09" WEST

286.45 FEET TO THE SOUTHWESTERLY LINE OF KIRKWOOD STREET (80 FEET WIDE), 3.) ALONG THE FORMER SOUTHWESTERLY LINE OF KIRKWOOD AVENUE, AS SAID AVENUE EXISTED PRIOR TO THE CLOSURE THEREOF, PER RESOLUTION No. 11411, DATED DECEMBER 21, 1914, SOUTH 54°28'21" EAST 15.47 FEET, 4.) SOUTH 6°17'09" WEST 114.62 FEET, 5.) NORTH 54°28'21" WEST 9.56 FEET AND 6.) SOUTH 6°17'09" WEST 160.46 FEET TO SAID CENTERLINE OF FORMER LA SALLE AVENUE; THENCE LEAVING SAID EASTERLY LINE OF PARCEL No. 3, ALONG SAID CENTERLINE OF FORMER LA SALLE AVENUE, NORTH 54°28'21" WEST 430.21 FEET TO SAID SOUTHEASTERLY LINE OF RANKIN STREET AND THE POINT OF BEGINNING, CONTAINING 3.386 ACRES, MORE OR LESS.

THE BASIS OF BEARINGS FOR THE ABOVE DESCRIPTIONS ARE BASED UPON THE CENTERLINE OF TOLAND STREET SHOWN AS "NORTH 35°31'39" EAST" ON SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)".

STREETS AND AVENUES REFERRED TO IN THE ABOVE PARCEL DESCRIPTIONS ARE AS THEY EXISTED AT THE TIME OF SAID "RECORD OF SURVEY MAP OF MARINE CORPS SUPPLY FORWARDING ANNEX (ISLAIS CREEK)", PRIOR TO THE SUBSEQUENT VACATIONS AND DEDICATIONS THEREOF.

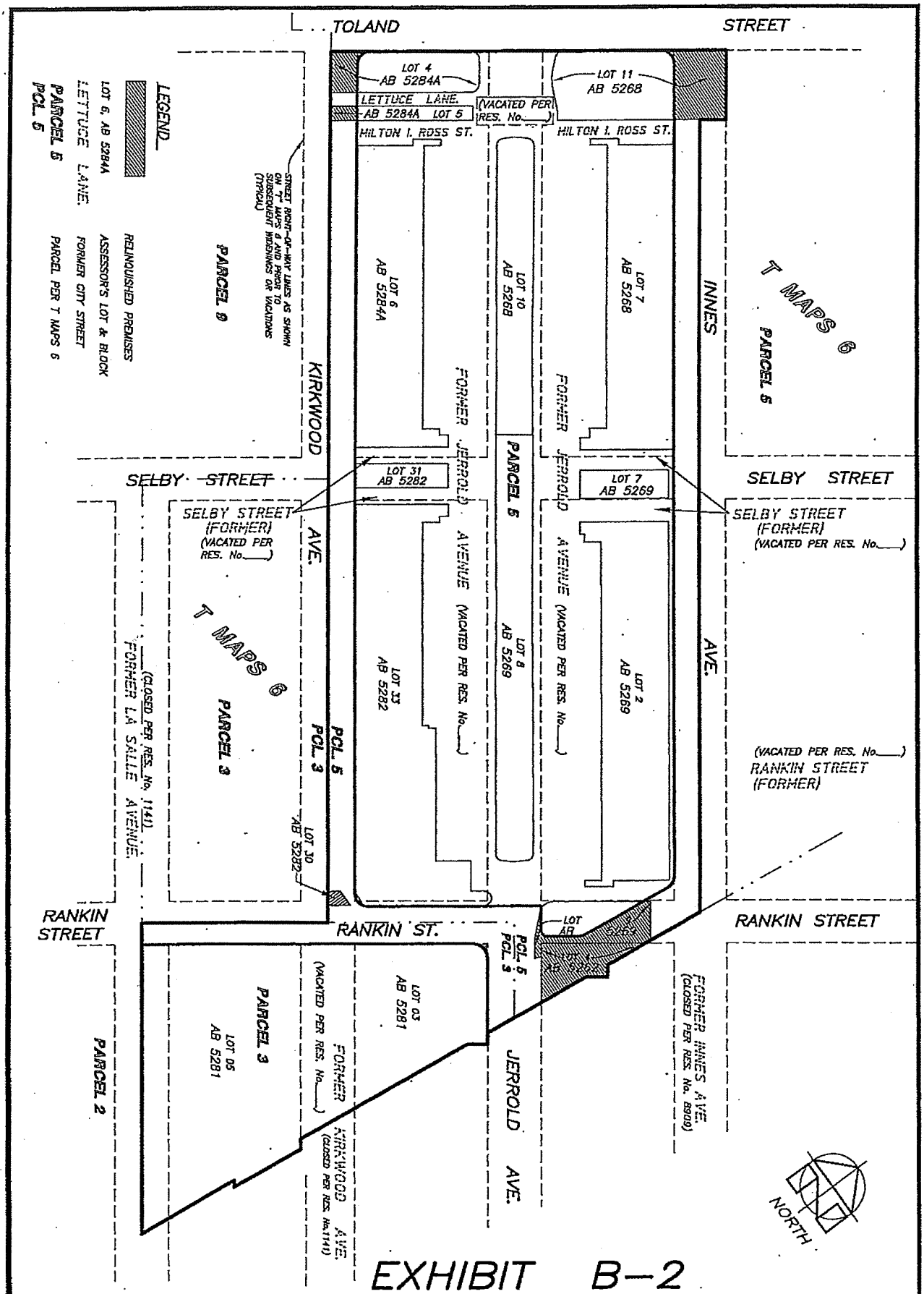
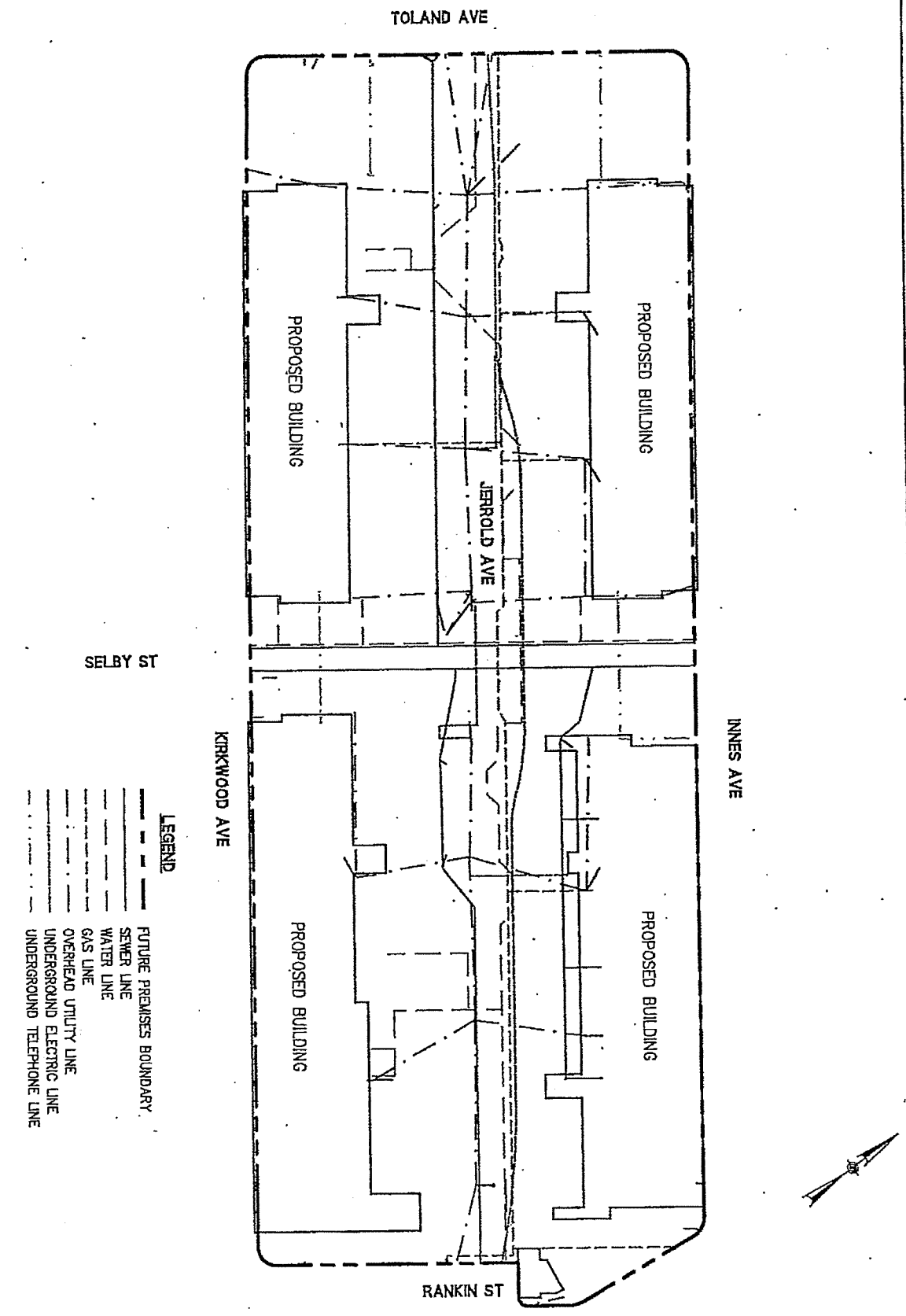


EXHIBIT B-2

JOB NO. S-7340	SHEET 1 OF 1	SCALE: 1"=130'	DATE: 4-12-12	MARTIN M. RON ASSOCIATES LAND SURVEYORS 859 HARRISON STREET, SUITE 200 SAN FRANCISCO, CA 94107 TEL (415) 543-4500 FAX (415)543-6255	RELINQUISHED AREAS LYING WITHIN SAN FRANCISCO WHOLESALE PRODUCE MARKET BOUNDARIES SAN FRANCISCO CALIFORNIA	CHK.:	DRW.:	SURV.:

EXHIBIT C

UTILITIES AND UTILITY OPERATORS



SAN FRANCISCO PRODUCE MARKET
EXHIBIT C-1

SAN FRANCISCO SAN FRANCISCO COUNTY CALIFORNIA

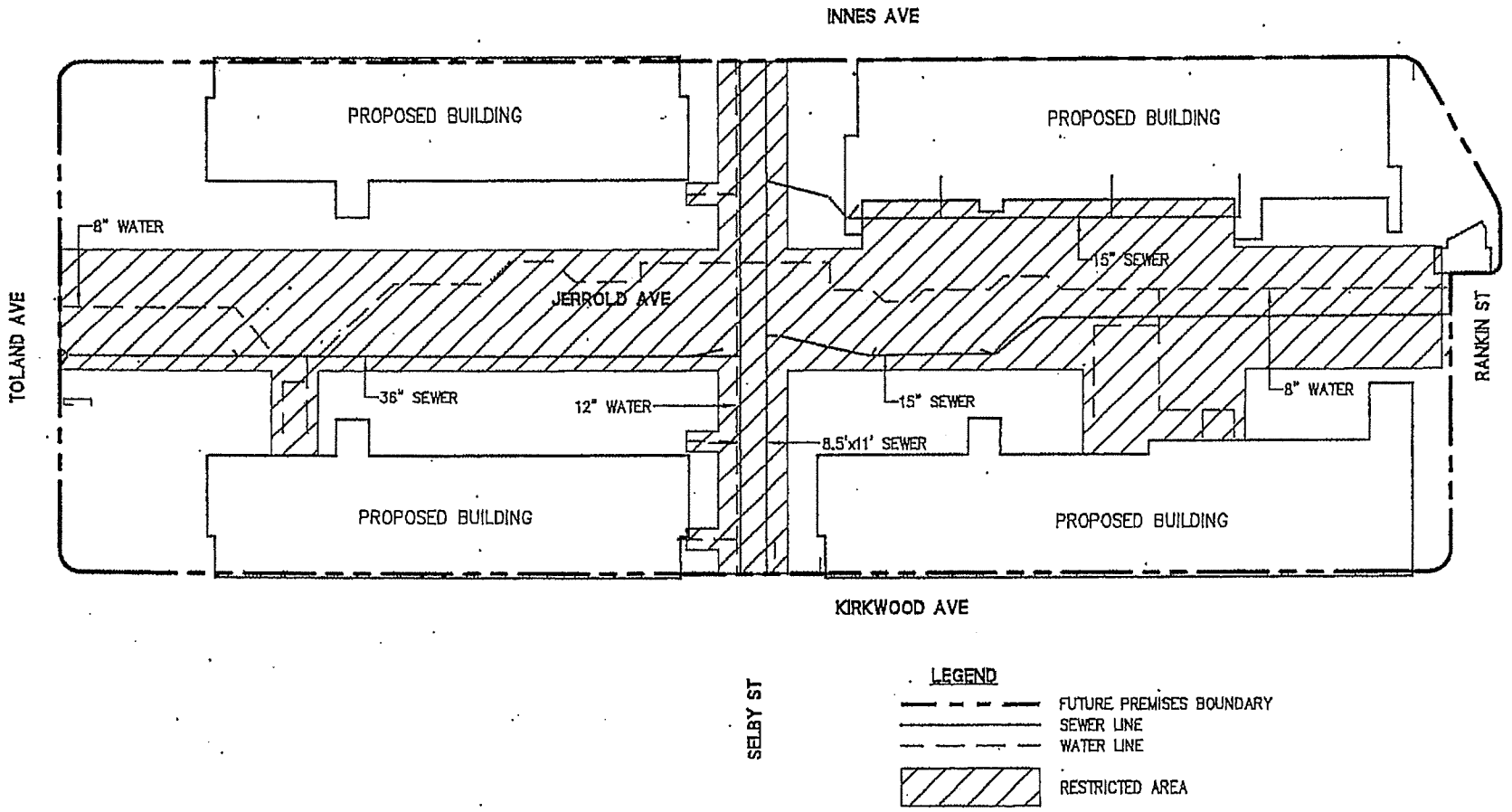
C1

BKF ENGINEERS
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (FAX)

EXHIBIT C-2

LIST OF KNOWN UTILITY PROVIDERS

1. San Francisco Public Utilities Commission
2. Pacific Gas and Electric Company
3. MCI Communications Corp.



BKF
255 SHORELINE DR
SUITE 200
REDWOOD CITY, CA 94065
650-482-6300
650-482-6399 (fax)

SAN FRANCISCO PRODUCE MARKET
EXHIBIT C-3
SAN FRANCISCO COUNTY CALIFORNIA

C3

EXHIBIT D

[INTENTIONALLY OMITTED]

EXHIBIT E

SCOPE OF DEVELOPMENT

EXHIBIT E

SCOPE OF DEVELOPMENT

I. Project Overview

The Project involves the expansion and phased redevelopment of the San Francisco Wholesale Produce Market. The site plan attached to this Scope of Development as **Exhibit E-1** illustrates the five main building sites for the Project, including the 901 Rankin Premises and the four quadrants of the **"Central Market Site."** The **"Project Improvements"** generally include the construction of new facilities on the 901 Rankin Premises, the renovation or replacement of most of the existing facilities on the Central Market Site, and the construction of related street and infrastructure improvements on and adjacent to the Premises.

The Project is anticipated to be carried out in phases to be determined by the Tenant (each, a **"Phase")** in accordance with the Schedule of Performance attached to the Lease as Exhibit G. The Project Improvements included in each Phase may or may not be carried out in single, continuous periods of construction. If developed separately (i.e., in sub-phases), each period of construction is referred to herein and in the Lease as a Phase.

II. Range of Development - Site Plans

This Scope of Development sets forth a range of building model approaches intended to provide future flexibility as to the exact composition and size of the Project Improvements. The Project Improvements may include renovated structures, rebuilt and enlarged new structures, or rebuilt and enlarged new structures with rooftop parking. The alternate building models are described in greater detail in Section III, below. The range of development is depicted in two possible site plan variants representing a minimum Project scenario ("Site Plan A" as depicted in Exhibit E-2) and a maximum Project scenario ("Site Plan B" as depicted in Exhibit E-3). Tenant may implement any combination of building models, provided the total capacity falls within the range of development bracketed by Site Plan A and Site Plan B.

A. Site Plan A

This variant provides for demolition of the existing structures and construction of a new warehouse and multi-use facility on the 901 Rankin Premises, the renovation and seismic upgrade of the four (4) warehouse structures on the Central Market Site, and construction of an operations center on the Central Market Site. This variant proposes the minimum Project capacity, with a total Project building area of approximately 426,000 square feet (sf). See **Exhibit E-2**, Project Summary Table (Site Plan A) for a summary of the existing uses, the net new construction and/or additional area and the Project's total square footage.

B. Site Plan B

This variant provides for demolition of the existing structures and construction of a new warehouse and multi-use facility on the 901 Rankin Premises, the replacement of the four (4) existing warehouse structures on the Central Market Site with new, enlarged structures and an operations center on the Central Market Site. Two (2) of the four (4) warehouse structures on the main site would have rooftop parking above the warehouse. This variant proposes the maximum total Project capacity having a total Project area of approximately 524,000 sf. See **Exhibit E-3**, Project Summary Table (Site Plan B) for a summary of the existing uses, the net new construction and/or additional area and the Project's total square footage

III. Description of Project Components

A. 901 Rankin

This work included demolition of the existing improvements on the 901 Rankin Premises and the construction a new two-story, approximately 85,000 sf warehouse facility, together with some of the associated street and streetscape improvements, as described below.

The street and streetscape improvements associated with 901 Rankin shall include improvements to the public rights-of-way contiguous with the 901 Rankin Premises, including Rankin Street between Kirkwood Avenue and Jerrold Avenue, and Jerrold Avenue east of Rankin Street, including improvement or installation of the eastern most sidewalk of Rankin Street from the southernmost property line of 901 Rankin Street north to Jerrold Avenue. Any of these street and streetscape improvements not already completed as part of the construction of the 901 Rankin warehouse will be installed in a future Phase of the Project.

Tenant shall prepare a conceptual Streetscape Plan consistent with the *"Better Streets Plan"* and otherwise substantially in accordance with the Lease and this Scope of Development for all such improvements.

B. Surrounding Street Improvements and Traffic, Marshaling Yard and Infrastructure Improvements

1. Surrounding Street Improvements

These include improvements to the rights-of-way (ROW) generally adjacent to the Premises in order to accommodate re-directed pedestrian and auto traffic resulting from the planned closure of Jerrold Avenue, including improvements to the street and underlying infrastructure as well as sidewalks and related street amenities (crosswalks, street trees, etc.), all as described in greater detail, below (collectively, the "Surrounding Street Improvements").

Tenant shall prepare a conceptual Streetscape Plan for the Surrounding Street Improvements, consistent with the "Better Streets Plan" and

otherwise substantially in accordance with the Lease and this Scope of Development.

The Surrounding Street Improvements include improvement of the public rights-of-way contiguous with the Central Market Site, including Kirkwood Avenue between Toland Street and Rankin Street, Toland Street between Kirkwood Avenue and Innes Avenue, and Innes Avenue between Toland Street and Rankin Street.

In addition to the above-referenced streets, the Surrounding Street Improvements include construction of the following new intersections: Toland Street & Innes Avenue, Innes Avenue & Selby Street, Innes Avenue & Innes Extension, Kirkwood Avenue & Toland Street, Kirkwood Avenue &Selby Street, Rankin Street & Kirkwood Avenue, and a new 3-way Rankin Street/Jerrold Avenue/Innes Extension (connecting the eastern end of Innes Ave. with Jerrold Street) intersection.

The following summarizes the location and general type of the improvements planned for each of these of right-of-way segments, all of which shall be included in the conceptual Streetscape Plan.

Innes Avenue (between Toland Street and the Caltrain right-of-way) Includes improvements to the street and underlying infrastructure as well as new sidewalks and related street amenities on both sides of this street fronting the Premises.

Innes Avenue Extension (between Innes Avenue and Jerrold Ave)

This new ROW, which will roughly parallel the existing Caltrain ROW at the eastern edge of the Premises, includes construction of a new street and underlying infrastructure as well as new sidewalks and related street amenities on both sides of this street.

Kirkwood Avenue (between Toland Street and the Caltrain right-of-way)

Includes improvements to the street and underlying infrastructure as well as new sidewalks and related street amenities on the side of the street fronting the Premises.

Jerrold Avenue (east of Rankin Street)

A new intersection at the juncture of Jerrold Avenue, Rankin Street, and the Innes Extension will be created and new improvements will extend eastward from this intersection until these improvements can be blended into existing streetscape components. The improvements in this area include both improvements to the street and underlying infrastructure as well as new sidewalks and related street amenities.

Rankin Street (between Jerrold Avenue & Kirkwood Avenue)

Includes both improvements to the street and underlying infrastructure as well as new sidewalks and related street amenities on the west side of the street.

Toland Street (between Innes Avenue and Kirkwood Avenue)

Includes new sidewalk and street amenities on the east side of Toland Street.

New Intersections

In addition to the street and streetscape improvements outlined above, the Project will create the following new intersections: Toland Street & Innes Avenue; Innes Avenue & Innes Extension, a 3-way intersection at Innes Extension-Jerrold Avenue-Rankin Street, and Kirkwood Avenue & Toland Street. These intersections will be developed in concert with the surrounding streets including sidewalks, curb ramps, and crosswalks, as described in greater detail below.

Utilities Improvements

The Project will extend an existing combined sewer line underneath a portion of Innes Avenue. This extension would occur from a point mid-block between Toland and Selby Streets and extend toward the intersection of Innes and Selby.

The Project will either relocate existing or provide new fire hydrants in approximately eight (8) locations distributed around the Project site.

The existing overhead utility lines that run through the project site, above Jerrold Avenue, may be undergrounded in a joint trench or may be otherwise re-routed. These utilities include electricity, telephone and cable television.

An existing high voltage electrical transmission line and other existing utilities are envisioned to remain in their current location (via easements). These utilities are located either in the current Jerrold Avenue right-of-way or underneath parts of the Initial Premises.

Streets, Curb, Gutter, Sidewalk, and Crosswalks

The Project will repave and provide new curbs and gutters on both sides of the following streets: Innes, Innes Extension, portions of Jerrold, Rankin, and Kirkwood. This work will be completed per City and County of San Francisco Department of Public Works standards; provided that interim improvement stages over portions of these streets may not be performed to City and County of San Francisco Department of Public Works standards. Curb radiuses are kept minimal to allow for adequate truck circulation and to keep the intersections suitable for pedestrian access.

The Project will provide new sidewalks as outlined above. A new sidewalk will be provided for the east side of Toland between Innes and Kirkwood. Curb ramps will be provided at all intersections. In combination with these accessible curb ramps, cross walks will be provided at many intersections including: Toland & Jerrold, Innes & Toland, Innes & Selby, Innes Extension, Jerrold & Rankin, Rankin & Kirkwood, Kirkwood & Selby, and Kirkwood & Toland.

Street trees and Landscaping

The Project will provide street trees and other understory landscaping to meet City requirements. Given the unique conditions of the streets

surrounding the Project, attention will be devoted to developing a compelling and well-functioning planting palette. Elements that will influence this development are as follows:

Spacing and tree wells — Multiple trees will be located in tree basins. The use of ground cover and other understory landscaping will be explored, as will the connection of street tree plantings with storm water management facilities. The spacing of street trees will be coordinated with other streetscape elements including: signage, utility boxes, pedestrian amenities, sewer lines, fire hydrants, and utilities. In addition, to street trees, green walls will be explored as a method of enhancing the streetscape.

Pedestrian amenities

At key areas along the streets, pedestrian amenities such as benches, bicycle racks, and trash receptacles will be placed. It is envisioned that these amenities will be located in areas of higher pedestrian or bicycle traffic, such as areas proximate to Project entries.

Street Lighting

New street lighting will be provided along: Innes, Innes Extension, portions of Jerrold east of the Project, Rankin, Kirkwood, and portions of Toland. The new street lighting will seek to fully and safely illuminate the new streetscape. Light levels will be provided as per the Better Streets Plan for Industrial streets. The increase in street light level at night time on the streets surrounding the Project will greatly improve conditions from those that exist today.

Traffic controls

Working in concert with the street and streetscape improvements outlined above will be a new system of traffic controls. As noted above there are a number of new intersections proposed by the Project and these controls establish the flow of traffic at the new and existing intersections. Below is a brief outline of the proposed traffic controls by intersection.

- Jerrold Avenue and Toland Street — all way stop (3 way)**
- Toland Street and Innes Avenue — all way stop (3 way)**
- Innes Avenue and Selby Street — south bound Selby traffic stop sign controlled
- Innes. Extension, Jerrold Avenue and Rankin Street west bound Jerrold traffic (headed south or into Market) stop sign controlled north bound Rankin traffic stop sign controlled
- Kirkwood Avenue and Rankin Street west bound Kirkwood traffic stop sign controlled
- Kirkwood Avenue and Selby Street north bound Selby traffic stop sign controlled
- Kirkwood Avenue and Toland Street west bound Kirkwood traffic stop sign controlled

** The Final Mitigated Negative Declaration (Final MND) for the Project requires monitoring of traffic conditions at the Jerrold Avenue and Toland Street and the Toland Street and Innes Avenue intersections. When the results of the monitoring analyses indicate that the intersection

of Jerrold Av/Toland St and/or Innes Av/Toland St is close to operating at an unacceptable Level of Service (LOS), the SFMTA will signalize the intersection(s) or make improvements that would allow the intersection(s) to continue to operate at an acceptable LOS. The Tenant shall be responsible for paying their fair share contribution to the costs of signalizing and/or other improvements to each of the two intersections as stipulated in the Final MND

2. Traffic, Marshaling Yard and Infrastructure Improvements

These site and infrastructure improvements are intended to secure the Premises and make use of the additional area resulting from the closure of the Former Street Property (as depicted in **Exhibit A-3.2,** attached to the Lease).

A new marshaling yard will be constructed between the warehouse facilities on the Central Market Site to provide an enhanced area for truck loading and unloading.

Two (2) pedestrian and vehicular access gates will be provided into and out of the Central Market Site; one on the west side (Toland Street), and one on the east side (Rankin Street) near the operations center described below. The Toland Street gate will have two entry lanes, one exit lane, and a reversible entry/exit lane operated with green/red lights or similar variable message signs, depending on the direction of the prevailing. vehicular flow. The Rankin Street gate will two entry lanes and one exit lane.

Vehicles will enter the main site via one of the entry lanes, a minimum of twelve (12) feet wide. All of the entry lanes at the Toland Street entry gate will be adjacent to a guard station, which will be staffed for controlled access depending on inbound traffic volume. When not staffed, access will be provided via a card key reader. The reversible third lane at the Toland Street gate will generally have inbound controlled access via card reader only, and is envisioned to serve registered drivers/vehicles, including SFWPM staff, merchant employees, and regular customers. Staffed guard stations will also function as an orientation point for visitors.

The center entry lane at the Rankin Street gate will also be adjacent to a guard station, which will be staffed depending on demand. When not staffed, access will be provided via a card key reader. The curb entry lane at the Rankin Street gate will have inbound controlled access via card key read6r only. All the exiting lanes at both gates will also be a minimum of twelve (12) feet wide and will be equipped with traffic control devices to ensure that only exiting vehicles can use the lanes.

An operations center will be constructed in the northeast quadrant of the Central Market Site. This operations center will contain a small field office, a break area for truck drivers, and a truck center for minor maintenance activities and truck washing and other operations related facilities.

C. Central Market Site

This work includes the renovation or demolition and new construction of the four (4) existing warehouse structures on the Central Market Site. (Construction may be carried out in any number of periods of construction. Each such period of construction shall be considered and referred to herein and in the Lease as a Phase).

As described above, the Scope of Development provides for a range of building capacity and development intensity. By utilizing the three building models described below in varying combinations, the resulting Project will provide capacity within the range of development bracketed by Site Plan A and Site Plan B (attached as **Exhibit E-2 and E-3).** Below is a brief overview of each of the building models that may be constructed as a Phase of the Project Improvements. Note, these building models are intended to be general and illustrative in nature. Tenant and City will evaluate detailed design considerations closer in time to commencement of construction of any Phase, as set forth in the Lease.

1. Renovation

This building model envisions renovation of an existing warehouse building to upgrade its functionality. The renovation would include seismic strengthening, disabled access, and new building systems, and may include modifications to increase operational efficiencies and modernize loading operations. The building footprint and main roof line would remain largely intact.

2. New Construction

This building model envisions demolition and replacement of an existing warehouse building with a new warehouse building. The new building would be both larger and taller in dimension than the existing structure and would house warehouse and accessory office functions.

3. New Construction with Rooftop Parking

This building model envisions a new warehouse facility similar in dimension and characteristic to the new construction building model outlined above, and also allows for unenclosed parking on the roof of the warehouse portion of the building. This building would be utilized in only two of the four potential building sites. This building model increases both the warehouse capacity and provides additional off-street parking at the facility.

D. Optional Building

Tenant shall have the option at its election to construct an approximately 12,000 square foot multi-use space containing the SFWPM offices, a meeting hall/education center and a demonstration kitchen to be developed on the Central Market Site, adjacent to the new warehouse structure. The multi-use space is currently envisioned to be constructed above grade-level parking.

EXHIBIT E-1

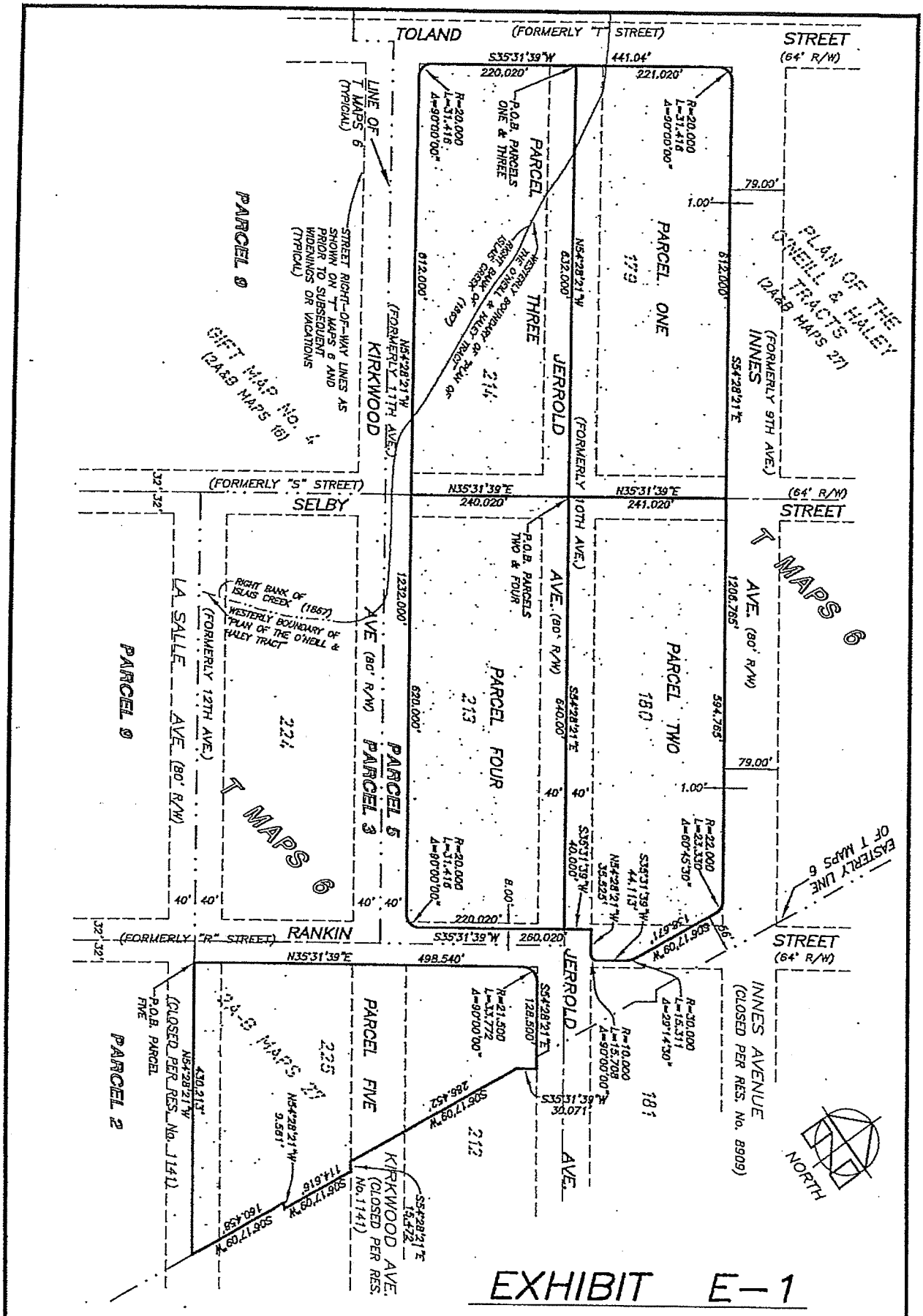
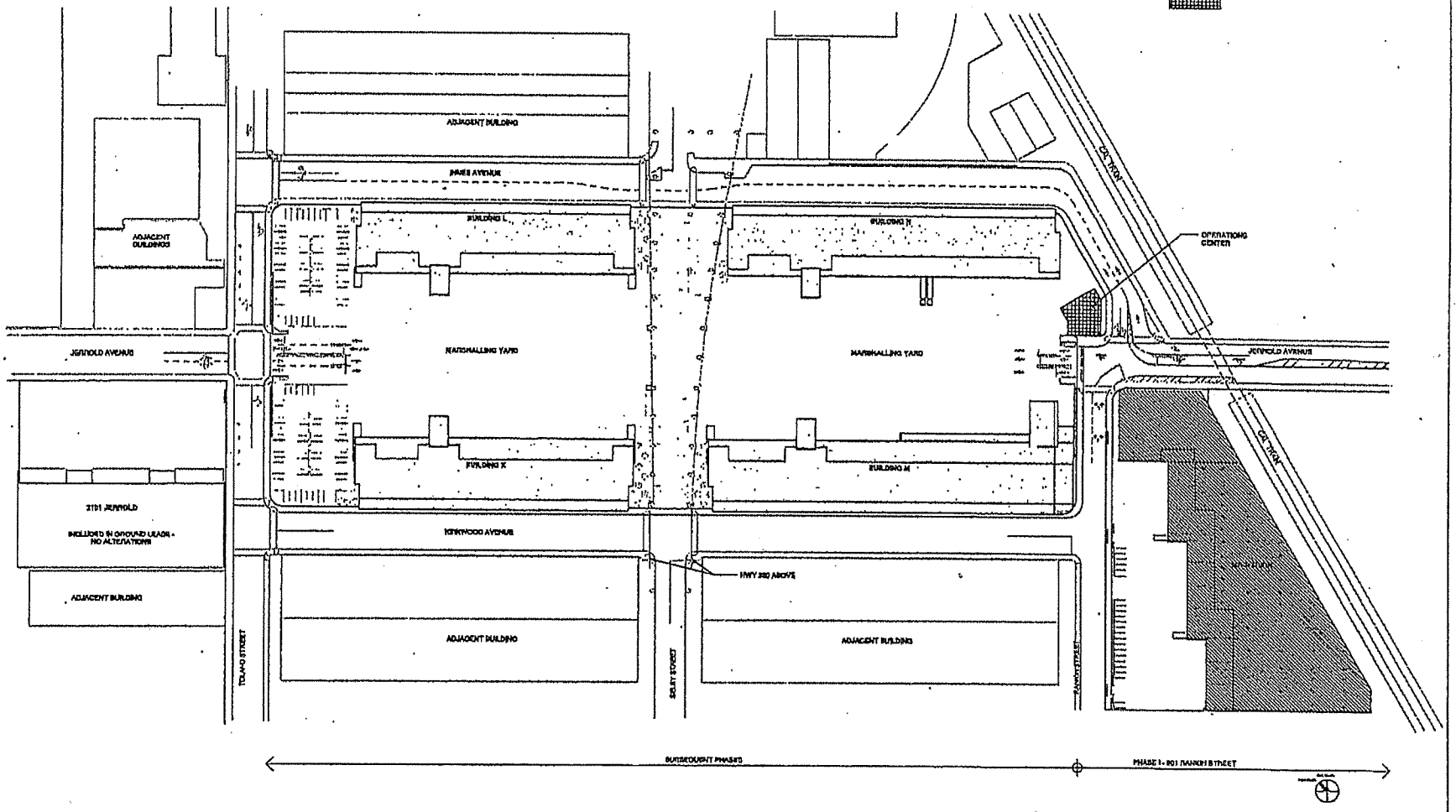


EXHIBIT E-1

SURV.:	MARTIN M. RON ASSOCIATES LAND SURVEYORS 859 HARRISON STREET, SUITE 200	PROPOSED PARCELS SAN FRANCISCO WHOLESALE	
DRW.:			
CHK.:			
SCALE: 1"			
DATE: 2-1			
SHEET 1 OF 1			
JOB NO S-734			



1 SITE PLAN A
1/64" = 1'-0"

SAN FRANCISCO WHOLESALE PRODUCE MARKET

2095 JERROLD AVENUE
SAN FRANCISCO, CA
94124

SAN FRANCISCO WHOLESALE PRODUCE MARKET RETENTION & EXPANSION PROJECT

Jackson Lilies
ARCHITECTURE

2325 Third Street #206
San Francisco, CA 94107
Tel 415.551.1779
Fax 415.551.1778

www.jacksonlilies.com

RETENTION AND EXPANSION PROJECT	
Date:	11.17.08
Scale:	1/64" = 1'-0"
Job #:	0707
Revit File:	[illegible]
Assembled by:	MJ/JMA

(RENOVATION PLUS)

SITE PLAN A

A-S.1

EXHIBIT E-2

EXHIBIT E-2

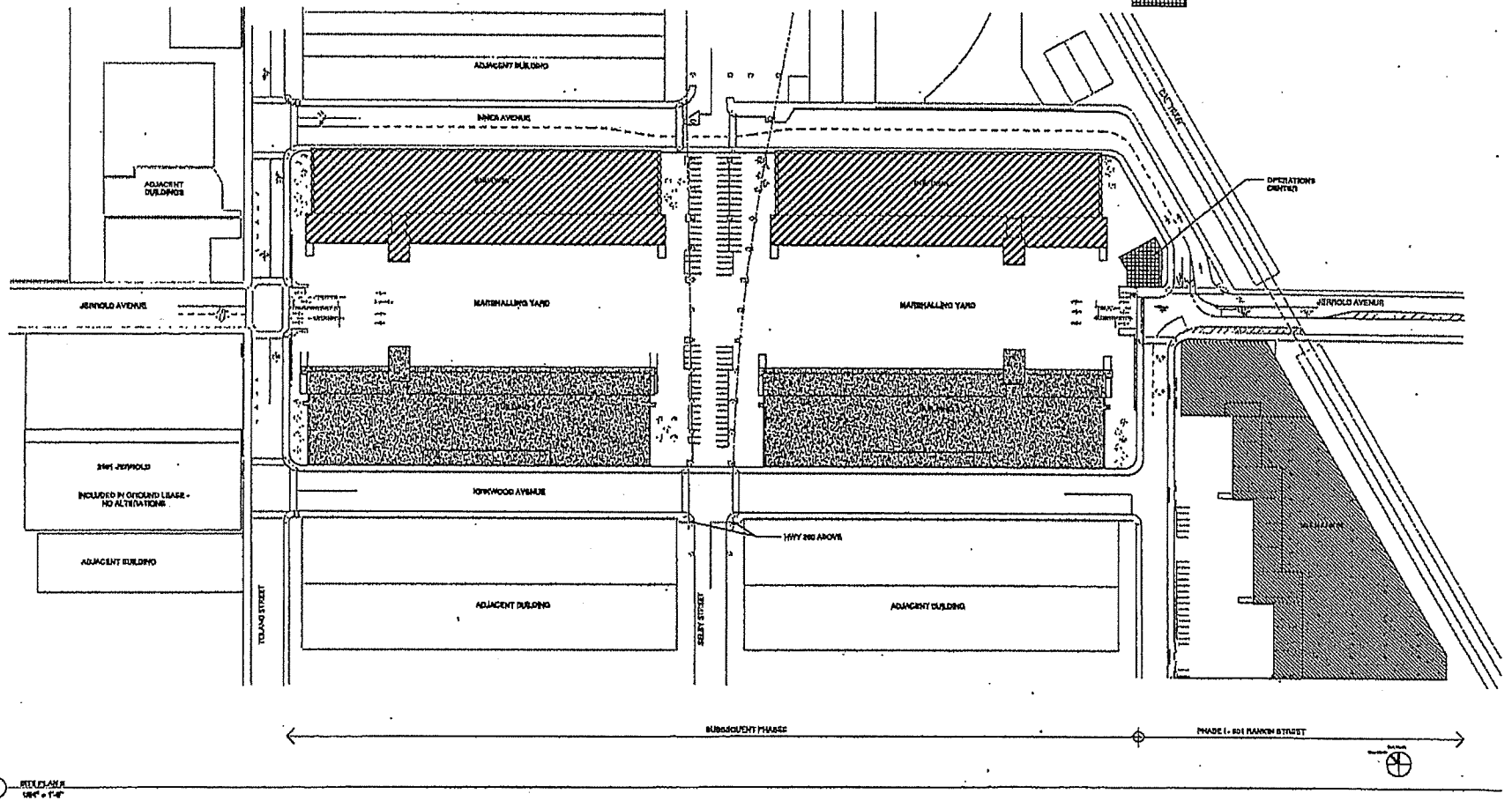
PROJECT SUMMARY TABLE A

Gross Square footage (GSF)	Existing Uses	Site Plan A		
		Existing Uses to Remain	Net New Construction and/or Addition	Project Totals
Residential	0	0	0	0
Retail	3,467	750	3,250	4,000
Office	50,147	37,694	30,376	68,070
Industrial	322,875 *	243,071	101,461	344,532
Other - Meeting Hall	0	0	10,009	10,009
Other - Food Prep / Sales	0	0	0	0
Parking area	135,859	6,400	98,069	104,469
Loading area	114,091	15,950	112,804	128,754
Total GSF	376,489	281,515	145,096	426,611
Dwelling units	0	0	0	0
Hotel rooms	0	0	0	0
Parking spaces	430	33	307	340
Loading spaces	168	22	170	192
Number of Buildings				
Industrial (w/ accessory office)	15	5	2	7
Office/retail	1	0	0	0
total	16 **	5	2	7
Height of building(s)	40'	27'-6"	40'-3"	40'-3"
Number of stories	varies +/<3	1 w/ mezz	2	3

Notes

* *Totals for existing 901 Rankin Street are approximate and include modular square footage*

** *Does include open docks, car ports, and modular structures*



1 SITE PLAN B
1/64" = 1'-0"

CITY OF SAN FRANCISCO
SAN FRANCISCO WHOLESALE PRODUCE MARKET

2095 JERROLD AVENUE
SAN FRANCISCO, CA
94124

SAN FRANCISCO WHOLESALE PRODUCE MARKET RETENTION & EXPANSION PROJECT

Jackson Liles
ARCHITECTURE
755 Oakdale Street #211
San Francisco, CA 94103
Tel 415.821.1799
Fax 415.821.1798
www.jacksonliles.com

Date & Issue
09.26.14 GENERAL PLAN REFERRAL
04.13.11 GENERAL PLAN REFERRAL
03.23.11 GENERAL PLAN REFERRAL REVISED
07.25.11 GENERAL PLAN REFERRAL REVISED

RETENTION AND EXPANSION PROJECT	
Date:	11.17.08
Scale:	1/64" = 1'-0"
Job #:	0513
Revit File:	[illegible]
Amended By:	RL/JMA

(NEW CONSTRUCTION W/ PARKING)

SITE PLAN B

A-S.2

EXHIBIT E-3

EXHIBIT E-3

PROJECT SUMMARY TABLE B

Gross Square footage (GSF)	Existing Uses	Site Plan B		
		Existing Uses to Remain	Net New Construction and/or Addition	Project Totals
Residential	0	0	0	0
Retail	3,467	0	4,000	4,000
Office	50,147	7,310	78,611	85,921
Industrial	322,875 *	43,740	380,035	423,775
Other - Meeting Hall	0	0	10,009	10,009
Other - Food Prep / Sales	0	0	0	0
Parking area	135,859	6,400	162,589	168,989
Loading area	114,091	15,950	123,851	139,801
Total GSF	376,489	51,050	472,655	523,705
Dwelling units	0	0	0	0
Hotel rooms	0	0	0	0
Parking spaces	430	33	407	440
Loading spaces	168	22	164	186
Number of Buildings				
Industrial (w/ accessory office)	15	1	6	7
Office/retail	1	0	0	0
total	16 **	1	6	7
Height of building(s)	40'	0	42'-8"	42'-8"
Number of stories	varies +/<3	0	3	3

Notes

* *Totals for existing 901 Rankin Street are approximate and include modular square footage*

** *Does include open docks, car ports, and modular structures*

EXHIBIT F

INTENTIONALLY OMITTED

EXHIBIT G

SCHEDULE OF PERFORMANCE

EXHIBIT G

SCHEDULE OF PERFORMANCE

The following table provides the Schedule of Performance for the Project. Each of these components of the Project is described in greater detail in the Scope of Development (Exhibit E).

Several principles apply to an effective understanding of this Schedule of Performance: (a) all terms used herein have the same meanings as provided in the Lease; (b) parenthetical numbers are references to sections of the Lease, as the dates and time periods described in this Schedule of Performance are not exhaustive of all dates and time periods described in the Lease; (9) dates and time periods described herein are subject to adjustments as provided in the Lease; and (d) in the event-of an inconsistency between this Schedule of Performance and the Lease, the Lease shall prevail.

SCHEDULE OF PERFORMANCE - OVERVIEW

Action	Required Completion Date
Completion of Construction of 901 Rankin building and related street and streetscape improvements	Completed on January 26, 2015
Commencement of construction of Improvements for 1900 Kirkwood Avenue on Central Market Site (SE quadrant)	August 01, 2024
Completion of construction of Improvements for 1900 Kirkwood Avenue	July 01, 2025
Commencement of construction of Improvements for 1901 Innes Avenue on Central Market Site (NE quadrant)	May 01, 2030
Commencement of construction of surrounding street improvements (i) connection from Toland to Milton Ross Lane (NW quadrant), and (ii) Innes Extension (Innes to Jerrold, NE quadrant)	March 01, 2030

Completion of construction of Improvements for 1901 Innes Avenue on Central Market Site	August 31, 2031
Completion of construction of street improvements (i) connection from Toland to Milton Ross Lane and (ii) Innes Extension	August 31, 2031
Commencement of construction of Improvements for 2001 Innes Avenue on Central Market Site (NW quadrant)	March 01, 2035
Commencement of construction of remainder of Surrounding Street Improvements	January 01, 2035
Completion of construction of Improvements for 2001 Innes Avenue on Central Market Site	June 30, 2036
Completion of construction of remainder of Surrounding Street Improvements	August 31, 2036
Commencement of construction of Improvements for 2000 Kirkwood Avenue on Central Market Site (SW quadrant)	March 01, 2040
Completion of construction of Improvements for 2000 Kirkwood Avenue	June 31, 2041

EXHIBIT H

SPECIFIC CITY SUBLEASE REQUIREMENTS

EXHIBIT H

SPECIFIC CITY SUBLEASE REQUIREMENTS

Except as otherwise approved by the City in writing, each Sublease shall include the following provisions:

1. Subject to Lease. A provision describing this Lease and providing that (a) the leasehold of the Subtenant is subject to this Lease, (b) the Subtenant shall not perform, or cause to be performed, any act in violation of this Lease, and (c) if any provision of the Sublease is inconsistent with any provision of this Lease, this Lease shall control.

2. City as Beneficiary. A provision providing that City shall be a third-party beneficiary of the Sublease.

3. Indemnification and Release. An indemnification clause and release of claims provision identical to that set forth in Article 23, provided that references to Tenant shall be changed to Subtenant, references to the Premises shall be changed to refer to the subleased premises, and references to Subtenant shall be changed to refer to sub-subtenants.

4. Insurance. A provision requiring the Subtenant to provide liability and other insurance in form and amounts reasonably approved by City's Risk Manager from time to time, with a clause requiring the Subtenant to cause to be named as additional insureds under all liability and other insurance policies "The City and County of San Francisco, and its Officers, Agents, Employees and Representatives" and acknowledging City's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the subleased premises. Tenant shall submit the insurance provision of Tenant's standard Sublease form to City for approval by the Risk Manager prior to entering into any Subleases using such form, and Tenant shall submit such insurance provision annually to City for approval or revision by the Risk Manager.

5. Effect of Master Lease Termination. A provision stating that if for any reason whatsoever this Lease is terminated, such termination shall at City's election operate to terminate the Sublease, except as otherwise provided in any non-disturbance agreement executed by City.

6. Payment of Rent on Default. A provision directing Subtenant to pay the Sublease rent and other sums due under the Sublease directly to City upon receiving written notice from City that an Event of Default has occurred.

7. Waiver of Relocation Assistance. A provision in which the Subtenant expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease.

8. City Entry Rights. A provision similar to Article 43, requiring the Subtenant to permit City to enter the subleased premises for the purposes specified in Article 43 and acknowledging and agreeing that City shall have all of the rights of access to the subleased premises described in this Lease.

9. Sublease and Assignment Profit Sharing. A provision requiring profit sharing between Tenant and the Subtenant in the event of a "Transfer" (defined in Section 9(c) below), substantially in accordance with subsections (a) – (c) of Section 9.

(a) 50/50 Split for Sub-subleases. Except as set forth in (i) and (ii), below, or as otherwise approved by City from time to time, such profit sharing provision shall require

Subtenant to pay to Tenant at least 50% of any "Transfer Premium" in connection with sub-subleases. "Transfer Premium" shall be defined substantially as follows: all rent, additional rent or other consideration payable by a sub-subtenant in connection with the sub-sublease in excess of the base rent and additional rent payable by Subtenant under the Sublease during the term of the Transfer, on a per rentable square foot basis, after first deducting the reasonable expenses incurred by Subtenant for: (i) the unamortized cost of tenant improvements and alterations made by Subtenant to the sub-sublease premises and not funded by a tenant improvement allowance from Tenant; (ii) any brokerage commissions in connection with the Transfer; (iii) legal fees reasonably incurred in connection with the Transfer; and (iv) any reimbursement of City's legal and administrative costs, as set forth in Section 9(c)(i), below ("Subtenant's Sub-subleasing Costs"). "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by a sub-subtenant to Subtenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Subtenant to sub-subtenant or for assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to sub-subtenant in connection with such Transfer.

i. The profit sharing provision described in subsection (a) shall not apply to sub-subleases of all or substantially all of Subtenant's Sublease Premises, which sub-subleases shall be governed by subsection (b), below.

ii. The profit sharing provision described in subsection (a) shall not apply to sub-subleases of Subtenants with Acknowledged Non-Conforming Subleases that required City's approval because the Net Effective Rental rate was less than 90% of Market Rent, which sub-subleases shall be governed by subsection (b) below.

iii. Tenant shall promptly provide City with written notice of the Transfer Premium identified by a Subtenant in connection with a sub-sublease. If City reasonably believes that the Transfer Premium disclosed by the Subtenant is unreasonably low, given the then-current Market Rent, then City shall provide a Tenant with written notice thereof, which notice shall include an explanation of the reason(s) for City's objection and shall identify the data City used to support its determination of Market Rent. Upon receipt of any such notice from City, Tenant shall require the Subtenant to certify under penalty of perjury that the entire Transfer Premium is as disclosed by the Subtenant and that no additional consideration was given in a manner designed to avoid Subtenant's obligations to pay Tenant a share of the Transfer Premium. Such certificate shall provide that any misstatement in the certificate shall be an event of default under the Sublease.

(b) Rent Re-set for Assignments and Acknowledged Non-Conforming Subleases. In connection with all other Transfers (other than Transfers described in subsection (a)(ii), above), except as may otherwise be approved by City in writing from time to time, such profit sharing provision shall provide that, if Market Rent in the most recently updated Leasing Schedule is greater than the Net Effective Rental Rate specified in the Sublease, then the base rent payable under the Sublease for that portion of space that is subject to the Transfer shall be increased during the term of the Transfer by an amount equal to fifty percent (50%) of the difference thereof. Further, for sub-subleases of Subtenants with Acknowledged Non-Conforming Subleases that required City's approval because the Net Effective Rental rate was less than 90% of Market Rent, such profit sharing provision shall provide that the base rent payable under the Sublease for that portion of space that is subject to the sub-sublease shall be increased during the term of the sub-sublease to an amount equal to the mid-point between (x) the applicable Market Rent in the Leasing Schedule that was in effect at the time the Sublease was entered into, and (y) the applicable Market Rent in the most recently updated Leasing Schedule. If Subtenant believes in good faith that the Market Rent in the applicable Leasing Schedule is higher than the current actual fair market value, Subtenant may request in writing that Tenant, with City's consent, use such lower value for purpose of calculating the increase described in subsection (b), above. In making any such request, Subtenant shall provide Tenant

and City with supporting data and other information to substantiate its claim. Tenant and City may approve or decline such request in their reasonable discretion.

(c) Transfer Defined. Except to the extent considered "Permitted Family Transfers," as defined in subsection (d) below or "Permitted Incubator Transfers," as defined in subsection (e) below, the term "Transfer" as used in this Section 9 shall mean the following: (i) any direct or indirect, transfer, sub-sublease, sublicense, grant of right to use the subleased premises, space-sharing arrangement with respect to the subleased premises, or assignment of Sublease, or change of ownership or control of the Subtenant (including, but not limited to, a change of any managing member of a limited liability company) in a transaction or a series of transactions; (ii) any dissolution, merger, consolidation or other reorganization of Subtenant (excluding a reorganization where Subtenant remains the controlling party); (iii) the sale or other transfer of ownership interests in Subtenant or any entity controlling Subtenant representing fifty percent (50%) or more of the outstanding ownership or interests (other than with respect to ownership interests traded through an exchange or over the counter) in a transaction or a series of transactions; (iv) the sale or other transfer of the ownership of (or the right to vote) stock possessing fifty percent (50%) or more of the total combined voting power of all classes of Subtenant's capital stock issued, outstanding, and entitled to vote for the election of directors (other than with respect to ownership interests traded through an exchange or over the counter) in a transaction or a series of transactions; and (iv) the sale of assets of Subtenant representing fifty percent (50%) or more of the aggregate value of all assets of Subtenant in a transaction or a series of transactions. If Subtenant consists of more than one person, a purported assignment (voluntary, involuntary, or by operation of law) by any one of the persons executing this Sublease shall be deemed a voluntary assignment of this Sublease by Subtenant and shall be a Transfer as defined herein.

(d) Special Permitted Family Transfers. An assignment, sublease or other transaction that would otherwise be a Transfer shall be considered a "Permitted Family Transfer" that is not subject to subsection (a) and subsection (b) of this Section 9 (but shall be subject to Section 10 below) if the transferee is:

i. a lineal descendant or antecedent, spouse or registered domestic partner of the Subtenant or of the party transferring an interest in the Subtenant, including adopted relations (each, a "Family Member");

ii. an entity in which any Family Member or any combination of Family Members holds a majority ownership interest; or

iii. a trust for the benefit of and controlled by the transferor or a Family Member or any combination of the transferor and Family Members.

(e) Special Permitted Incubator Transfers. An assignment, sublease or other transaction or event that would otherwise be a Transfer hereunder shall be considered a "Permitted Incubator Transfer" that is not subject to subsection (a) and subsection (b) of this Section 9 (but shall be subject to Section 10 below) if (i) the transferee is a parent, subsidiary or affiliate of Subtenant, and (ii) neither Subtenant, Subtenant's parent, any entity controlling Subtenant's parent, nor the transferee had annual revenue exceeding $100,000,000 (the "Revenue Cap") in the year immediately preceding the assignment. As used herein, (A) "parent" shall mean a company which owns a majority of Subtenant's voting equity; (B) "subsidiary" shall mean an entity wholly owned by Subtenant or at least 51% of whose voting equity is owned by Subtenant; and (C) "affiliate" shall mean an entity under common control with Subtenant. If Subtenant asserts that a Transfer is a Permitted Incubator Transfer, then Subtenant shall deliver to Tenant and City reasonable evidence that such Transfer is a Permitted Incubator Transfer, including evidence of the ownership structure of Subtenant and the proposed transferee sufficient to establish that the requirements of this subparagraph have been satisfied and financial statements prepared and certified by a nationally recognized certified public accounting firm in accordance with generally accepted accounting principles consistently applied evidencing that

the Revenue Cap for the required parties was not exceeded. Notwithstanding the foregoing, if following a Permitted Incubator Transfer there is a sale or transfer of voting equity, ownership or control of Subtenant or of the party to which the interest in the Sublease has been transferred such that the affiliation which originally qualified for the Permitted Incubator Transfer no longer exists, Subtenant shall promptly provide Tenant and City with notice thereof, and such sale or transfer shall be deemed to be a Transfer under the Sublease and the provisions of Subsection (a) and subsection (b) of this Section 9 shall apply on the date of such Transfer. Following any Permitted Incubator Transfer, Subtenant shall deliver to Tenant and City not less than annually evidence of the ownership structure of Subtenant and the transferee sufficient to establish that the affiliation required by this subparagraph continues to be satisfied. The Revenue Cap shall be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "Index"), which is published most immediately preceding the anniversary of the Commencement Date of the Master Lease over the Index in effect on the Commencement Date of the Master Lease.

10. Other Transfer Provisions. A provision requiring the Subtenant to reimburse Tenant upon demand for Tenant's and City's reasonable attorneys' fees and administrative expenses incurred in connection with the review, processing and/or preparation of any documentation in connection with any requested Transfer, and a provision in which the transferee, assignee, sub-subtenant, licensee, or concessionaire expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease, the Sublease or the subject sub-sublease, as applicable.

11. Estoppel Certificate for City. A provision requiring the Subtenant to execute, acknowledge and deliver to City, within fifteen (15) business days after request, a certificate stating to the best of the Subtenant's knowledge after diligent inquiry (a) the Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is in full force and effect, as modified, and stating the modifications or, if the Sublease is not in full force and effect, so stating), (b) the dates, if any, to which any rent and other sums payable under the Sublease have been paid, (c) that no notice has been received by the Subtenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) that Tenant is not then in default under the Sublease (or if Tenant is then in default, describing such default).

12. Pesticide Prohibition. A provision incorporating the requirements of Section 25.1(d) of this Lease, regarding compliance with City's Pesticide Ordinance.

13. Non-Discrimination. A provision incorporating the requirements of Section 47.2(b) of this Lease, regarding non-discrimination.

14. Prohibition on Tobacco and Alcohol Advertising. A provision substantially as follows:

> Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including property which is the subject of this Sublease. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes or/and tobacco products, or to (ii) encourage people not to smoke or to stop smoking.

[NOTE: INCLUDE THE FOLLOWING SECTION EXCEPT FOR WHEN THE SUBLEASED PREMISES IS USED FOR THE OPERATION OF A RESTAURANT OR OTHER FACILITY OR EVENT WHERE THE SALE, PRODUCTION OR CONSUMPTION OF ALCOHOL IS PERMITTED: Subtenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.]

15. No Personal Liability of City Personnel. A provision stating that no elective or appointive board, commission, member, officer, employee or other agent of City shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by City under the Lease or Sublease, or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of City under the Lease or Sublease.

16. MacBride Principles – Northern Ireland. A clause identical to that set forth in Section 47.3, provided that references to Tenant shall be changed to Subtenant.

17. Tropical Hardwood/Virgin Redwood Ban. A clause identical to that set forth in Section 47.4, provided that references to Tenant shall be changed to Subtenant and references to the Premises shall be changed to the subleased premises.

18. Card Check Ordinance. A clause identical to that set forth in Section 47.8, provided that references to Tenant shall be changed to Subtenant, the reference to subtenants shall be changed to sub-subtenants, and the reference to the Premises shall be changed to the subleased premises.

19. Resource-Efficient Building Ordinance. A clause identical to that set forth in Section 47.12, provided that the reference to Tenant shall be changed to Subtenant and the reference to the Premises shall be changed to the subleased premises.

20. Drug-Free Workplace. If any federal grants apply to the subleased premises, a clause identical to that set forth in Section 47.13, provided that the reference to Tenant shall be changed to Subtenant and the reference to the Lease shall be changed to the Sublease.

21. Preservative Treated Wood Containing Arsenic. A clause identical to that set forth in Section 47.14, provided that references to Tenant shall be changed to Subtenant.

22. Food Service Waste Reduction Ordinance. A provision substantially as follows:

Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, with respect to food sold or produced that the premises which are the subject of this Sublease, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully

set forth herein. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Landlord, as tenant under the Master Lease, will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting Landlord's other rights and remedies, Subtenant agrees that the sum of One Hundred Dollars ($100.00) liquidated damages for the first breach, Two Hundred Dollars ($200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Landlord, as tenant under the Master Lease, will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Landlord, as tenant under the Master Lease, because of Subtenant's failure to comply with this provision.

23. Conflicts of Interest. A provision substantially as follows:

Subtenant certifies that it has made a complete disclosure to Landlord and City of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the City presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for termination of this Sublease.

EXHIBIT I

MITIGATION AND IMPROVEMENT MEASURES
AND
CONDITIONS TO GENERAL PLAN REFERRAL

EXHIBIT I-1

AGREEMENT TO IMPLEMENT MITIGATION AND IMPROVEMENT MEASURES

ATTACHMENT A

San Francisco Planning

AGREEMENT TO IMPLEMENT MITIGATION MONITORING AND REPORTING PROGRAM

Record No.:	2009.1153ENV-03	*Block/Lot:*	5268/007, 010, and 011, 5284A/004,005, and 006, 5282/031 and 033, 5269/002, 007, 008, and 009, 5262/004, 528/1003 and 005
Project Title:	San Francisco Market (formerly San Francisco Wholesale Produce Market)	*Lot Size:*	13 acres
		Project Sponsor:	Michael Janis, mjanis@thesfmarket.org
Zoning:	Production, Distribution, and Repair (PDR-2) Use District 80-E Height and Bulk District	*Lead Agency:*	San Francisco Planning Department
		Staff Contact:	Liz White – 628.652.7557, elizabeth.white@sfgov.org

The table below indicates when compliance with each mitigation measure must occur. Some mitigation measures span multiple phases. Substantive descriptions of each mitigation measure's requirements are provided on the following pages in the Mitigation Monitoring and Reporting Program.

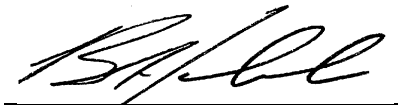
Adopted Mitigation Measure	Period of Compliance			Compliance with Mitigation Measure Completed?
	Prior to the Start of Construction*	During Construction**	Post-construction or Operational	
Project Mitigation Measure 1: Archeological Resources	X	X		
Project Mitigation Measure 2: Paleontological Resources		X		
Project Mitigation Measure 3: Protection of Nesting Birds During Construction		X		

NOTES:

* Prior to any ground disturbing activities at the project site.

** Construction is broadly defined to include any physical activities associated with construction of a development project including, but not limited to: site preparation, clearing, demolition, excavation, shoring, foundation installation, and building construction.

BL I agree to implement the attached mitigation measure(s) as a condition of project approval.



Property Owner or Legal Agent Signature

July 14, 2022

Date

Note to sponsor: Please contact CPC.EnvironmentalMonitoring@sfgov.org to begin the environmental monitoring process prior to the submittal of your building permits to the San Francisco Department Building Inspection.

PAGE INTENTIONALLY BLANK

ATTACHMENT A

MITIGATION MONITORING AND REPORTING PROGRAM

Adopted Mitigation Measure	Monitoring and Reporting Program[a]			
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/ Completion Criteria
MITIGATION MEASURES AGREED TO BY PROJECT SPONSOR				
CULTURAL RESOURCES				
Project Mitigation Measure 1: Archeological Resources Based on a reasonable presumption that archeological resources may be present within the project site, the following measures shall be undertaken to avoid any potentially significant adverse effect from the proposed project on buried or submerged historical resources. The project sponsor shall retain the services of an archeological consultant from a pool of qualified archaeological consultants maintained by the Planning Department archaeologist. The archeological consultant shall undertake an archeological testing program as specified herein. In addition, the consultant shall be available to conduct an archeological monitoring and/or data recovery program if required pursuant to this measure. The archeological consultant's work shall be conducted in accordance with this measure at the direction of the Environmental Review Officer (ERO). All plans and reports prepared by the consultant as specified herein shall be submitted first and directly to the ERO for review and comment, and shall be considered draft reports subject to revision until final approval by the ERO. Archeological monitoring and/or data recovery programs required by this measure could suspend construction of the project for up to a maximum of four weeks. At the direction of the ERO, the suspension of construction can be extended beyond four weeks only if such a suspension is the only feasible means to reduce to a less than significant level potential effects on a significant archeological resource as defined in CEQA Guidelines Sect. 15064.5 (a)(c).	Project sponsor/ archeological consultant at the direction of the Environmental Review Officer (ERO).	Prior to issuance of site permits.	Project Sponsor shall retain Archeological consultant to undertake Archeological monitoring program in consultation with ERO.	Complete when Project Sponsor retains qualified Archeological consultant.

Archeological Testing Program. The archeological consultant shall prepare and submit to the ERO for review and approval an archeological testing plan (ATP). The archeological testing program shall be conducted in accordance with the approved ATP. The ATP shall identify the property types of the expected archeological resource(s) that potentially could be adversely affected by the proposed project, the testing method to be used, and the locations recommended for testing. The purpose of the archeological testing program will be to determine to the extent possible the presence or absence of archeological resources and to identify and to evaluate whether any archeological resource encountered on the site constitutes an historical resource under CEQA. At the completion of the archeological testing program, the archeological consultant shall submit a written report of the findings to the ERO. If based on the archeological testing program the archeological consultant finds that significant archeological resources may be present, the ERO in consultation with the archeological consultant shall determine if additional measures are warranted. Additional measures that may be undertaken include additional archeological testing, archeological monitoring, and/or an archeological data recovery program. If the ERO determines that a significant archeological resource is present and that the resource could be adversely affected by the proposed project, at the discretion of the project sponsor either: A) The proposed project shall be re-designed so as to avoid any adverse effect on the significant archeological resource; or B) A data recovery program shall be implemented, unless the ERO determines that the archeological resource is of greater interpretive than research significance and that interpretive use of the resource is feasible.	Project sponsor's qualified archeological consultant and construction contractor	Prior to issuance of construction permits and throughout the construction period	Planning Department	Considered complete after approval of archeological testing plan
Archeological Monitoring Program. If the ERO in consultation with the archeological consultant determines that an archeological monitoring program shall be implemented the archeological monitoring program shall minimally include the following provisions: • The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the AMP reasonably prior to any project-related soils disturbing activities commencing. The ERO in consultation with the archeological consultant shall determine what project activities shall be archeologically monitored. In most cases, any soils- disturbing activities, such as demolition, foundation removal, excavation, grading, utilities installation, foundation work, driving of piles (foundation, shoring, etc.), site	The project sponsor and archeological consultant at the direction of the ERO	Prior to issuance of site permits.	Consultation with ERO on scope of monitoring program	After consultation with and approval by the environmental review officer of the monitoring program

remediation, etc., shall require archeological monitoring because of the risk these activities pose to potential archaeological resources and to their depositional context; • The archeological consultant shall advise all project contractors to be on the alert for evidence of the presence of the expected resource(s), of how to identify the evidence of the expected resource(s), and of the appropriate protocol in the event of apparent discovery of an archeological resource; • The archeological monitor(s) shall be present on the project site according to a schedule agreed upon by the archeological consultant and the ERO until the ERO has, in consultation with project archeological consultant, determined that project construction activities could have no effects on significant archeological deposits; • The archeological monitor shall record and be authorized to collect soil samples and artifactual/ecofactual material as warranted for analysis; • If an intact archeological deposit is encountered, all soils-disturbing activities in the vicinity of the deposit shall cease. The archeological monitor shall be empowered to temporarily redirect demolition/excavation/pile driving/construction activities and equipment until the deposit is evaluated. If in the case of pile driving activity (foundation, shoring, etc.), the archeological monitor has cause to believe that the pile driving activity may affect an archeological resource, the pile driving activity shall be terminated until an appropriate evaluation of the resource has been made in consultation with the ERO. • The archeological consultant shall immediately notify the ERO of the encountered archeological deposit. The archeological consultant shall make a reasonable effort to assess the identity, integrity, and significance of the encountered archeological deposit, and present the findings of this assessment to the ERO. Whether or not significant archeological resources are encountered, the archeological consultant shall submit a written report of the findings of the monitoring program to the ERO. *Archeological Data Recovery Program*. The archeological data recovery program shall be conducted in accord with an archeological data recovery plan (ADRP). The archeological consultant, project sponsor, and ERO shall meet and consult on the scope of the ADRP prior to preparation of a draft	ERO, archeological consultant, and project sponsor	After determinations by ERO that an	Archeological consultant to prepare	Considered complete upon approval of ADRP by ERO

Adopted Mitigation Measure	Monitoring and Reporting Program[a]			
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/ Completion Criteria
ADRP. The archeological consultant shall submit a draft ADRP to the ERO. The ADRP shall identify how the proposed data recovery program will preserve the significant information the archeological resource is expected to contain. That is, the ADRP will identify what scientific/historical research questions are applicable to the expected resource, what data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. Data recovery, in general, should be limited to the portions of the historical property that could be adversely affected by the proposed project. Destructive data recovery methods shall not be applied to portions of the archeological resources if nondestructive methods are practical. The scope of the ADRP shall include the following elements: • Field Methods and Procedures. Descriptions of proposed field strategies, procedures, and operations. • Cataloguing and Laboratory Analysis. Description of selected cataloguing system and artifact analysis procedures. • Discard and Deaccession Policy. Description of and rationale for field and post-field discard and deaccession policies. • Interpretive Program. Consideration of an on-site/off-site public interpretive program during the course of the archeological data recovery program. • Security Measures. Recommended security measures to protect the archeological resource from vandalism, looting, and non-intentionally damaging activities. • Final Report. Description of proposed report format and distribution of results. • Curation. Description of the procedures and recommendations for the curation of any recovered data having potential research value, identification of appropriate curation facilities, and a summary of the accession policies of the curation facilities.		archeological data recovery program is required	an ADRP in consultation with ERO	

Adopted Mitigation Measure	Monitoring and Reporting Program[a]			
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/ Completion Criteria
Human Remains and Associated or Unassociated Funerary Objects. The treatment of human remains and of associated or unassociated funerary objects discovered during any soils disturbing activity shall comply with applicable State and Federal laws. This shall include immediate notification of the Coroner of the City and County of San Francisco and in the event of the Coroner's determination that the human remains are Native American remains, notification of the California State Native American Heritage Commission (NAHC) who shall appoint a Most Likely Descendant (MLD) (Public Resources Code Sec. 5097.98). The archeological consultant, project sponsor, and MLD shall make all reasonable efforts to develop an agreement for the treatment of, with appropriate dignity, human remains and associated or unassociated funerary objects (CEQA Guidelines. Sec. 15064.5(d)). The agreement should take into consideration the appropriate excavation, removal, recordation, analysis, custodianship, curation, and final disposition of the human remains and associated or unassociated funerary objects.	Project sponsor/ archeological consultant in consultation with the City, San Francisco Medical Examiner, California State Native American Heritage Commission, and most likely descendant	Discovery of human remains	Notification of County/City Coroner and, as warranted, notification of NAHC.	Considered complete on finding by ERO that all State laws regarding human remains/burial objects have been adhered to, consultation with MLD is completed as warranted, that sufficient opportunity has been provided to the Archeological consultant for any scientific /historical analysis of remains/funerary objects specified in the Agreement, and the agreed-upon disposition of the remains has occurred
Final Archeological Resources Report. The archeological consultant shall submit a Draft Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describes the archeological and historical research methods employed in the archeological testing/monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis (now the Environmental Planning division) of the Planning Department shall receive three copies of the FARR along with copies of any	Archeological consultant at the direction of the ERO.	Following completion of treatment by archeological consultant as determined by the ERO.	Planning Department / project sponsor	Complete on certification to ERO that copies of the approved ARR have been distributed

Adopted Mitigation Measure	Monitoring and Reporting Program[a]			
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/ Completion Criteria
formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest in or the high interpretive value of the resource, the ERO may require a different final report content, format, and distribution than that presented above.				
PALEONTOLOGICAL RESOURCES				
Project Mitigation Measure 2: Paleontological Resources. In the event that any project soils-disturbing activities encounter evidence of a potential paleontological resource (fossilized vertebrate, invertebrate, and plant remains or the trace or imprint of such remains), the project sponsor shall contact the Environmental Review Officer and a qualified paleontologist to undertake an appropriate assessment of the discovery and, if warranted, further field evaluation, data recovery, documentation, recordation, and curation in accordance with the Standard Guidelines for the Assessment and Mitigation of Adverse Impacts to Nonrenewable Paleontological Resources of the Society of Vertebrate Paleontology (SVP).	Project sponsor, qualified paleontologist, and construction contractor	During ground disturbing activities	If necessary, the project sponsor and a qualified paleontologist shall submit a Paleontological Evaluation Letter or Paleontological Impact Reduction Program to the Environmental Review Officer	Considered complete upon end of ground disturbing activities or, if necessary, approval of a Paleontological Evaluation Letter or Paleontological Impact Reduction Program by the Environmental Review Officer
BIOLOGICAL RESOURCES				
Project Mitigation Measure 3: Protection of Nesting Birds During Construction. The project sponsor shall implement the following protective measures to ensure implementation of the Migratory Bird Treaty Act and compliance with State regulations during construction. Pre-construction surveys for nesting birds shall be conducted by a qualified ornithologist or wildlife biologist to ensure that no nests would be disturbed during project implementation. A preconstruction survey shall be conducted no more than 14 days prior to the initiation of demolition/construction activities during the early part of the breeding season (January through April) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May through August). During this survey, the qualified person shall inspect all trees in and immediately adjacent to the impact areas for nests.	Project sponsor, qualified biologist, CDFW (as necessary).	Avoid vegetation removal and construction activities during the nesting season or conduct pre-construction surveys during the bird nesting season within 72 hours prior to the start of construction. Implementation ongoing during	Qualified biologist and project sponsor in coordination with planning department staff if active nests are observed.	Ongoing during construction if active nests are observed. Qualified biologist to submit weekly reports if active nests are observed.

Adopted Mitigation Measure	Monitoring and Reporting Program[a]			
	Implementation Responsibility	Mitigation Schedule	Monitoring/Reporting Responsibility	Monitoring Actions/ Completion Criteria
		construction if active nests are observed.		

NOTES:

[a] Definitions of MMRP Column Headings:

Adopted Mitigation and Improvements Measures: Full text of the mitigation measure(s).

Implementation Responsibility: Entity who is responsible for implementing the mitigation measure. In most cases this is the project sponsor and/or project's sponsor's contractor/consultant and at times under the direction of the planning department.

Mitigation Schedule: Identifies milestones for when the actions in the mitigation measure need to be implemented.

Monitoring/Reporting Responsibility: Identifies who is responsible for monitoring compliance with the mitigation measure and any reporting responsibilities. In most cases, it is the Planning Department who is responsible for monitoring compliance with the mitigation measure. If a department or agency other than the planning department is identified as responsible for monitoring, there should be an expressed agreement between the planning department and that other department/agency. In most cases the project sponsor, their contractor, or consultant are responsible for any reporting requirements.

Monitoring Actions/Completion Criteria: Identifies the milestone at which the mitigation measure is considered complete. This may also identify requirements for verifying compliance.

EXHIBIT I-2

CONDITIONS TO GENERAL PLAN REFERRAL

The following language was excepted from the Determination Letter, and for the purposes of the following General Plan Referral Conditions, Tenant shall be deemed to be the "Project Sponsor."

2. The SFWPM shall not construct or permit any improvements in the Jerrold Avenue and Selby Street rights-of-way (proposed to be vacated) which would be inconsistent with their future use as public streets, other than improvements which may readily be removed at the expiration or termination of the lease. In this context, Jerrold Avenue is defined as the portion of Jerrold Avenue (formerly known as "10th Avenue") that was 80'-wide, similar to the current configuration of Jerrold Avenue east of Rankin Street and west of Toland Street. The Selby Street right-of-way is defined as the portion of Selby Street (formerly known as "S" Street) that is 64 feet wide, consistent with the dimension of Selby Street north of Innes Avenue and south of Kirkwood Avenue. The configuration of the Jerrold Avenue and Selby Street rights-of-way subject to this condition is shown on the Figure entitled "Proposed Parcels, San Francisco Produce Market," San Francisco, California, prepared by Martin M. Ron Associates, dated 7/22/2011.

3. The SFWPM shall prepare a Streetscape Plan for the Project site, in consultation with the San Francisco Planning Department and Department of Public Works. The Streetscape Plan shall incorporate infrastructure and pedestrian amenities including sidewalks at least 10 feet in width, traffic control devices, pedestrian crosswalks, streetlights, consistent street tree planting and other improvements to accommodate safer pedestrian use of the rights-of-way. The project sponsor shall be responsible for the cost of relocating and/or installing all surface and subsurface utilities in the project area to the extent required, and the city's cost of entering into licenses or other agreements with all surface and subsurface utilities in the project area which will not be relocated. On-street parking located on Innes Avenue, Toland Street, Kirkwood Avenue and Rankin Street shall be configured to facilitate vehicular through-traffic movement on these perimeter streets.

4. The Streetscape Plan shall include the elements described in Condition 3 (above) and shall be consistent with the configuration of the Project site as shown in the attached Figure entitled "Master Site Plan, San Francisco Wholesale Produce Market Retention & Expansion Project," Sheet A-MP.1, prepared by Jackson Liles Architecture, dated 07/05/2011. The Streetscape Plan shall incorporate the configuration of the proposed Jerrold Avenue/Innes Avenue Extension/Rankin Street intersection, shown in the attached Figure entitled "Enlarged Eastern Intersection," San Francisco, Wholesale Produce Market Retention & Expansion Project, Sheet A-S.1.3, prepared by Jackson Liles Architecture, dated 08/25/2011. The Streetscape Plan may be prepared and implemented in phases, associated with phased development of the 901 Rankin Street site and the Main Site, as follows:

   a. The Project Sponsor may submit a Streetscape Plan, consistent with the *Better Streets* Plan, for all street and streetscape improvements associated with development of the 901 Rankin Street parcel, for review and approval by the Planning Department and the Department of Public Works, prior to issuance of any site, demolition or building permits required for development of the 901 Rankin Street site. Construction of approved streetscape improvements shall be installed in association with improvements to the 901 Rankin Street Site.

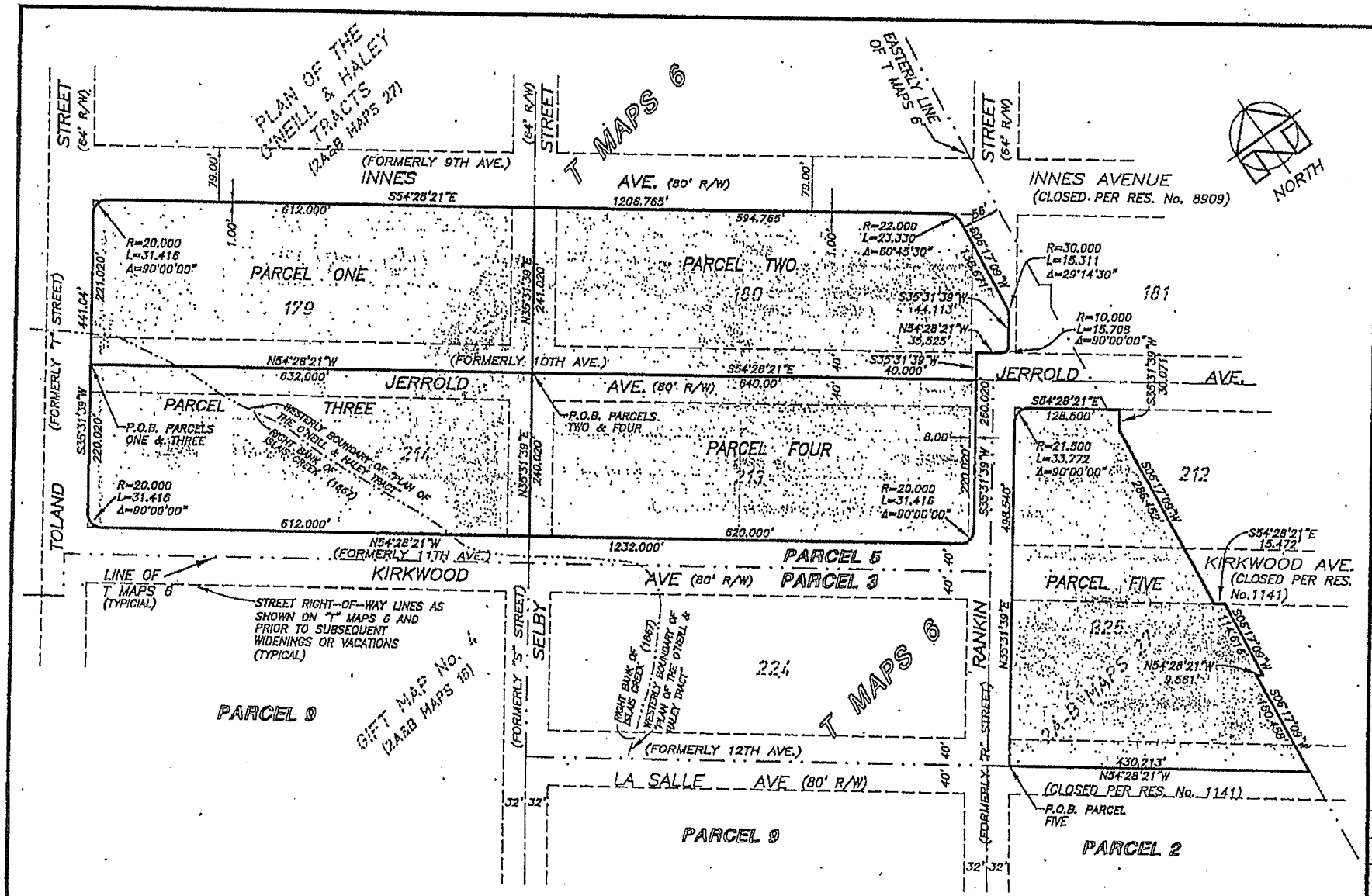
   b. The Project Sponsor may submit a Streetscape Plan, consistent with the *Better Streets* Plan, for all streetscape improvements associated with development of the Main Site for review and approval by the Planning Department and Department of Public Works, prior to issuance of site, demolition or building permits required for

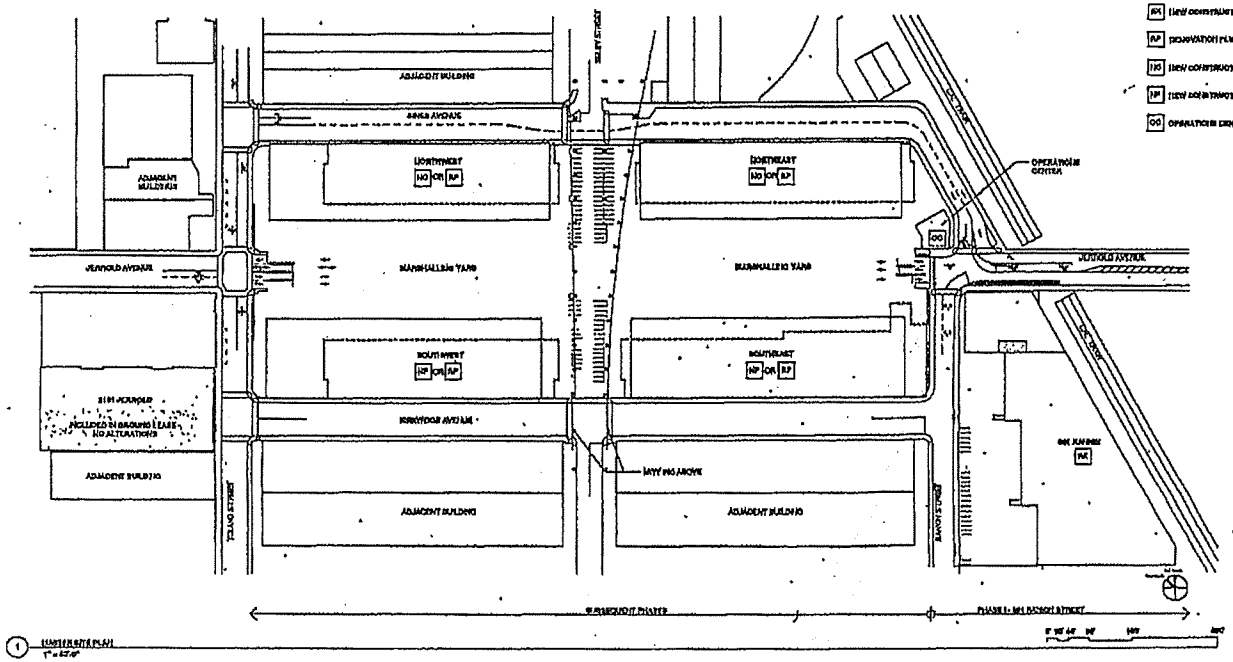
development of the Main Site. Construction of approved streetscape improvements shall be installed in association with improvements to the Main Site.

6. The City wishes to retain the ability to rededicate for public street use: (a) those portions of Jerrold Avenue (proposed to be vacated) consistent with the dimensions of Jerrold Avenue east of Rankin Street and west of Toland Street, and (b) those portions of Selby Street (proposed to be vacated) consistent with the dimensions of the Selby Street north of limes Avenue and south of Kirkwood Avenue, upon the expiration or termination of the lease. Accordingly: ...

   b. The SFWPM shall not perform or permit any improvements on those portions of the street property (proposed to be vacated) which would be inconsistent with future use as a public street, other than improvements which may readily be removed at the expiration or termination of the Lease.

[Figures referenced in Conditions to General Plan Referral are Attached Here.]


PLAN OF THE O'NEILL & HALEY TRACTS (2 A&B MAPS 27)
(FORMERLY 9TH AVE.)
INNES AVE. (80' R/W)
INNES AVENUE (CLOSED PER RES. No. 8909)
T MAPS 6
EASTERLY LINE OF T MAPS 6
STREET (64' R/W)
NORTH
PARCEL ONE
PARCEL TWO
PARCEL THREE
PARCEL FOUR
PARCEL FIVE
PARCEL 9
PARCEL 8
PARCEL 2
179
180
181
211
212
213
224
225
JERROLD AVE. (80' R/W)
(FORMERLY 10TH AVE.)
KIRKWOOD AVE. (CLOSED PER RES. No.1141)
(FORMERLY 11TH AVE.)
LA SALLE AVE (80' R/W)
(FORMERLY 12TH AVE.)
TOLAND STREET (FORMERLY "T" STREET)
SELBY STREET (FORMERLY "S" STREET)
RANKIN STREET (FORMERLY "R" STREET)
P.O.B. PARCELS ONE & THREE
P.O.B. PARCELS TWO & FOUR
P.O.B. PARCEL FIVE
WESTERLY BOUNDARY OF THE O'NEILL & HALEY TRACT
RIGHT BANK OF ISLAIS CREEK (1867)
LINE OF T MAPS 6 (TYPICAL)
STREET RIGHT-OF-WAY LINES AS SHOWN ON "T" MAPS 6 AND PRIOR TO SUBSEQUENT WIDENINGS OR VACATIONS (TYPICAL)
GIFT MAP No. 4 (2 A&B MAPS 15)
S54°28'21"E 1206.765'
N54°28'21"W 1232.000'
N35°31'39"E 241.020'
S35°31'39"W 221.020'
R=20.000 L=31.416 Δ=90°00'00"
R=22.000 L=23.330 Δ=60°45'30"
R=30.000 L=15.311 Δ=29°14'30"
R=10.000 L=15.708 Δ=90°00'00"
R=21.500 L=33.772 Δ=90°00'00"
S35°31'39"W 44.113'
N54°28'21"W 35.525'
S35°31'39"W 40.000'
S35°31'39"W 30.071'
S54°28'21"E 128.600'
S05°17'09"W 286.452'
S54°28'21"E 15.472'
S05°17'09"W 111.61'
S05°17'09"W 60.458'
N54°28'21"W 9.561'
N54°28'21"W 430.213'
N54°28'21"W 632.000'
N54°28'21"W 612.000'
S54°28'21"E 640.00'
S54°28'21"E 620.000'
N35°31'39"E 240.020'
S35°31'39"W 220.020'
N35°31'39"E 498.540'
S35°31'39"W 441.04'
79.00'
1.00'
40'
32'
56'
8.00'
SURV.:
DRW.:
CHK.:
PROPOSED PARCELS
SAN FRANCISCO WHOLESALE PRODUCE MARKET
CALIFORNIA
SAN FRANCISCO
MARTIN M. RON ASSOCIATES
LAND SURVEYORS
859 HARRISON STREET, SUITE 200
SAN FRANCISCO, CA 94107
TEL (415) 543-4500 FAX (415)543-6255
SCALE 1"=130'
DATE 7-22-11
SHEET 1
OF 1
JOB NO. S-7340



SAN FRANCISCO WHOLESALE PRODUCE MARKET

2095 JERROLD AVENUE
SAN FRANCISCO, CA
94124

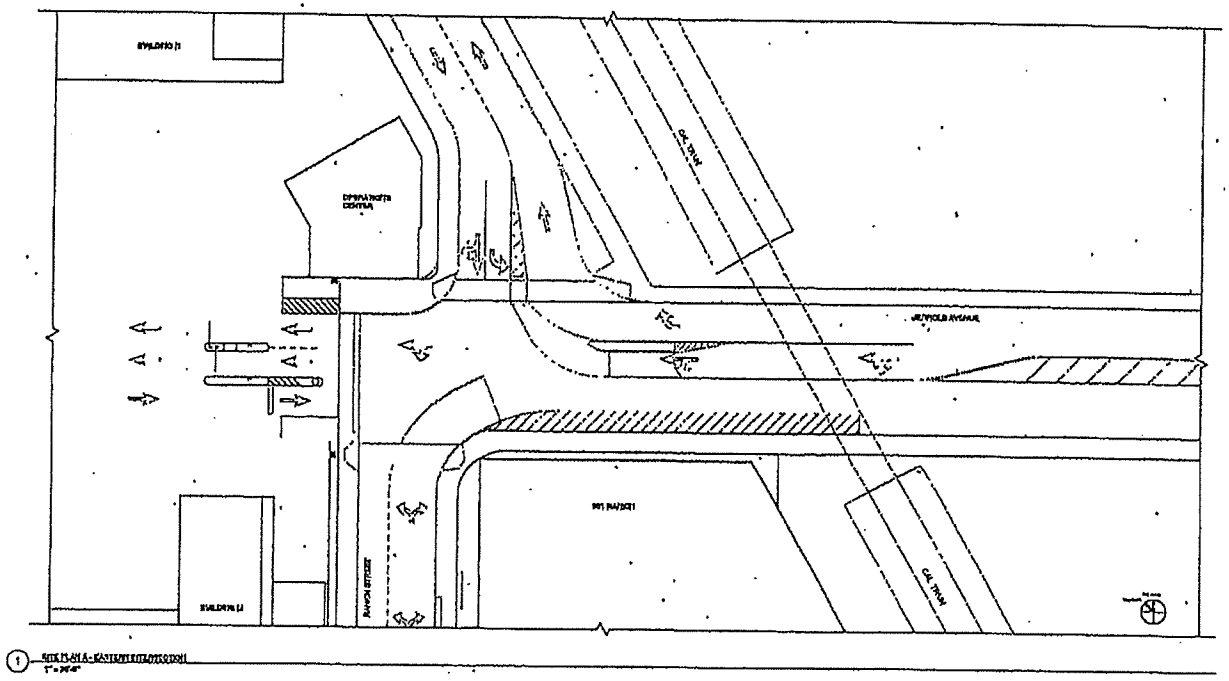
SAN FRANCISCO WHOLESALE PRODUCE MARKET RETENTION & EXPANSION PROJECT

Jackson Liles ARCHITECTURE

MASTER PLAN

MASTER SITE PLAN

A-MP.1



1 SITE PLAN A - EASTERN INTERSECTION
1" = 20'-0"

CITY OF SAN FRANCISCO
SAN FRANCISCO WHOLESALE PRODUCE MARKET
AGENCY CORPORATION

SAN FRANCISCO WHOLESALE PRODUCE MARKET

2095 JERROLD AVENUE
SAN FRANCISCO, CA
94124

SAN FRANCISCO WHOLESALE PRODUCE MARKET RETENTION & EXPANSION PROJECT

Jackson Liles
ARCHITECTURE

[illegible]

[illegible]

[illegible]

[illegible]

(ELEVATION PLUS)

ENLARGED EASTERN INTERSECTION

A-S.1.3

EXHIBIT J

SAMPLE FORMS OF FIRST SOURCE HIRING AGREEMENTS

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of , by and between the City and County of San Francisco (the "City") through its First Source Hiring Administration ("FSHA") and San Francisco Market Corporation **("Project Sponsor").**

WHEREAS, Project Sponsor, as developer, proposes to construct no new dwelling units, with up to 523,70 square feet of commercial space and accessory, off-street parking spaces ("Project") at property shown in E› , Lots in Assessor's Block , San Francisco California ("Site"); and

WHEREAS, the Administrative Code of the City provides at Chapter 83 for a "First Source Hiring Program" which has as its purpose the creation of employment opportunities for qualified Economically Disadvantaged Individuals (as defined in Exhibit A); and

WHEREAS, the Project requires a building permit for a commercial activity of greater than 25,000 square feet and/or is a residential project greater than ten (10) units and therefore falls within the scope of the Chapter 83 of the Administrative Code; and

WHEREAS, Project Sponsor wishes to make a good faith effort to comply with the City's First Source Hiring Program.

Therefore, the parties to this Memorandum of Understanding agree as follows:

A. Project Sponsor, upon entering into a contract for the construction of the Project with Prime Contractor after the date of this MOU, will include in that contract a provision in the form attached hereto as Exhibit A and Exhibit A-1. It is the Project Sponsor's responsibility to provide a signed copy of Exhibit A to First Source Hiring program and CityBuild within 10 business days of execution.

B. Project Sponsor, as the developer of the Project, will comply with the requirements of Chapter 83 and upon entering into leases for the commercial space at the Project that are subject to Chapter 83, will include in that contract a provision in the form attached hereto as Exhibit B and Exhibit B-1. Project Sponsor will inform the FSHA when leases or occupancy contracts have been negotiated and provide a signed copy of Exhibit B and Exhibit B-1.

C. Any lessee(s) or operator(s) of commercial space within the Project shall have the same obligations under this MOU as the Project Sponsor.

D. CityBuild shall represent the First Source Hiring Administration and will provide referrals of Qualified economically disadvantaged individuals for employment on the construction phase of the Project as required under Chapter 83. The First Source Hiring Program will

provide referrals of Qualified economically disadvantaged individuals for the permanent jobs located within the commercial space of the Project.

E. The owners or residents of the residential units within the Project shall have no obligations under this MOU, or the attached First Source Hiring Agreement.

F. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's contractor and/or tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.

G. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a contractor or commercial tenant to comply with the requirements of Chapter 83.

H. This MOU is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this MOU shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.

J. Except as set forth in Section E, above: (1) this MOU shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this MOU shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this MOU.

Signature: _____ Date:

Name of Authorized Signer: Email:

Company: Phone:

Address:

Project Sponsor: San Francisco Market Corporation

Contact: Phone:

Address: Email:

_____ Date:

First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl. San Francisco, CA 94103
Attn: Ken Nim, CityBuild Director, ken.nim@sfgov.org

Exhibit A
First Source Hiring Agreement – Construction

This First Source Hiring Agreement (this "Agreement"), is made as of , by and between , the First Source Hiring Administration, (the "FSHA"), and the undersigned contractor ("Contractor"):

RECITALS

WHEREAS, Contractor has executed or will execute an agreement (the "Contract") to construct or oversee a portion of the project to construct new dwelling units, with up to square feet of commercial space and accessory, off-street parking spaces ("Project") at , Lots in Assessor's Block , San Francisco California ("Site"), and a copy of this Agreement is attached as an exhibit to, and incorporated in, the Contract; and

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

WHEREAS, as a material part of the consideration given by Contractor under the Contract, Contractor has agreed to execute this Agreement and participate in the San Francisco Workforce Development System established by the City and County of San Francisco, pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

a. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.

b. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq*.), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.

c. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the

work, then there are two hiring opportunities for carpentry on the Project.

d. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.

e. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.

f. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.

g. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

h. Entry Level Position: A non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary and permanent jobs, and construction jobs related to the development of a commercial activity.

i. First Opportunity: Consideration by Contractor of System Referrals for filling Entry Level Positions prior to recruitment and hiring of non-System Referral job applicants.

j. Job Classification: Categorization of employment opportunity or position by craft, occupational title, skills, and experience required, if any.

k. Job Notification: Written notice, in accordance with Section 2(b) below, from Contractor to FSHA for any available Entry Level Position during the term of the Contract.

l. Publicize: Advertise or post available employment information, including participation in job fairs or other forums.

m. Qualified: An Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications provided by Contractor to the System in the job availability notices required this Agreement.

n. System: The San Francisco Workforce Development System established by the City and County of San Francisco, and managed by the Office of Economic and Workforce Development (OEWD), for maintaining (1) a pool of Qualified individuals, and (2) the mechanism by which such individuals are certified and referred to prospective employers covered by the First Source Hiring requirements under Chapter 83 of the San Francisco Administrative Code. Under this agreement, CityBuild will act as the representative of the San Francisco Workforce Development System.

o. System Referrals: Referrals by CityBuild of Qualified applicants for Entry Level Positions with Contractor.

p. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the work under the Contract.

2. PARTICIPATION OF CONTRACTOR IN THE SYSTEM

a. The Contractor agrees to work in Good Faith with the Office of Economic and Workforce Development (OEWD)'s CityBuild Program to achieve the goal of 50% of new hires for employment opportunities in the construction trades and Entry-level Position related to providing support to the construction industry.

The Contractor shall provide CityBuild the following information about the Contractor's employment needs under the Contract:

i. On Exhibit A-1, the CityBuild Workforce Projection Form 1, Contractor will provide a detailed numerical estimate of journey and apprentice level positions to be employed on the project for each trade.

ii. Contractor is required to ensure that a CityBuild Workforce Projection Form 1 is also completed by each its subcontractors.

iii. Contractor will collaborate with CityBuild staff in completing the CityBuild Workforce Hiring Plan Form 2, to identify, by trade, the number of Core workers at project start and the number of workers at project peak; and the number of positions that will be required to fulfill the First Source local hiring expectation.

iv. Contractor and Subcontractors will provide documented verification that its "core" employees for this contract meet the definition listed in Section 1.a.

v. A negotiated and signed CityBuild Workforce Hiring Plan Form 2 will constitute the First Source Hiring Plan as required under Chapter 83.

b. Contractor must (A) give good faith consideration to all CityBuild Referrals, (B) review the resumes of all such referrals, (C) conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract, and (D) affirmative obligation to notify CityBuild of any new entry-level positions throughout the life of the project.

c. Contractor must provide constructive feedback to CityBuild on all System Referrals in accordance with the following:

i. If Contractor meets the criteria in Section 5(a) below that establishes "good faith efforts" of Contractor, Contractor must only respond orally to follow-up questions asked by the CityBuild account executive regarding each System Referral; and

ii. After Contractor has filled at least 5 Entry Level Positions under this Agreement, if Contractor is unable to meet the criteria in Section 5(b) below that establishes "good faith efforts" of Contractor, Contractor will be required to provide written comments on all CityBuild Referrals.

d. Contractor must provide timely notification to CityBuild as soon as the job is filled, and identify by whom.

3. CONTRACTOR RETAINS DISCRETION REGARDING HIRING DECISIONS

Contractor agrees to offer the System the First Opportunity to provide qualified applicants for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Contractor shall consider all applications of Qualified System Referrals for employment. Provided Contractor utilizes nondiscriminatory screening criteria, Contractor shall have the sole discretion to interview and hire any System Referrals.

4. COMPLIANCE WITH COLLECTIVE BARGAINING AGREEMENTS

Notwithstanding any other provision hereunder, if Contractor is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Contractor's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of the Contract shall be the following:

a. Contractor shall notify the appropriate union(s) of the Contractor's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).

b. Contractor shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).

c. Contractor shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

5. CONTRACTOR'S GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Contractor will make good faith efforts to comply with its obligations to participate in the System under this Agreement. Determinations of Contractor's good faith efforts shall be in accordance with the following:

a. Contractor shall be deemed to have used good faith efforts if Contractor accurately completes and submits prior to the start of demolition and/or construction Exhibit A-1: CityBuild Workforce Projection Form 1; and

b. Contractor's failure to meet the criteria set forth from Section 5(c) to 5(m) does not impute "bad faith." Failure to meet the criteria set forth in Section 5(c) to 5(m) shall trigger a review of the referral process and the Contractor's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with Section 11 (c) below.

c. Meet with the Project's owner, developer, general contractor, or CityBuild representative to review and discuss your plan to meet your local hiring obligations under San Francisco's First Source Hiring Ordinance (Municipal Code-Chapter 83) or the City and County of San Francisco Administrative Code Chapter 6.

d. Contact a CityBuild representative to review your hiring projections and goals for this project. Developer/prime must take active steps to advise all of its subcontractors of the local hiring obligations on the project, including, but not limited to providing CityBuild access and presentation time at each pre-bid, each pre-construction, and if necessary, any progress meeting held throughout the life of the project

e. Submit to CityBuild a "Projection of Entry Level Positions" form or other formal written notification specifying your expected hiring needs during the project's duration.

f. Notify your respective union(s) regarding your local hiring obligations and request their assistance in referring qualified San Francisco residents for any available position(s). This step applies to the extent that such referral would not violate your union's collective bargaining agreement(s).

g. Be sure to reserve your "name call" privileges for qualified applicants referred through the CityBuild system. This should be done within the terms of applicable collective bargaining agreement(s).

h. Provide CityBuild with up-to-date list of all trade unions affiliated with any work on this project in a timely matter in order to facilitate CityBuild's notification to these unions of the project's workforce requirements.

i. Submit a "Job Request" form to CityBuild for each apprentice level position that becomes available. Please allow a minimum of 3 Business Days for CityBuild to provide appropriate candidate(s). You should simultaneously contact your union about the position as well, and let them know that you have contacted CityBuild as part of your local hiring obligations.

j. Developer has an ongoing, affirmative obligation and must advise each of its subs of their ongoing obligation to notify CityBuild of any/all apprentice level openings that arise throughout the duration of the project, including openings that arise from layoffs of original crew. Developer/contractor shall not exercise discretion in informing CityBuild of any given position; rather, CityBuild is to be universally notified, and a discussion between the developer/contractor and CityBuild can determine whether a CityBuild graduate would be an appropriate placement for any given apprentice level position.

k. Hire qualified candidate(s) referred through the CityBuild system. In the event of the firing/layoff of any CityBuild graduate, developer/contractor must notify CityBuild staff within two days of the decision and provide justification for the layoff; ideally, developer/contractor will request a meeting with the project's employment liaison as soon as any issue arises with a CityBuild placement in order to remedy the situation before termination becomes necessary.

l. Provide a monthly report and/or any relevant workforce records or data from contractors to identify workers employed on the project, source of hire, and any other pertinent information as pertain to compliance with this Agreement.

m. Maintain accurate records of your efforts to meet the steps and requirements listed above. Such records must include the maintenance of an on-site First Source Hiring Compliance binder, as well as records of any new hire made by the contractor/developer through a San Francisco CBO whom the contractor believes meets the First Source Hiring criteria. Any further efforts or actions agreed upon by CityBuild staff and the developer/contractor on a project-by-project basis.

6. COMPLIANCE WITH THIS AGREEMENT OF SUBCONTRACTORS

In the event that Contractor subcontracts a portion of the work under the Contract, Contractor shall determine how many, if any, of the Entry Level Positions are to be employed by its Subcontractor(s) using Form 1: the CityBuild Workforce Projection Form and minimum hiring goals using Form 2: the CityBuild Workforce Hiring Plan, provided, however, that Contractor shall retain the primary responsibility for meeting the requirements imposed under this Agreement. Contractor shall ensure that this Agreement is incorporated into and made applicable to such Subcontract.

7. EXCEPTION FOR ESSENTIAL FUNCTIONS

Nothing in this Agreement precludes Contractor from using temporary or reassigned existing employees to perform essential functions of its operation; provided, however, the obligations of this Agreement to make good faith efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

8. CONTRACTOR'S COMPLIANCE WITH EXISTING EMPLOYMENT AGREEMENTS

Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

9. HIRING GOALS EXCEEDING OBLIGATIONS OF THIS AGREEMENT

Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and retention goals, first source hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping, and enforcement requirements and procedures which exceed the requirements of this Agreement.

10. OBLIGATIONS OF CITYBUILD

Under this Agreement, CityBuild shall:

a. Upon signing the CityBuild Workforce Hiring Plan, immediately initiate recruitment and pre-screening activities.

b. Recruit Qualified individuals to create a pool of applicants for jobs who match Contractor's Job Notification and to the extent appropriate train applicants for jobs that will become available through the First Source Program;

c. Screen and refer applicants according to qualifications and specific selection criteria submitted by Contractor;

d. Provide funding for City-sponsored pre-employment, employment training, and support services programs;

e. Follow up with Contractor on outcomes of System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system;

f. Provide Contractor with reporting forms for monitoring the requirements of this Agreement; and

g. Monitor the performance of the Agreement by examination of records of Contractor as submitted in accordance with the requirements of this Agreement.

11. CONTRACTOR'S REPORTING AND RECORD KEEPING OBLIGATIONS

Contractor shall:

a. Maintain accurate records demonstrating Contractor's compliance with the First Source Hiring requirements of Chapter 83 of the San Francisco Administrative Code including, but not limited to, the following:

(1) Applicants
(2) Job offers
(3) Hires
(4) Rejections of applicants

b. Submit completed reporting forms based on Contractor's records to CityBuild quarterly, unless more frequent submittals are reasonably required by FSHA. In this regard, Contractor agrees that if a significant number of positions are to be filled during a given period or other circumstances warrant, CityBuild may require daily, weekly, or monthly reports containing all or some of the above information.

c. If based on complaint, failure to report, or other cause, the FSHA has reason to question Contractor's good faith effort, Contractor shall demonstrate to the reasonable satisfaction of the City that it has exercised good faith to satisfy its obligations under this Agreement.

12. DURATION OF THIS AGREEMENT

This Agreement shall be in full force and effect throughout the term of the Contract. Upon expiration of the Contract, or its earlier termination, this Agreement shall terminate and it shall be of no further force and effect on the parties hereto.

13. NOTICE

All notices to be given under this Agreement shall be in writing and sent by: certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States Mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA: First Source Hiring Administration
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, CityBuild Director
ken.nim@sfgov.org

If to CityBuild: CityBuild Compliance Manager
OEWD, 1 South Van Ness 5th Fl.
San Francisco, CA 94103
Attn: Ken Nim, CityBuild Director
ken.nim@sfgov.org

If to Developer:

Attn:

If to Contractor:

Attn:

a. Any party may change its address for notice purposes by giving the other parties notice of its new address as provided herein. A "business day" is any day other than a Saturday, Sunday or a day in which banks in San Francisco, California are authorized to close.

b. Notwithstanding the forgoing, any Job Notification or any other reports required of Contractor under this Agreement (collectively, "Contractor Reports") shall be delivered to the address of FSHA pursuant to this Section via first class mail, postage paid, and such Contractor Reports shall be deemed delivered two (2) business days after deposit in the mail in accordance with this Subsection.

14. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors in interest.

15. SEVERABILITY

If any term or provision of this Agreement shall, to any extent, be held invalid or

unenforceable, the remainder of this Agreement shall not be affected.

16. COUNTERPARTS

This Agreement may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

17. SUCCESSORS

This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

18. HEADINGS

Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions

19. GOVERNING LAW

This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

CONTRACTOR:

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

Phone: _____

Email: _____

CityBuild
Office of Economic and Workforce Development

FIRST SOURCE HIRING PROGRAM
FORM 1: WORKFORCE PROJECTIONS

Instructions

- *The Prime Contractor must complete and submit Form 1 within 30 days of award of contract.*
- *All subcontractors with contracts in excess of $100,000 must complete Form 1 and submit to the Prime Contractor within 30 days of award of contract.*
- *The Prime Contractor is responsible for collecting all completed Form 1's from all subcontractors.*
- *It is the Prime Contractor's responsibility to ensure the CityBuild Program receives completed Form 1's from all subcontractors in the specified time and keep a record of these forms in a compliance binder at the project jobsite.*
- *All contractors and subcontractors are required to attend a preconstruction meeting with CityBuild staff.*
- *All contractors and subcontractors are responsible for submitting a Job Notice Form (Form 3) for all new hires on the project.*

Construction Project Name: _____

Construction Project Address: _____

Projected Start Date: _____

Contract Duration: _____ *(calendar days)*

Company Name: _____

Company Address: _____

Main Contact Name: _____

Main Phone Number: _____

Main Contact Email : _____

Name of Person with Hiring Authority: _____

Hiring Authority Phone Number: _____

Hiring Authority Email: _____

Name of Authorized Representative _____ Signature of Authorized Representative* _____ Date _____

By signing this form, the company agrees to participate in the CityBuild Program and comply with the provisions of the First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.

Table 1: Briefly summarize your contracted or subcontracted scope of work

Table 2: Complete on the following page

- *List the construction trade crafts that are projected to perform work. Do not list Project Managers, Engineers, Administrative, and any other non-construction trade employees.*
- *Total Number of Workers on the Project: The total number of workers projected to work on the project per construction trade. This number will include existing workers and new hires. For union contractors this total will also include union dispatches.*
- *Total Number of New Hires: List the projected number of New Hires that will be employed on the project. For union contractors, New Hires will also include union dispatches.*

CityBuild
Office of Economic and Workforce Development

FIRST SOURCE HIRING PROGRAM
FORM 1: WORKFORCE PROJECTIONS

Table 2: List all construction trades projected to perform work

Construction Trades	Journey or Apprentice	Union (Yes or No)	Total Work Hours	Total Number of Workers on the Project	Total Number of New Hires
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			
	J ☐ A ☐	Y ☐ N ☐			

Table 3: List your core or existing employees projected to work on the project

- *Please provide information on your projected core or existing employees that will perform work on the jobsite.*
- *"Core" or "Existing" workers are defined as any worker appearing on the Contractor's active payroll for at least 60 out of the 100 working days prior to the award of this Contract. If necessary, continue on a separate sheet.*

Name of Core or Existing Employee	Construction Trade	Journey or Apprentice	City	Zip Code
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		
		J ☐ A ☐		

FOR CITY USE ONLY: CityBuild Staff: _____ Approved: Yes ☐ No ☐ Date: _____
Reason:_____

CONTACT CITYBUILD FOR QUESTIONS:
CITYBUILD@SFGOV.ORG | 415.701.4848 (P) | 415.701.4896 (F) | WWW.OEWD.ORG

CityBuild
Office of Economic and Workforce Development

FORM 3
CITYBUILD JOB NOTICE FORM

Contractors performing work on public works projects, private developments and other construction projects covered by the San Francisco Administrative Code, the Mayor's Office of Housing (MOH) or the Office of Community Investment and Infrastructure (OCII) shall utilize this form to notify CityBuild of all hiring opportunities at least three (3) business days prior to the worker's start date.

INSTRUCTIONS:

1. Complete the information below and email the completed form to citybuild@sfgov.org.
2. Include the assigned CityBuild compliance officer in the email when submitting the completed form.
3. To confirm receipt of the form, contact the Office of Economic and Workforce Development (OEWD) at 415-701-4848.

SECTION A. JOB NOTICE INFORMATION

Trade: _____ # of Journeymen: _____ # of Apprentices: _____

Start Date: _____ Start Time: _____ Job Duration: _____

Brief description of your scope of work: _____

SECTION B. UNION INFORMATION

Is your organization Union signatory? ☐ **YES** *(complete Union information below)* ☐ **NO** *(continue to Section C)*

Local # : _____ Union Contact Name: _____ Union Phone #: _____

ATTENTION: *Please also submit this form to your union or hiring hall if you are required to do so under your collective bargaining agreement or contract. CityBuild is not a Dispatching Hall, nor does this form act as a Request for Dispatch. All formal Requests for Dispatch will be conducted through your union or hiring hall.*

SECTION C. CONTRACTOR INFORMATION

Project Name: _____

Jobsite Location: _____

Contractor: _____ Prime ☐ Sub ☐

Contractor Address: _____

Contact Name: _____ Title: _____

Office Phone: _____ Cell Phone: _____ Email: _____

Alt. Contact: _____ Phone #: _____

Contractor Signature: _____ Date: _____

OEWD USE ONLY	**Able to fill:** YES ☐ NO ☐ **Referral Notes:**

CityBuild
Office of Economic and Workforce Development

FORM 4: FIRST SOURCE SUMMARY REPORT

Project Name: _____ Project Address: _____ Company Name: _____ Date: _____

Contractor Representative: _____ Signature: _____ Email: _____ Contact Number: _____

COUNT	LAST	FIRST	ZIP CODE	JOURNEY/ APPRENTICE	CRAFT	REFERRAL SOURCE	NEW HIRE	DATE OF HIRE (New Hires Only)
1 (e.g.)	Doe	John	94080	JOURNEY	LABORER	Union	YES	1/1/2012
2 (e.g.)	Doe	Jane	94124	APPRENTICE	CARPENTER	CityBuild	YES	2/1/2012
3 (e.g.)	Piper	Peter	94502	JOURNEY	PILE DRIVER	Core	NO	9/1/2011

Exhibit B-1: First Source Hiring Program Exhibit
For Business Commercial Operations, and/or End Use Occupancy of a Covered Building

This First Source Hiring Program Exhibit to the MOU Agreement (Exhibit), is made as of , by and between (the "Lessee"), and the First Source Hiring Program Administration, (the "FSHP"), collectively the "Parties":

RECITALS

WHEREAS, Lessee has plans to occupy the building at [Address] "Premises" which required a FSHP MOU Agreement between the project sponsor and FSHP due to the issuance of a building permit for 25,000 square feet or more of floor space or constructed ten or more residential units; and,

WHEREAS, the project sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises ("Contract"); and

WHEREAS, as a material part of the consideration given by Lessee under _contract, Lessee has agreed to execute this Exhibit and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Exhibit, initially capitalized terms shall be defined as follows:

a. Entry Level Position: Any position that requires less than two (2) years training or specific preparation, and shall include temporary and permanent jobs.

b. Lessee: Tenant, business operator and any other occupant of the building requiring an FSHP Agreement as defined in San Francisco Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and possessing a Business Registration Certificate with the Office of Treasurer.

c. Referral: A member of the Workforce System who has been identified by OEWD as having the appropriate training, background, and skill sets for a Lessee specified Entry Level Position.

d. Workforce System: The System established by the City and County of San Francisco and managed by OEWD for maintaining 1. A pool of qualified individuals; and 2. The mechanism by which individuals are certified and referred to prospective employers covered by the FSHP requirements under this Chapter.

2. LESSEE OBLIGATIONS

a. Lessee shall notify OEWD of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates from the Workforce System prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.

b. Lessee shall accurately complete and submit the "First Source Employer's Projection of Entry-Level Positions" to OEWD upon execution of this Exhibit.

c. Lessee shall register with OEWD's data system, upon execution of this Exhibit.

d. Lessee shall notify OEWD of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD.

e. If Lessee's operations create Entry Level Positions, Lessee will provide good faith efforts to meet the hiring goals established by the FSHA for filling open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.

f. Nothing in this Exhibit shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Exhibit and an existing agreement, the terms of the existing agreement shall supersede this Exhibit.

g. This Exhibit shall be in full force and effect throughout the Lessee's occupancy of the building.

h. Lessee's failure to meet the criteria set forth in this Exhibit may trigger a review of the referral process and compliance with this Exhibit. Failure to comply with the MOU and Exhibit to the MOU may result in penalties as defined in San Francisco Administrative Code Chapter 83. Lessee agrees to review San Francisco Administrative Code Chapter 83, and execution of the MOU and Exhibit to the MOU denotes that Lessee agrees to its terms and conditions.

3. NOTICE

All notices to be given under this Exhibit shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

4. ADDITIONAL TERMS

This Exhibit contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Exhibit shall be held invalid or unenforceable, the remainder of this Exhibit shall not be affected. If Exhibit is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Exhibit shall inure to the benefit of and shall be binding upon the parties to this Exhibit and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several.

Section titles and captions contained in this Exhibit are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Exhibit or the intent of any of its provisions. This Exhibit shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Exhibit as of the date set forth above.

Date: _____ Signature: _____

Name of Authorized Signer: _____

Company: _____

Address: _____

City, State, Zip: _____

Phone: _____

Email: _____

SAN FRANCISCO
OFFICE OF ECONOMIC & WORKFORCE DEVELOPMENT

FIRST SOURCE HIRING
CITY & COUNTY OF SAN FRANCISCO

WORKFORCE PROJECTION FORM

Business Name:
Contract ID (If applicable):
Phone:
Date:

Main Contact:
Supplier ID (If applicable):
Email:
Signature: _____
Name of Authorized Representative:

** By signing this form, the company agrees to participate in the San Francisco Workforce Development System established by the City and County of San Francisco, and comply with the provisions of the First Source Hiring Program pursuant to Chapter 83 of the San Francisco Administrative Code*

Instructions:

- This form must be submitted via email to the Office of Economic and Workforce Development at business.services@sfgov.org with the subject line First Source Hiring Workforce Projection Form
- If an entry level position becomes available at any time during the term of the lease and/or contract, the company must notify the First Source Hiring Program Administrator at business.services@sfgov.org

Section 1: Select your Industry:

☐ Admin/Support/Waste Services	☐ Food Services	☐ Mgmt/Enterprises	☐ Transport/Warehouse
☐ Agri/Forestry/Fish/Hunt	☐ Government	☐ Manufacturing	☐ Utilities
☐ Construction	☐ Health Care	☐ Real Estate/Rental	☐ Wholesale Trade
☐ Educational Services	☐ Info/Tech/Prof	☐ Retail Trade	☐ Other
☐ Finance/Insurance	☐ Leisure/Hospitality	☐ Social Services	_____

Section 2: Indicate Industry NAICS code if known: _____

Section 3: Provide information on all Entry Level Positions:

Entry level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Section 4: Select the type of First Source Project:

☐ Contractor	☐ Scene in San Francisco Rebate Applicant
☐ Subcontractor	☐ City Contract (Department) _____
☐ City of San Francisco Tenant	☐ Cannabis
☐ Subtenant	☐ Other _____
☐ Developer	

One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

(415)701-4848 (415)701-4897 oewd.org
workforce.development@sfgov.org

EXHIBIT K

FORM OF MEMORANDUM OF LEASE

EXHIBIT K
FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

San Francisco Market Corporation

Attn:

No Documentary Transfer Tax due
No fee for recording pursuant to
Government Code § 27383

APN: [List Block and Lot numbers]

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is dated as _____ 2022, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), and SAN FRANCISCO MARKET CORPORATION, a California nonprofit corporation ("**Tenant**").

RECITALS

A. City holds title to certain real property located in the City and County of San Francisco, State of California, generally bounded by Times Avenue, Rankin Street, Kirkwood Avenue, and Toland Avenue, which is improved with warehouse, dock and office space and commonly known as the San Francisco Wholesale Produce Market ("SFWPM"), as generally shown on the diagram attached hereto for informational purposes only as *Exhibit A-1* (the "Initial Premises"). The Initial Premises is bisected by Jerrold Avenue and Selby Street and several paper streets. City also holds title to certain real property located in the City and County of San Francisco, State of California, commonly known as 901 Rankin Street, as more particularly described and shown on *Exhibit A-2.1* and *Exhibit A-2.2* (the "901 Rankin Premises").

B. On or about February 1, 2013, City and Tenant entered into that certain unrecorded Lease dated as of February 1, 2013 (the "Lease"), pursuant to which City agrees to lease the Initial Premises and the 901 Rankin Premises to Tenant, and Tenant agrees to lease the Initial Premises and 901 Rankin Premises from City, subject to Tenant's right to terminate the Lease with respect to the 901 Rankin Premises prior to City's delivery of the 901 Rankin Premises to Tenant on the terms and conditions set forth in the Lease. On or about the date hereof, City and Tenant are entering into that certain unrecorded Amended and Restated Lease dated as of _____ 2022 (the "Amended Lease") pursuant to which the parties agreed to certain amendments to the Lease.

C. In order to improve operations on the SFWPM site, the Amended Lease provides that the premises under the Amended Lease will eventually include certain portions of the

improved and paper streets which presently bisect the SFWPM site, defined in the Amended Lease as the "Former Street Property," upon the completion of a vacation of certain portions of rights of way as outlined in the Amended Lease and in San Francisco Board of Supervisor's Ordinance 163-12 (the "Vacation Ordinance"). The Former Street Property is shown on the diagram attached hereto for informational purposes only as *Exhibit B*. The vacation of the relevant portions of the improved and paper streets and the lease to Tenant of the vacated Former Street Property is conditioned on Tenant's performance of certain street and infrastructure improvements around the perimeter of the central SFWPM site and the surrender of those portions of the Initial Premises defined in the Amended Lease as the "Relinquished Premises." The Relinquished Premises are shown on the diagram attached hereto for informational purposes only as *Exhibit C*. The Parties anticipate that upon completions of such street and infrastructure improvements, the City's Board of Supervisors will accept the improvements for public use and maintenance subject to the provisions of San Francisco Administrative Code Section 1.52 and will dedicate the applicable increments of the Relinquished Premises for public street use, and that the Relinquished Premises will be deleted from the premises under the Amended Lease. The configuration of the premises under the Amended Lease following the relinquishment of the Relinquished Premises and the addition of the Former Street Property is generally depicted on the attached *Exhibit D*, which is attached hereto for informational purposes only.

D. The Amended Lease provides that Tenant shall apply for a new parcel map to accommodate and support the new development pattern for the SFWPM, generally consistent with the parcel configuration shown in *Exhibit D*. Execution of the Amended Lease and this Memorandum by the Director of Property on behalf of the City does not mean that City's Department of Public Works or the Board of Supervisors or the Mayor have approved or will approve such parcel map. If such Parcel Map is approved, City and Tenant may elect to record an amended and restated memorandum of lease or other instrument to correct and clarify the description of the real property which is the subject of the Amended Lease.

E. The premises from time to time covered by the Amended Lease is referred to as the "Premises."

F. City and Tenant desire to record this Memorandum to provide notice to all third parties of certain rights of Tenant under the Amended Lease.

NOW, THEREFORE, in consideration of the Premises and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Tenant agree as follows:

1. Lease Terms. The lease of the Premises to Tenant is on all of the terms and conditions set forth in the Amended Lease, which is incorporated in this Memorandum by reference.

2. Term. The term of the Amended Lease is approximately sixty (60) years, with incremental commencement for the Initial Premises, 901 Rankin Premises, and Former Street Property as specifically provided in the Amended Lease, and early expiration with respect to the Relinquished Premises. The term of the Amended Lease commenced with respect to the Initial Premises on February 1, 2013. The Term of the Amended Lease commenced with respect to the

901 Rankin Premises on _____. The term of the Amended Lease shall expire with respect to the entire Premises on January 31, 2073.

3. Incorporation of Lease. This Memorandum is prepared and recorded for the purpose of providing the public with constructive notice of the Amended Lease: This Memorandum in no way modifies or otherwise affects the terms and conditions of the Amended Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Amended Lease, the terms and conditions of the Amended Lease shall control.

4. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute but one and the same document.

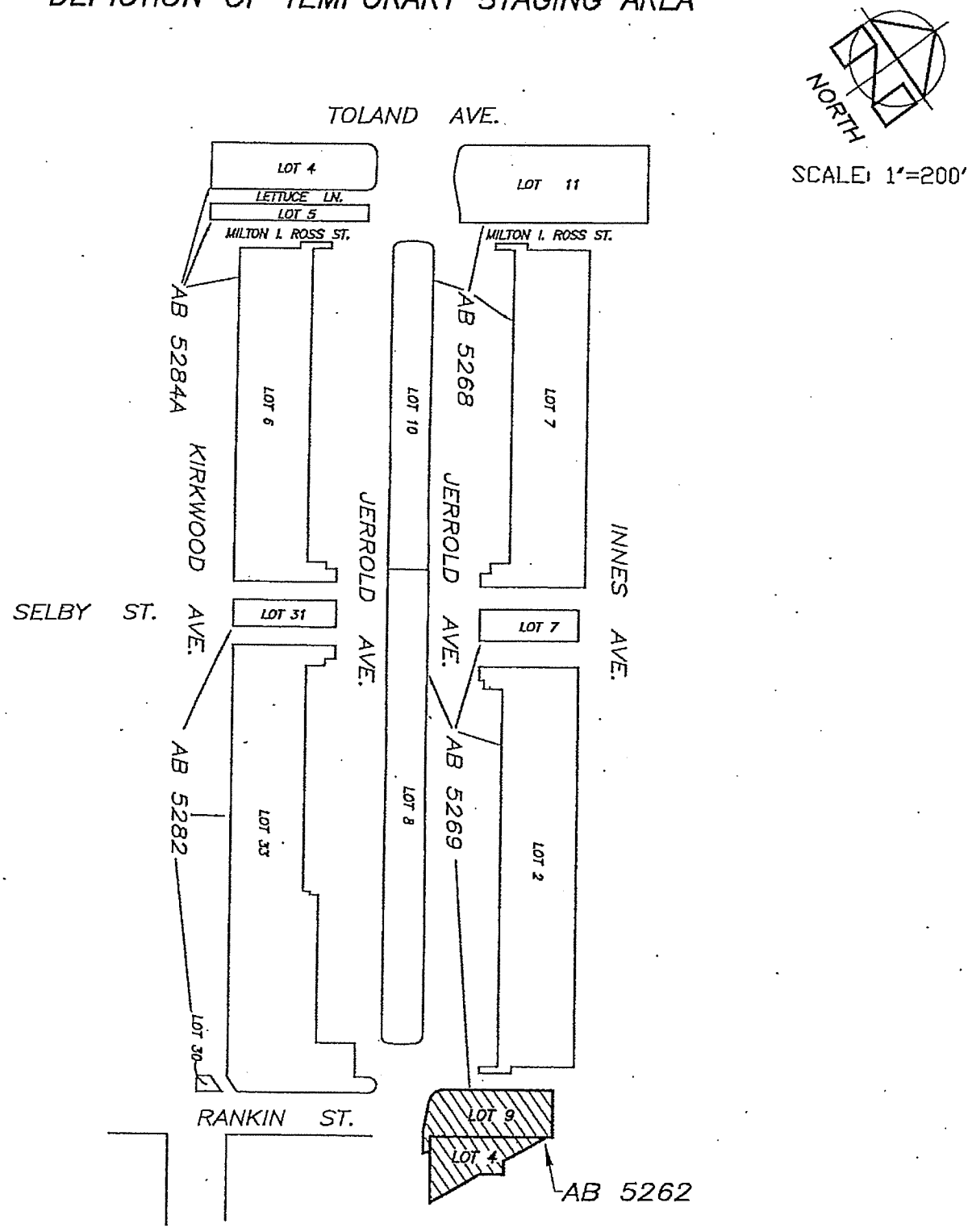
[Signatures on Following Page]

EXHIBIT L

DEPICTION OF TEMPORARY STAGING AREA

EXHIBIT L

DEPICTION OF TEMPORARY STAGING AREA



LEGEND

LOT 6, AB 5284A — ASSESSOR'S LOT & BLOCK

▨ — TEMPORARY STAGING AREA

EXHIBIT M

FORM OF SEPARATE PARCEL LEASE

CITY AND COUNTY OF SAN FRANCISCO
LONDON N. BREED, MAYOR

LEASE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation,
as Landlord

and

[_____,
a _____]
as Tenant

for the lease of real property and improvements
currently comprising part of the San Francisco Wholesale Produce Market

in San Francisco, California

Dated as of _____

TABLE OF CONTENTS

LIST OF LEASE EXHIBITS

LEASE

THIS LEASE (this "**Lease**"), dated for reference purposes as of _____ , 20__, is by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "**City**"), and [_____, a _____] (the "**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City and San Francisco Market Corporation, a California nonprofit corporation and an Affiliate of Tenant ("**SFMC**"), are parties to that certain Amended and Restated Lease dated as of [_____, 2022] (as further amended from time to time, the "**Existing SFWPM Lease**") pursuant to which SFMC leases certain real property from the City for use as the San Francisco Wholesale Produce Market ("**SFWPM**").

B. The Existing SFWPM Lease contemplates that City and SFMC, or an entity controlled by SFMC, may enter into separate parcel leases with respect to certain legal parcels of the premises leased pursuant to the Existing SFWPM Lease, in order to secure Financing obtained by SFMC to construct or renovate buildings on those certain legal parcels.

C. SFMC has delivered a Financing Notice (as defined in the Existing SFWPM Lease) to City in connection with a Financing of the Premises described in this Lease, in accordance with Section 2.9 of the Existing SFWPM Lease.

D. City has approved SFMC's financing plan for the Premises, as well as SFMC's request to enter into this Lease (described in the Existing SFWPM Lease as a **Separate Parcel Lease**) with [SFMC][Tenant, as an Affiliate of SFMC,] for the Premises. City and SFMC have agreed to terminate the Existing SFWPM Lease with respect to the Premises as of the Effective Date.

E. All initially capitalized terms used herein are defined in Article 1 below or have the meanings given them when first defined.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings ascribed to them in this Article. In the event of any conflict between a definition given in this Article and any more specific provision of this Lease, the more specific provision shall control.

1.1 "**Accounts**" has the meaning set forth in Section 9.3(a)i.

1.2 "**Acknowledged Non-Conforming Sublease**" has the meaning set forth in Section 8.3(g).

1.3 "**Additional Rent**" means any and all sums (other than the payment of Net Revenues) that may become due or be payable by Tenant under this Lease.

1.4 "**Additional Replacements**" has the meaning set forth in Section 16.1(b).

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

1.6 "**Agents**" means, when used with reference to either Party to this Lease or any other person or entity, the members, officers, directors, commissioners, employees, agents and contractors of such Party or other person or entity, and their respective heirs, legal representatives, successors and assigns.

1.7 "**Agreement to Implement Improvement and Mitigation Measures**" has the meaning set forth in the Existing SFWPM Lease. A copy of the Agreement to Implement Improvement and Mitigation Measures is set forth in Exhibit I-1.

1.8 "**Ancillary Uses**" has the meaning set forth in Section 4.1.

1.9 "**Annual Statement**" has the meaning set forth in Section 12.2(b).

1.10 "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of the City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

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

1.12 "**Base Rent**" has the meaning set forth in Section 12.1.

1.13 "**Bona Fide Institutional Lender**" means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for one or more persons or entities none of which need be Bona Fide Institutional Lenders: (i) a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof, an insurance company, a governmental agency, a real estate investment trust, a religious, educational or eleemosynary institution, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other person or group of

persons which, at the time of a Mortgage is recorded in favor of such Person or Persons, has assets of at least $500 million in the aggregate (or the equivalent in foreign currency) with respect to senior secured debt and $100 million in the aggregate (or the equivalent in foreign currency) with respect to mezzanine debt, and in the case of any Person or group of persons or entities none of whom is a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a governmental agency, or a real estate investment trust, is regularly engaged in the financial services business, or (ii) any special account, managed fund, department, agency or Affiliate of any of the foregoing, or (iii) any person or entity acting in a fiduciary capacity for any of the foregoing. For purposes hereof, (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture or other loan document, and (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if promptly after such loan is consummated the note(s) or other evidence of indebtedness or the collateral securing the same are assigned to one or more persons or entities then qualifying as a Bona Fide Institutional Lender.

1.14 "**Books and Records**" has the meaning set forth in Section 9.3(c).

1.15 "**Capital Grant Funds**" has the meaning set forth in Section 12.2(a)i.

1.16 "**Capital Repairs and Replacements**" has the meaning set forth in Section 9.3(a)vi.

1.17 "**Casualty Notice**" has the meaning set forth in Section 20.4(a).

1.18 "**Chapter 12T**" has the meaning set forth in Section 47.18.

1.19 "**Chapter 24**" has the meaning set forth in Section 47.17.

1.20 "**City Administrator**" means the City Administrator of the City and County of San Francisco or his or her designee, or successor that succeeds to the rights and obligations of the City Administrator under applicable Law.

1.21 "**City Contractor**" has the meaning set forth in Section 47.13.

1.22 "**City Representative**" has the meaning set forth in Section 12.2(c).

1.23 "**City's Percentage Interest**" has the meaning set forth in Section 21.3(b).

1.24 "**Commencement Date**" means the Effective Date.

1.25 "**Community Development Entity**" has the meaning set forth in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended

1.26 "**Condemnation**" means the taking or damaging, including severance damage, of all or any part of any property, or the right of possession thereof, by eminent domain, inverse condemnation, or for any public or quasi-public use under the Law. Condemnation may occur pursuant to the recording of a final order of condemnation, or by a voluntary sale of all or any

part of any property to any entity having the power of eminent domain (or to a designee of any such entity), provided that the property or such part thereof is then under the threat of condemnation or such sale occurs by way of settlement of a condemnation action.

1.27 "**Condemnation Date**" means the earlier of: (a) the date when the right of possession of the condemned property is taken by the condemning authority; or (b) the date when title to the condemned property (or any part thereof) vests in the condemning authority.

1.28 "**Construction Documents**" has the meaning set forth in Section 18.4(a).

1.29 "**Debt Service**" has the meaning set forth in Section 12.2(a)ii.

1.30 "**Default Rate**" means an annual interest rate equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the Effective Date of this Lease, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act.

1.31 "**Disabled Access Laws**" means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. and disabled access Laws under the City's building code.

1.32 "**Dispossession Event**" means a foreclosure, sale, or conveyance in lieu of foreclosure through which a Mortgagee or its designee acquires title to Tenant's leasehold interest in this Lease, provided that a "Dispossession Event" shall pertain only to the leasehold interest in this Lease if held by Tenant or a Tenant's Affiliate approved by City.

1.33 "**Effective Date**" means the date on which the Parties have executed and delivered this Lease, which shall in no event be earlier than the date that a final subdivision map creating the Premises has been recorded in the Official Records, and shall correspond with the (i) close of escrow in connection with the Financing, (ii) the removal of any prior Mortgage from the Premises, if applicable, (iii) the amendment of the Existing SFWPM Lease to remove the Premises, and (iv) execution and delivery of the CAM Agreement.

1.34 "**Event of Default**" has the meaning set forth in Section 28.1.

1.35 "**Existing SFWPM Lease**" has the meaning set forth in Recital A.

1.36 "**Expiration Date**" means the earlier of: (1) January 31, 2073; or (2) the date of repayment of the Financing (not including any repayment in connection with (i) a re-financing approved by City prior to the expiration of the initial term this Lease or (ii) a Mortgagee's exercise of rights under a Mortgage); unless extended by City in writing.

1.37 "**Final Construction Documents**" with respect to any Subsequent Construction means plans and specifications sufficient for the processing of an application for a building permit for such Subsequent Construction in accordance with applicable Laws, if applicable.

1.38 "**Financing**" has the meaning set forth in Section 44.4(a).

1.39 "**First Source Hiring Agreements**" has the meaning set forth in Section 47.6.

1.40 "**Force Majeure**" means events or conditions which result in delays in a Party's performance (excluding a Party's performance of the payment of money required under the terms of this Lease) of its obligations hereunder due to causes beyond such Party's control and not caused by the acts or omissions of the delayed Party, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, war, explosion, invasion, insurrection, rebellion, riots, fires, floods, earthquakes, tidal waves, strikes, freight embargoes, epidemics, pandemics, and inclement weather which is materially inconsistent with customary weather patterns. Force Majeure does not include the lack of credit or the failure to obtain financing or have adequate funds and therefore, no event caused by a lack of credit or a failure to obtain financing shall be considered to be an event of Force Majeure for purposes of this Lease. The delay caused by Force Majeure includes not only the period of time during which performance of an act is hindered, but also such additional time thereafter as may reasonably be required to make repairs, and to Restore if appropriate, and to complete performance of the hindered act.

1.41 "**GAAP**" means generally accepted accounting principles, consistently applied.

1.42 "**Gross Revenues**" has the meaning set forth in Section 12.2(a).

1.43 "**Handle**" when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, transport, store, emit, discharge or dispose of any Hazardous Material (Handling will have a correlative meaning).

1.44 "**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" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or under Section 25281 or Section 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

1.45 **"Hazardous Material Claims**" means any and all enforcement, investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed under any Hazardous Material Laws, together with any and all Losses made or threatened by any third party against City, or any of the other Indemnified Parties and any of their Agents, or the Premises or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous

Material Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Premises or any Improvements, the loss or restriction of the use or any amenity of the Premises or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

1.46 "**Hazardous Material Laws**" means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, the City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), to the extent applicable to tenants of City property on the Effective Date, and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

1.47 "**Impositions**" has the meaning set forth in Section 13.1(b).

1.48 "**Improvements**" means all buildings, structures, fixtures and other improvements erected, built, placed, installed, constructed, expanded, improved, and/or replaced upon or within the Premises.

1.49 "**Indemnified Parties** "means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City.

1.50 "**Indemnify**" means indemnify, protect and hold harmless.

1.51 "**Index**" means the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the index is modified during the Term hereof, the modified Index shall be used in place of the original Index. If compilation or publication of the Index is discontinued during the Term, City shall select another similar published index, generally reflective of increases in the cost of living, subject to Tenant's approval, which shall not be unreasonably withheld or delayed, in order to obtain substantially the same result as would be obtained if the Index had not been discontinued.

1.52 "**Inspection Report**" has the meaning set forth in Section 16.1(b).

1.53 "**Invitees**" when used with respect to Tenant means the customers, patrons, invitees, guests, permittees, members, licensees, concessionaires, assignees, transferees and Subtenants of Tenant and the customers, patrons, invitees, guests, permittees, members, licensees, concessionaires, assignees, transferees and sub-tenants of such Subtenants.

1.54 "**Law**" or "**Laws**" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Premises or any portion thereof (including, without limitation, any subsurface area, the use thereof and of the Premises, or any portion thereof, and of the buildings and Improvements thereon), whether or not in the contemplation of the Parties, including,

without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Premises, or any portion thereof. The term Law or Laws shall also include Tenant's compliance with General Order 143-B and 95 of the Public Utilities Commission of the State of California (notwithstanding the fact that such General Orders may not be directly applicable to Tenant).

1.55 "**Lease**" means this Lease, as it may be amended from time to time in accordance with its terms.

1.56 "**Lease Year**" means, for the Term of this Lease, any applicable twelve (12) month period beginning on the Commencement Date, or the applicable anniversary thereof and ending on the date immediately prior to the next succeeding anniversary of the Commencement Date.

1.57 "**Leasing Reserve Account**" has the meaning set forth in Section 9.3(a)vii.

1.58 "**Leasing Schedule**" has the meaning set forth in Section 7.1(a).

1.59 "**Loss**" or "**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 costs and expenses, (including, without limitation, Attorneys' Fees and Costs and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise. Notwithstanding anything to the contrary contained herein, in no event shall Losses include or shall a party be liable for any indirect, special, consequential or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) regardless of whether such party has been informed of the possibility of such damages or is negligent. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the limitation set forth in the preceding sentence.

1.60 "**Major Damage or Destruction**" means damage to or destruction of all or any portion of the Improvements on the Premises to the extent that the hard costs of Restoration will exceed sixty percent (60%) of the hard costs to replace such Improvements on the Premises in their entirety. The calculation of such percentage shall be based upon replacement costs and requirements of applicable Laws in effect as of the date of the event causing such Major Damage or Destruction.

1.61 "**Management Agreement**" has the meaning set forth in Section 9.2(a).

1.62 "**Manager**" has the meaning set forth in Section 9.2(a).

1.63 "**Market Rent**" has the meaning set forth in Section 7.1(c).

1.64 "**Market Rent Schedule**" has the meaning set forth in Section 7.1(b).

1.65 "**Memorandum of Lease**" has the meaning set forth in Section 48.10.

1.66 "**Minor Alterations**" has the meaning set forth in Section 18.2.

1.67 "**Mitigation and Improvement Measures**" has the meaning set forth in Section 5.1(b).

1.68 "**Monthly Income Statement**" has the meaning set forth in Section 12.2(b).

1.69 "**Mortgage**" means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement or similar security instrument or assignment of all or a portion of Tenant's leasehold interest under this Lease that is recorded in the Official Records and approved by the City as set forth in Article 44.

1.70 "**Mortgage Confirmation Statement**" has the meaning set forth in Section 44.4(b).

1.71 "**Mortgagee**" means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.

1.72 "**New Lease**" has the meaning set forth in Section 44.11(e).

1.73 "**New Tenant**" has the meaning set forth in Section 8.1(b).

1.74 "**Net Awards and Payments**" has the meaning set forth in Section 21.4.

1.75 "**Net Effective Rental Rate**" means the rental rate, including periodic increases, minus the tenant improvement allowance (other than any tenant improvement allowance for "green building" components, equipment or other features intended to assist a Subtenant in complying with applicable "green building" Laws) and the value of all leasing concessions amortized over the Sublease term, on a per square foot basis.

1.76 "**Net Revenues**" has the meaning set forth in Section 12.2.

1.77 "**Non-Disturbance Agreements**" has the meaning set forth in Section 8.5(a).

1.78 "**Nutritional Standards Requirements**" has the meaning set forth in Section 47.23.

1.79 "**Official Records**" means, with respect to the recordation of Mortgages and other documents and instruments, the Official Records of the City and County of San Francisco.

1.80 "**Operating Account**" has the meaning set forth in Section 9.3(a).

1.81 "**Operating Reserve Account**" has the meaning set forth in Section 9.3(a).

1.82 "**Operating Expenses**" has the meaning set forth in Section 12.2.

1.83 "**Partial Condemnation**" has the meaning set forth in Section 21.3(b).

1.84 "**Party**" means City or Tenant, as a party to this Lease; "**Parties**" means both City and Tenant, as Parties to this Lease.

1.85 "**Payment Caps**" has the meaning set forth in Section 9.3(a)ii.

1.86 "**Permitted Title Exceptions**" has the meaning set forth in Section 22.1.

1.87 "**Permitted Uses**" has the meaning set forth in Section 4.1.

1.88 "**Personal Property**" means all trade fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant or any subtenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor.

1.89 "**Pesticide Ordinance**" has the meaning set forth in Section 25.1(d).

1.90 "**Premises**" shall mean the real property described on Exhibit A attached hereto and any Improvements, together with any additions, modifications or other Subsequent Improvements thereto permitted hereunder.

1.91 "**Prevailing Wage Requirements**" has the meaning set forth in Section 5.6(a).

1.92 "**Primary Uses**" has the meaning set forth in Section 4.1.

1.93 "**Prime Rate**" means the rate of interest designated as the "prime rate" in The Wall Street Journal, or, if such publication ceases to exist, in a business publication of similar substance and reputation thereto.

1.94 "**Project**" means the phased redevelopment of the entire premises leased under the Existing SFWPM Lease for use as the San Francisco Wholesale Produce Market, as well as associated off-site infrastructure improvements.

1.95 **"Project Development Account**" means the separate depository account established and maintained by SFMC under the Existing SFWPM Lease for the payment of Project Development Costs. The funds in the Project Development Account shall be used only for the payment of Project Development Costs and shall not be used for Operating Expenses, Capital Repairs and Replacements (as defined herein) or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City's sole discretion.

1.96 "**Project Development Costs**" has the meaning set forth in Section 12.2.

1.97 "**Project Goals**" has the meaning set forth in the Existing SFWPM Lease.

1.98 "**Property Related Insurance**" means the insurance set forth in items i, ii and v of Section 24.1(a).

1.99 "**Proposed Transfer**" has the meaning set forth in Section 8.1(g).

1.100 "**QALICB**" has the meaning set forth in Section 8.1(i).

1.101 "**Regulatory Approval**" means any authorization, approval or permit required by any governmental agency having jurisdiction over the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Art Commission and the City's Department of Building Inspection.

1.102 "**Release**" when used with respect to Hazardous Material means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Lease by or on behalf of Tenant, or in, on, under or about the Premises or any portion thereof.

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

1.104 "**Rent**" means Base Rent and Additional Rent.

1.105 "**Rent Roll**" has the meaning set forth in Section 8.3(k).

1.106 "**Replacements**" has the meaning set forth in Section 16.1(b).

1.107 "**Replacement Reserve Account**" has the meaning set forth in Section 9.3(a)vi.

1.108 "**Replacement Reserve Account Funds**" has the meaning set forth in Section 20.3.

1.109 "**Reserve Account**" has the meaning set forth in Section 9.3(a)vii.

1.110 "**Restoration**" means the repair, restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable to substantially the same condition they were in immediately before an event of damage or destruction or, in the case of Condemnation, the restoration, replacement, or rebuilding of the Improvements to an architectural whole. All Restoration shall be conducted in accordance with

the provisions of Article 18. ("Restore" and "Restored" shall have correlative meanings.). Notwithstanding the foregoing, in the event of a Major Damage or Destruction occurring at any time during the Term, Tenant shall not be required to Restore the Improvements to the identical size or configuration as existed before the event giving rise to the Restoration so long as the Improvements as Restored are consistent with the Permitted Uses. In connection with any such Restoration after an event of Major Damage or Destruction, the Improvements may be redesigned, made larger or smaller, reconfigured, or otherwise modified, provided that the Improvements as so redesigned is a first class project affording similar public benefits as the original Improvements.

1.111 "**Restricted Area**" means the area depicted on Exhibit C.

1.112 "**Safety Restoration Work**" has the meaning set forth in Section 20.4(b)ii.

1.113 "**Salary History**" " has the meaning set forth in Section 47.28.

1.114 "**Sale Period**" has the meaning set forth in Section 44.7(b)i.

1.115 "**SFMC**" has the meaning set forth in Recital A.

1.116 "**SFPUC Facilities**" has the meaning set forth in Section 2.3(a).

1.117 "**SFWPM**" has the meaning set forth in Recital A.

1.118 "**Significant Deviation From Economic Model**" means extraordinary economic events or conditions, such as credit and financial crises, spikes in construction costs, labor shortages, unusually high rates of inflation and other similar conditions, or numerous less significant economic events or conditions that, when considered cumulatively, cause the assumptions upon which the Schedule of Performance is based to become so unreliable as to prevent timely performance.

1.119 "**Significant Subtenant Change**" means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of legal or beneficial interests in a Subtenant, directly or indirectly, in one or more transactions, by operation of law or otherwise, that results in any of the following: (1) a change in the identity of persons or entities controlling the Subtenant, provided that a Significant Change will not include the Transfer of beneficial interests in any entity as a result of the trading of shares on the open-market where such entity is a publicly-traded company, (2) the admission of any equity investor that has the right to exercise day-to-day management or day-to-day control over the business of the Subtenant, (3) the dissolution of the Subtenant, (4) the sale of fifty percent (50%) or more of the Subtenant's assets, capital or profits, or the assets, capital or profit of any person or entity controlling the Subtenant, except for sales of publicly traded stock.

1.120 "**Sublease**" means any lease, sublease, license, concession or other agreement by which Tenant leases, subleases, demises, licenses or otherwise grants to any person or entity in conformity with the provisions of this Lease, the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons or entities).

1.121 "**Subsequent Construction**" means all repairs to and reconstruction, replacement, addition, expansion, Restoration, alteration or modification of any Improvements, or any construction of additional Improvements.

1.122 "**Substantial Condemnation**" has the meaning set forth in Section 21.3(a).

1.123 "**Subtenant**" means any person or entity leasing, occupying or having the right to occupy any portion of the Premises under and by virtue of a Sublease.

1.124 "**Sufficient Restoration Funds**" has the meaning set forth in Section 20.3.

1.125 "**Tax Credit Assignment**" has the meaning set forth in Section 8.1(i).

1.126 "**Tenant**" has the meaning set forth in the introductory paragraph of this Lease and includes Tenant's permitted successors and assigns.

1.127 "**Tenant's Organizational Expenses**" has the meaning set forth in Section 12.2(a)vi.

1.128 "**Tenant's Percentage Interest**" has the meaning set forth in Section 21.3(b).

1.129 "**Tenant's Restoration Funds**" has the meaning set forth in Section 20.3.

1.130 "**Term**" has the meaning set forth in Section 3.1.

1.131 "**Total Condemnation**" has the meaning set forth in Section 21.2.

1.132 "**Transfer**" means to sell, convey, assign, transfer, encumber, alienate or otherwise dispose (directly or indirectly, by one or more transactions, and by operation of law or otherwise) of all or any interest or rights in the Premises, the Improvements, and/or this Lease, including but not limited to any right or obligation to develop or operate the Premises (other than pursuant to a Sublease made in the ordinary course), or otherwise do any of the above or make any contract of agreement to do any of the same, or permit a Significant Change to occur.

1.133 "**Umbrella Policy**" has the meaning set forth in Section 24.1(a)iii.

1.134 "**Uninsured Casualty**" has the meaning set forth in Section 20.4(b).

1.135 "**Unmatured Event of Default**" means any event, action or inaction that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Lease.

2. PREMISES; DELIVERY; CONDITION OF PREMISES

2.1. General; Limits on Definition of Premises.

"Premises" has the meaning set forth in Article 1 above. Any acreage stated in this Lease with respect to the Premises or any part thereof is an estimate only, and City does not warrant it to be correct.

2.2. Condition of Premises.

(a) Inspection of Premises. Tenant acknowledges that Tenant has conducted a thorough and diligent inspection of the Premises, is familiar with the condition of the Premises and the suitability of the Premises for Tenant's intended use, and has accepted the Premises.

(b) As Is; Disclaimer of Representations. Tenant acknowledges and agrees that the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, any water lines, sewer lines, or other facilities, structures, equipment or fixtures located on or under the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Waiver and Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way connected with (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises (including, but not limited to, soils and groundwater conditions), (ii) any Laws applicable thereto, including without limitation, Hazardous Materials Laws; provided that the foregoing release shall not be applicable in the event of the intentional concealment of a material fact or matter with respect to the Premises that was actually known by the City Administrator or the Director of Property at or before the commencement date of the Existing SFWPM Lease and not disclosed to Tenant in writing.

In connection with the foregoing release, Tenant acknowledges that it is familiar with 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.

Tenant's Initials: _____

Tenant agrees that the release contemplated by this Section includes unknown claims. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease.

(d) Without limiting the foregoing provisions of this Section 2.2, City's Director of Real Estate shall cause City staff at the Department of Real Estate to cooperate in good faith with Tenant's attempts to resolve title matters which arise in connection with Tenant's

development and financing of Improvements, including but not limited to filing and prosecuting an action under the McEnerney Act at Tenant's request and at Tenant's sole cost and expense.

2.3. Utility Operators' Rights; SFPUC Facilities; Reserved Rights

(a) [Utility Operators; SFPUC Facilities; Restrictions. Without limiting the generality of Section 2.2 above, Tenant accepted the Premises subject to the rights of owners and operators of utilities located on and under portions of the Premises (collectively, the "**Utility Operators**"). The San Francisco Public Utilities Commission (the "**SFPUC**") is a Utility Operator. The City, on behalf of SFPUC, reserves the right to use, operate, maintain, repair, enlarge, replace, modify, expand, and reconstruct the existing main sanitary drain line presently located in the general area delineated and labeled on the attached Exhibit B and any other pipelines, drains or appurtenances which connect improvements on the Premises to such main sanitary drain line (collectively the "**SFPUC Facilities**") in coordination with Tenant and in a manner designed to minimize unreasonable interference with Tenant's and Subtenants' business operations and use of the Premises. Except in the event of any emergency, prior to granting SFPUC or any other Utility Operator permission pursuant to any license agreement, permit to enter, or similar such agreement to enter upon the Premises for the purpose of using, operating, maintaining, repairing, enlarging, replacing, modifying, expanding or reconstructing any utility facilities located on or under the Premises, City shall notify Tenant and use good faith efforts to cause such Utility Operator to coordinate with Tenant in a manner designed to minimize unreasonable interference with Tenant's and Subtenants' business operations and use of the Premises. Tenant shall not do or grant to others the right to do anything in, on, under or about the Premises that could cause damage to or interference with SFPUC Facilities or the facilities of the other Utility Operators. Without limiting the foregoing, any development, installation, repair and replacement by Tenant or third parties to whom Tenant has given rights to the Premises shall be performed in a manner which does not endanger or damage any of then-existing utility installations within the Premises. To prevent damage to the SFPUC Facilities, neither Tenant nor any third party shall use vehicles or equipment in excess of the standards established by AASHTO-H20 within the "Restricted Area" designated on Exhibit C without the prior written consent of a staff member of the SFPUC. Following any installation or construction in or on such Restricted Area. Tenant shall promptly provide the SFPUC with a copy of the as-built plans for such installation or construction.][DRAFTING NOTE: THIS SECTION TO BE REVISED OR DELETED DEPENDING ON THE PREMISES THAT IS THE SUBJECT OF THIS LEASE. FOR EXAMPLE, IF THE PREMISES ARE NOT AFFECTED BY THE SFPUC FACILITIES BUT ARE AFFECTED BY RIGHTS OF OTHER UTILITY OPERATORS, THEN THIS PARAGRAPH WILL BE REVISED TO REMOVE THE PORTION RELATED TO SFPUC.]

(b) Reserved Rights. Notwithstanding anything to the contrary in this Lease, during the Term City reserves and retains all of the following rights relating to the Premises:

(i) Any and all water and water rights, including, but not limited to any and all surface water and surface water rights, riparian rights and appropriative water rights to surface streams and the underflow of streams;

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

(iii) The right, after reasonable prior written notice to Tenant and consideration of any objection by Tenant to the same, to grant future rights and easements over, across, under,

in and upon the Premises as City shall determine in its sole discretion, provided that any such right or easement shall not unreasonably interfere with Tenant's use of the Premises; and

(iv) All rights of access provided for in Section 43.1 below.

3. TERM; INCREMENTAL COMMENCEMENT

3.1. Term.

The Premises are leased for the period from the Commencement Date until the Expiration Date, unless sooner terminated as set forth herein (the "**Term**"), subject to the terms and conditions set forth in this Lease. Upon request by either Party, the Parties shall execute a memorandum verifying the actual Commencement Date in a form reasonably satisfactory to the Parties. Upon the Commencement Date, the lease of the Premises under the Existing SFWPM Lease shall automatically terminate. Upon the expiration or termination of this Lease, City shall have the right to add the Premises to the Existing SFWPM Lease (subject to a Mortgagee's rights under Article 44).

3.2. Discussions Regarding Possible Future Use of the Premises.

In order to allow Tenant and Subtenants to plan for the orderly continuation, transition or termination, as applicable, of business under this Lease and the Subleases, approximately five (5) years before the Expiration Date, provided that this Lease has not been earlier terminated, City's Director of Property, or his or her designee, and Tenant shall meet to discuss whether the Parties are interested in extending the Term of this Lease or entering into a new lease for the Premises or some portion thereof. Tenant acknowledges that any future agreement to extend the Term of the Lease or to enter into a new lease would be subject to the prior approval of the then-Board of Supervisors, in its sole and absolute discretion.

4. USES

4.1. Permitted Use.

Tenant shall use the Premises for the operation of a produce wholesaling and distribution center serving San Francisco and the Bay Area, bringing quality food from its source to San Francisco and Bay Area food businesses and citizens by bringing together merchants, distributors, buyers and sellers, and providing warehouses, infrastructure, program space and a supportive structure for individual businesses engaged in the following (the "**Permitted Use**" or "**Permitted Uses**"), consistent with PDR zoning: 1) receiving, storing, selling, distributing and producing agriculture, horticultural products, produce and other food products and related uses; ancillary office and administration functions; hosting food industry trade shows; and educational and training programs related to the food industry, nutrition and sustainability (together, the "**Primary Uses**"); and 2) support and services uses that are ancillary to and necessary or desirable to support the Primary Uses, including, without limitation, limited retail, restaurants, pallet repair, equipment repair, truck maintenance and washing, waste management and recycling facilities necessary or desirable for the operation of the SFWPM, security services facilities and break room facilities for truck drivers (together, the "**Ancillary Uses**"). Tenant shall operate the Premises in a manner which maintains high standards regarding food safety and security. Any exceptions to the Permitted Use shall require prior approval of City, which may be withheld or granted in its sole discretion.

4.2. Education and Community Involvement.

Tenant shall use good faith efforts to support educational and training programs, displays and/or presentations related to the food industry, including, as appropriate, providing space for programs related to the food industry, nutrition and sustainability, and shall explore ways to cultivate connections with the Bayview neighborhood and the wider San Francisco community.

4.3. Limitations on Uses by Tenant.

(a) Prohibited Activities. Tenant shall not conduct or permit on the Premises any of the following activities:

i. any activity that creates a public or private nuisance;

ii. any activity that is not within the Permitted Use;

iii. any activity that will cause damage to the Premises or the Improvements;

iv. any activity that is reasonably determined by City to constitute waste, disfigurement or damage to the Premises;

v. any activity that is reasonably determined by City to constitute a material nuisance to owners or occupants of adjacent properties. Such activities include, without limitation, the preparation, manufacture or mixing of anything that emits any materially objectionable or unlawful odors, noises or lights onto adjacent properties, or the unreasonable or unlawful use of loudspeakers or sound apparatus that can be heard outside the Premises or the unlawful or unreasonable use of any light apparatus that can be seen outside of the Premises (taking into account the Permitted Uses and the hours of operation of the businesses in the Premises), subject to any right given Tenant to alter, modify, repair, maintain, restore or construct Improvements; provided, however, that such activities are performed in accordance with all Laws and all terms and conditions of this Lease as applicable;

vi. any activity that will materially injure, obstruct or interfere with the rights of Subtenants, or of other tenants, owners or occupants of adjacent properties, including rights of ingress and egress, to their properties, except to the extent necessary on a temporary basis to alter, modify, repair, maintain, restore or construct Improvements and conducted within the Permitted Uses hereunder in accordance with all Laws and Regulatory Approvals;

vii. any activity that attracts members of the general public to the Premises in a manner that materially obstructs, conflicts or interferes with the food-oriented wholesaling and distribution activities of Subtenants;

viii. use of the Premises for sleeping or personal living quarters and use;

ix. any auction, distress, fire, bankruptcy or going out of business sale on the Premises without the prior written consent of City; and

x. while any New Markets Tax Credit loan is outstanding, any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(b) Land Use Restrictions: Special Restrictions Regarding Former Street Property. Tenant shall not enter into agreements granting licenses, easements or access rights over the Premises if the same would be binding on City's reversionary interest in the Premises, or obtain changes in applicable land use Laws or conditional use permits for any uses not provided for hereunder, in each instance without City's prior written consent, which consent may be withheld in City's sole discretion. [Tenant acknowledges that City wishes to preserve the ability to rededicate for public street use those portions of the Premises depicted on Exhibit D upon the expiration or termination of this Lease, and that, accordingly, Tenant shall not perform or permit any improvements on those particular portions of the Premises that would be inconsistent with future use as a public street, other than improvements which may readily be removed at the expiration or termination of this Lease.] [DRAFTING NOTE: THIS IS

INTENDED TO PREVENT INCONSISTENT IMPROVEMENTS WITHIN THE PORTIONS OF THE FORMER STREET PROPERTY WITHIN CURRENT JERROLD AVENUE AND SELBY STREET RIGHTS OF WAY. IF THIS AREA IS NOT PART OF THE PREMISES UNDER THIS LEASE, THEN THIS LANGUAGE SHOULD BE DELETED.]

4.4. Continuous Use

Tenant shall use good faith efforts to ensure that the Premises are used continuously during the Term in accordance with the Permitted Uses and shall not allow the Premises to remain unoccupied or unused without the prior written consent of City, which City may withhold in its sole discretion, subject to Article 20 [Damage or Destruction], Article 21 [Condemnation] and Force Majeure, and further subject to customary vacancies of space that may arise from time to time in connection with retenanting.

5. CONSTRUCTION OF IMPROVEMENTS

5.1. Scope of Development; Improvement Requirements

If Tenant intends to construct Improvements as part of the Project, then Tenant shall construct the Improvements in compliance with the Design Documents and Budget approved by the City pursuant to the requirements set forth in Exhibit K, and in compliance with all applicable Laws, including, without limitation, Hazardous Materials Laws and Disabled Access Laws and with the Agreement to Implement Improvement and Mitigation Measures set forth in Exhibit I-1 attached hereto and the mitigation and improvement measures specified therein (the "**Mitigation and Improvement Measures**") and items 2, 3, 4 and 6.b. set forth in Exhibit I-2 attached hereto (the "**General Plan Referral Conditions**"), as excerpted from the Determination Letter. The requirements set forth in this Section 5.1 are referred to collectively as the "**Improvement Requirements**."

5.2. Costs

Tenant shall bear all of the cost of developing the Improvements as described in the approved Design Documents. Without limiting the foregoing, Tenant shall be responsible for performing all preparation work necessary for the development of the Improvements. Such preparation of the property shall include, among other things, investigation and Remediation of Hazardous Materials required for development or operation of the Improvements, demolition and site preparation, all structure and substructure work, and the Improvements and tenant improvements. Nothing in this Section 5.2 shall prohibit Tenant from using grants or loans, including grants and loans from City.

5.3. Competitive Requirements Inapplicable

Pursuant to the Board of Supervisors Resolution approving this Lease, Tenant's architectural, surveying, engineering, legal, project management, construction, contracting, and other consulting services for the Project are not subject to the requirements of Chapter 6 of City's Administrative Code.

5.4. Good Construction and Engineering Practices

(a) Good Construction and Engineering Practices. Once construction with respect to the Improvements has commenced, such construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake and cause its contractor to undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. Tenant, while performing any construction with respect to the Project, shall undertake commercially reasonable measures in accordance with good

construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

(b) On-Site Observations. A California licensed architect or engineer, as appropriate, shall make on-site observations of all construction of the Improvements and shall provide certificates consistent with then-prevailing professional practices when required by the City.

(c) Semi-Monthly Updates. During periods of construction Tenant shall submit to City at such times requested by City but at least twice per month, written progress reports including a tracking of the Budget in the form of a consolidated one-page summary report including, without limitation, backup detail and pending and approved change order requests showing the impact to the Budget and the estimated impact to the anticipated completion date for such Phase, and if requested by City, additional related or supporting information, in form and detail as may be required reasonably by City.

(d) Construction Draws. Tenant shall submit to City for informational purposes a copy of each draw request submitted to a financial institution or escrow account manager, sent to City no later than five (5) days after such draw request is submitted.

(e) Changes in Final Construction Documents or Construction Contract. Tenant will not make or cause to be made any material changes in the approved Final Construction Documents or the Construction Contract without the City's express prior written approval, to be granted or withheld in City's reasonable discretion. Prior to making any changes to the Final Construction Documents or Construction Contract that Tenant considers to be non-material, including substituting materials that are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, Tenant must notify the City in writing. If City, in its reasonable discretion, determines that the noticed changes are material, then the changes will be subject to the City's approval. So long as City is not capricious or acting in bad faith, City's determination of whether changes are material will be conclusive. All material changes to the Final Construction Documents must be requested in writing by Tenant and must be submitted with a written description of, and a set of plans highlighting, the requested changes, together with Tenant's contractor's good faith estimate of the increase or decrease in the cost of the Improvements and the estimated delay (if any) which would result from incorporating the proposed change. City will respond to Tenant within five (5) business days after receipt of Tenant's complete request. If City fails to respond to such request within such five (5) business day period, Tenant may submit a second written notice to City requesting City's approval or disapproval within five business (5) days after Tenant's second notice. If the City fails to respond within such second five (5) business day period, such changes will be deemed approved, provided that the original request met the requirements of this Section. If, following City's approval or deemed approval of the proposed change and estimated cost, Tenant desires to incorporate the change into the Improvements, then Tenant shall cause the Final Construction Documents to be revised and shall execute a change order for such change on Tenant's contractor's standard form therefor, and the term "Final Construction Documents" shall thereafter be deemed to refer to the plans as so revised.

5.5. Submittals After Completion

(a) As-Built Documents. Tenant shall deliver to City one complete set of as-built plans, specifications and surveys with respect to the Project Improvements within ninety (90) days after Completion of the Improvements in any Phase.

(b) Certified Construction Costs. Within ninety (90) days after Completion of the Improvements in any Phase, Tenant shall deliver to City an itemized statement of all construction costs (which costs shall include all tenant improvement work, to the extent applicable) incurred by the Tenant in connection with the construction of such Phase of the

Improvements in accordance with the final construction drawings, certified as true and accurate by an independent certified public accountant (the "Certified Construction Costs"). Tenant shall keep accurate books and records of all construction costs incurred in accordance with accounting principles generally accepted in the construction industry. Within sixty (60) days after receipt of the statement of Certified Construction Costs, City shall have the right to inspect Tenant's records regarding the construction of the relevant Improvements and the costs incurred in connection therewith. If the City disagrees with the statement of Certified Construction Costs, City may request that such records may be audited by an independent certified public accounting firm mutually acceptable to the City and Tenant, or if the Parties are unable to agree, either Party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either Party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. Tenant shall pay the entire cost of the audit, including City's costs in connection therewith. Any Mortgagee may exercise Tenant's rights under this Section 5.5 in the place and in the stead of Tenant, and City shall have the right to rely on any statements or other information provided by such Mortgagee.

5.6. Prevailing Wages and Working Conditions

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

(b) Tenant will include, and will require its subtenants, and Contractors and Subcontractors (regardless of tier), to include in any Construction Contract for Covered Construction the Prevailing Wage Requirements, with specific reference to San Francisco Administrative Code Section 23.61, and the agreement to cooperate in City enforcement actions. Each Construction Contract for Covered Construction will name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third-party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section will constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see www.sfgov.org/olse or call City's Office of Labor Standards Enforcement at 415-554-6235.

(c) Tenant will pay, and will require its subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents, to persons performing services for the following activity on the Premises as set forth in and to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Automobile Storage Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Trade Show and Special Event (as defined in

Section 21C.8), and Broadcast Services (as defined in Section 21C.9), Commercial Vehicles, Loading and Unloading for Shows and Special Events (as defined in Section 21C.10), and Security Guard Services for Events (as defined in Section 21C.11). If Tenant, or its subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City will have all available remedies set forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books, and records pertaining to the applicable services and may interview any individual who provides, or has provided, those services.

6. SURROUNDING STREET IMPROVEMENTS

Pursuant to the Existing SFWPM Lease, SFMC is obligated to complete Surrounding Street Improvements (as defined in the Existing SFWPM Lease). Tenant will cooperate with, and will not interfere with, all such efforts to complete the Surrounding Street Improvements.

7. LEASING SCHEDULE AND MARKET RENT SCHEDULE

7.1. Leasing Schedule and Market Rent Schedule.

(a) Preparation; Considerations. City acknowledges receipt of a leasing schedule with respect to the Premises (the "**Leasing Schedule**") that (i) identifies basic information about the various types of space that are or will be available for sublease, such as location, type, use and amount of space, and existing condition and equipment, and (ii) establishes a range of proposed Sublease rental rates and related Sublease terms (e.g. periodic rent increases, tenant improvement allowances and other concessions and rent inducements, term lengths, etc.) for the various types of space. At least once every five (5) years hereafter, Tenant shall prepare and submit to City for its review an updated Leasing Schedule.

(b) Submittal. Tenant shall submit each Leasing Schedule to City for review, together with Tenant's determination of Market Rent for each category of space covered by the Leasing Schedule (the "**Market Rent Schedule**"), a copy of the current Rent Roll, and a summary of the supporting data used to determine the Market Rent for the various types of space contained in the proposed Leasing Schedule. City acknowledges receipt of the Market Rent Schedule, current Rent Roll, and summary of supporting data in connection Tenant's delivery of the initial Leasing Schedule.

(c) Market Rent. For purposes of this Lease, the term "**Market Rent**" shall mean the Net Effective Rental Rate that would be payable in an arms length negotiation for space of comparable size, age, condition and functionality, suitable for the Permitted Uses, and situated either in the SFWPM or other similar, reputable, established food-oriented markets or districts, or in other comparable warehouse or distribution spaces or districts in the San Francisco Bay Area sub-markets, taking into account typical concessions. Market Rent shall include the periodic rental increases, if any, that would be applicable to the space covered in the Leasing Schedule.

7.2. City Review of Market Rent Determination.

(a) City Disapproval Right. No later than thirty (30) days after City's receipt of the Market Rent Schedule, City may provide Tenant with written notice that City disagrees with Tenant's determination of Market Rent for one or more categories of space covered by the Market Rent Schedule, together with a written explanation of the reason(s) therefor and the provisions of Section 7.3 below shall apply. City's explanation shall identify the data City used to support its own determination of Market Rent.

(b) Failure to Disapprove. If City does not disapprove the Market Rent Schedule within the 30-day period described above, Tenant may at Tenant's election provide written notice to City that no disapproval of the Market Rent Schedule was received, and provided that such notice displays prominently on the envelope enclosing such notice and the

first page of such notice, substantially the following words: "MARKET RENT APPROVAL REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED", Tenant's Market Rent determinations in the Market Rent Schedule shall be deemed approved and become effective if City does not disapprove any aspect of the Market Rent Schedule within ten (10) business days of such notice.

7.3. Disputes Regarding Market Rent Schedule.

(a) Consultation Period. During the fourteen (14) day period following City's disapproval notice (the "Consultation Period"), Tenant and City shall attempt in good faith to meet no less than two (2) times, at a mutually agreed upon time and place, to attempt to resolve any such disagreement. Tenant and City may agree in writing to extend the Consultation Period for a reasonable period to resolve their disagreement. During the Consultation Period each Party shall promptly provide the other with additional information on request.

(b) Market Rent Determination. If Tenant and City do not reach agreement as to the disputed Market Rent within the Consultation Period, the following shall apply:

i. Tenant and City shall each select one appraiser to determine Market Rent. Unless the Parties confirm different qualifications for the appraisers by the end of the Consultation Period, each such appraiser shall be an "MAI" designated appraiser with experience appraising rental rates for industrial properties in the San Francisco Bay Area sub-markets. Each appraiser shall arrive at a determination of the Market Rent and submit his or her conclusions to Tenant and City within forty five (45) days of the expiration of the Consultation Period described in Section 7.3(a).

ii. If only one appraisal is submitted within the requisite time period, then the Party that made such submittal may at such Party's election provide written notice to the other Party that no appraisal was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "APPRAISAL VALUE REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN DEEMED VALUE," the one appraisal received shall be deemed to be the Market Rent if the other Party does not provide an appraisal within ten (10) days of such notice. If both appraisals are submitted within such time period or within such 10-day notice period, and if the two appraisals so submitted differ by twenty percent (20%) or less of the higher of the two, then the average of the two shall be the Market Rent. If the two appraisals differ by more than twenty percent (20%) of the higher of the two, then the two appraisers shall immediately select a third appraiser, with the qualifications specified above, who will within ten (10) days of his or her selection, choose either Tenant's or City's appraiser's determination of the Market Rent and provide the reasoning for such selection. In determining whether the two appraisals differ by more than twenty percent (20%), the parties shall separately compare each category of space having a different rental rate, if applicable. All appraisals and determinations hereunder shall be in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the MAI. Tenant and City shall pay the cost of the appraiser selected by such Party and one-half of the cost of the third appraiser, provided that City's costs shall be reimbursed by Tenant in accordance with the provisions of Section 27.3 of this Lease.

8. ASSIGNMENT AND SUBLETTING

8.1. Assignment.

(a) Consent of City. Except as otherwise expressly permitted in Sections 8.1(b) and (c), Tenant, its successors and permitted assigns shall not Transfer any interest in this Lease, without the prior written consent of City, which consent shall not be

withheld, delayed or conditioned unreasonably by City after completion of the Project Improvements but may be withheld by City in its sole discretion prior to completion of the Project Improvements. Notwithstanding anything to the contrary set forth in this Lease, the Premises shall remain subject to this Lease regardless of any Transfer made at any time or from time to time, whether or not City approved such Transfer.

(b) Mortgaging of Leasehold. Subject to the limitations, rights and conditions set forth in Section 44 [Mortgages] hereof, Tenant shall be permitted to Transfer its interest in the Lease pursuant to a Permitted Mortgage (as defined in Article 44 below). Tenant shall have the right, without City's consent, to Transfer its interest in this Lease to a Mortgagee or to an Affiliate or designee of a Mortgagee upon a Dispossession Event (such Mortgagee or such other transferee being a "**New Tenant**"). Following any such initial transfer in connection with a Dispossession Event, any subsequent Transfer of the leasehold interest by a New Tenant (that is not made in connection with a Transfer pursuant to a Permitted Mortgage as set forth in Section 44 [Mortgages]) shall be subject to City's consent, which consent will not be unreasonably withheld, conditioned, or delayed.

(c) Conditions. Except as otherwise set forth in Exhibit H, any Transfer described in Section 8.1(a) is further subject to the satisfaction of the following conditions precedent, each of which is hereby agreed to be reasonable as of the date hereof (the "**Transfer Conditions**"):

i. Any proposed transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant (including, without limitation, the provisions of Section 9 [and Section 46.1(c)] hereof).

ii. The Transfer is made for a legitimate business purpose and not to deprive City of the benefits of this Lease. It is the intent of this Lease, to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no Transfer of this Lease, or any interest therein, however effected or occurring, and whether voluntary or involuntary, by operation of law or otherwise, foreseen or unforeseen, shall operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises that City would have had, had there been no such Transfer.

iii. All instruments and other legal documents effecting the Transfer shall have been submitted to City for review, including the agreement of sale, transfer, or equivalent, and City shall have approved such documents which approval shall not be unreasonably withheld, delayed or conditioned.

iv. Tenant shall have complied with the provisions of Section 8.1(d) below.

v. There shall be no Event of Default or Unmatured Event of Default on the part of Tenant or any of the other documents or obligations to be assigned to the proposed transferee, or if not cured, Tenant or the proposed transferee have made provisions to cure the Event of Default, which provisions are satisfactory to City in its sole and absolute discretion.

vi. The proposed transferee (A) has demonstrated to City's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned, (B) is not forbidden by applicable Law from transacting business or entering into contracts with City; (C) is subject to the jurisdiction of the courts of the State of California; and (D) is not in default with respect to any obligations that it has to City.

vii. The proposed Transfer is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion.

viii. Tenant deposits with City sufficient funds, in City's reasonable opinion, to reimburse City for its legal expenses to review the proposed assignment.

(d) Delivery of Executed Assignment. Subject to Section 44 [Mortgages], no Transfer of any interest in this Lease made with City's consent, or as herein otherwise permitted, will be effective unless and until there has been delivered to City, within thirty (30) days after Tenant entered into such Transfer, an executed counterpart of the agreement affecting the Transfer containing an agreement, a memorandum of which shall be in recordable form, executed by Tenant and the transferee, wherein and whereby such transferee assumes performance of all of the obligations on Tenant's part to be performed under this Lease (except as otherwise provided in Section 8.1(j) below), and the other assigned documents to and including the end of the Term (provided, however, that the failure of any transferee to assume this Lease, or to assume one or more of Tenant's obligations under this Lease, will not relieve such transferee from such obligations or limit City's rights or remedies under this Lease or under applicable Law). The form of such instrument of Transfer shall be subject to City's approval, which approval shall not be unreasonably withheld, delayed or conditioned.

(e) No Release of Tenant's Liability or Waiver by Virtue of Consent. Upon occurrence of a Transfer of Tenant's entire interest in this Lease, approved by City under Sections 8.1(a), (c) and (d) hereof, Tenant will be released from liability solely for obligations arising under this Lease on or after the date of such assignment. The consent by City to an assignment hereunder is not in any way to be construed to relieve any transferee of Tenant from its obligation to obtain the express consent in writing of City to any further Transfer.

(f) Reports to City. At such time or times as City may reasonably request, Tenant must furnish City with a statement, certified as true and correct by an officer of Tenant, setting forth all of the constituent members of Tenant and the extent of their respective holdings, and in the event any other persons or entities have a beneficial interest in Tenant, their names and the extent of such interest. Tenant's furnishing of such information, however, will not relieve Tenant from liability for its failure to comply with the provisions of this Lease.

(g) Determination of Whether Consent is Required. At any time Tenant may submit a request to City for the approval of the terms of a Transfer of this Lease (all of the foregoing being collectively referred to herein as a "**Proposed Transfer**") or for a decision by City as to whether in its opinion a Proposed Transfer requires City consent under the provisions of this Section 8.1. Within thirty (30) days of the making of such a request and the furnishing by Tenant to City of all documents and instruments with respect thereto as shall be reasonably requested by City, City shall notify Tenant in writing of City's approval or disapproval of the Proposed Transfer or of City's determination that the Proposed Transfer does not require City's consent. If City disapproves the Proposed Transfer, or determines that it requires the consent of City, as applicable, it must specify the grounds for its disapproval, its reason that consent is required, or both, as applicable.

(h) Scope of Prohibitions on Assignment. The prohibitions provided in this Section 8.1 will not be deemed to prevent (i) the granting of Subleases so long as such subletting is done in accordance with Section 8.3, or (ii) the granting of any Permitted Mortgage.

(i) Assignment to Accommodate New Markets Tax Credit Financing. City acknowledges that Tenant may desire to convey its interest in this Lease, in the form of a sublease or assignment ("**Tax Credit Assignment**") to a qualified active low-income community business Affiliate of Tenant ("**QALICB**") for the purpose of taking advantage of New Markets Tax Credits financing. In such event, Tenant may further desire to sublease back from the QALICB the interest in this Lease assigned pursuant to the Tax Credit Assignment. If such

arrangement does not involve Tenant's sublease back of all of the interest in the Lease that QALICB assumed pursuant to the Tax Credit Assignment, then, pursuant to the Tax Credit Assignment, the QALICB shall assume all rights, duties, obligations and interest of Tenant under the Lease. No such conveyance to facilitate New Markets Tax Credit financing shall be subject to the terms of Section 8.3, but shall instead be subject to the terms of this Section 8.1. The City Administrator may amend any provision in this Article 8 if the City Administrator determines, in consultation with the City Attorney, that such amendment is necessary or desirable to facilitate transactions required for the Premises to benefit from the use of New Markets Tax Credits and furthers the City's interest in the operation of the Premises, and does not materially reduce the rent or materially increase the liabilities or obligations of City under this Lease and is in compliance with all applicable laws, including the City's Charter.

(j) Participation in Proceeds from Sale of Lease. Except as provided in Section 8.1(i) or in connection with or at any time following a Dispossession Event, upon an assignment, sale, or other Transfer of Tenant's interest in this Lease, Tenant shall pay to City or, at City's election, to the Project Development Account, as Additional Rent hereunder, all sums paid to Tenant with respect to the leasehold interest in this Lease after subtracting expenses for verifiable, reasonable and customary brokerage commissions and other expenses actually paid or obligations incurred by Tenant in connection with the Transfer.

8.2. Assignment of Rents.

Tenant hereby assigns to City all rents and other payments of any kind, due or to become due from any present or future Subtenant; provided, however, the foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Article 44. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing assignment, Tenant shall have the right to collect, use for any purpose (subject to the terms of this Lease) and retain the balance thereof, of all such assigned rents and other payments of any kind, due or to become due from any present or future Subtenant, at all times prior to the commencement of legal proceedings to terminate this Lease due to an Event of Default. Subject to the rights of any Mortgagee City shall apply any net amount collected by it from such Subtenants (after the payment of Operating Expenses required for the on-going operation of the SFWPM) to the payment of Rent due under this Lease or for the payment of any other amounts under this Lease owed to City by Tenant.

8.3. Subletting by Tenant.

(a) Subletting. Subject to this Section 8.3, the conditions and provisions of which are hereby agreed to be reasonable as of the date hereof, Tenant has the right to enter into or amend Subleases from time to time that, by their terms, are subject to and in compliance with the provisions of this Lease without the necessity of obtaining the consent of City, to such persons or entities and upon such terms and conditions which are consistent with the provisions of this Lease. Except as specifically provided in this Section 8.3, Tenant shall not enter into a Sublease that is inconsistent with the then current Leasing Schedule or with the Sublease requirements set forth in this Section 8.3, including, without limitation, Section 8.3(b).

(b) Requirements for Conforming Subleases Not Requiring Consent. In addition to any other requirement set forth in this Section 8.3, the following conditions must be satisfied with respect to any Sublease for which City's consent shall not be required: (A) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses, (B) the Subtenant and the Sublease are expressly subject to all the terms and provisions of this Lease, (C) the term of the Sublease, including any extension options, shall not exceed twenty (20) years and does not extend beyond the term of this Lease, (D) there exists no Event of Default or Unmatured Event of Default under the Lease, (E) the Subtenant indemnifies City for any loss or damage arising in connection with the Sublease in form set forth in Exhibit E,

(F) Tenant remains liable under this Lease, (G) the Subtenant provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City, (H) the proposed Sublease is pursuant to a bona fide arms-length transaction as reasonably determined by City based upon information reasonably provided to City and is not with an Affiliate of Tenant, and (I) the Sublease includes the provisions set forth in Exhibit E. The foregoing conditions are sometimes referred to as the "Sublease Conditions."

(c) Requirements Regarding Market Rent. Tenant shall use good faith efforts to achieve Market Rent in Subleases whenever possible and to enter into Subleases with terms that are reasonable in light of the market conditions existing at the time of such Sublease. Notwithstanding the above, all Subleases shall have a Net Effective Rental Rate that is not less than ninety percent (90%) of Market Rent for the applicable category of space, as shown on the then-current Market Rent Schedule unless Tenant expressly proposes, and City approves, an Acknowledged Non-Conforming Sublease, as set forth in Section 8.3(g) below.

(d) Pre-Execution Deliveries to City. Prior to executing a Sublease, Tenant shall submit a summary of the key terms of the proposed Sublease (i.e., location, proposed use, square footage of the demised premises, length of term, rental rate, tenant improvement allowances and leasing concessions) to City together with a calculation of the Net Effective Rental Rate for such proposed Sublease for review by the City for conformance with the then-current Market Rent Schedule and Permitted Uses. If the Net Effective Rental Rate for the proposed Sublease is less than Market Rent for the applicable category of space, summary shall contain an appendix that describes why Tenant determined that the proposed Net Effective Rental Rate is appropriate for such category of space. If the Net Effective Rental Rate is less than ninety percent (90%) of Market Rent for such category of space, as shown on the then-current Market Rent Schedule, then such proposed Sublease shall be subject to the provisions of Section 8.3(g) below.

(e) Nonconformance with Permitted Uses or Other Sublease Conditions. If City determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease, as described in Section 8(g) below) is or may be inconsistent with the Permitted Uses or any other Sublease Condition, then City may, no later than ten (10) business days after receipt of the summary of key terms:

i. disapprove such Sublease, in its sole discretion, by providing written notice to Tenant describing the claimed inconsistencies; or

ii. request additional information from Tenant regarding the reason(s) why the proposed Sublease should be approved despite such inconsistency(ies).

(f) Nonconformance with Minimum Rent Requirement. If City determines that a proposed Sublease (other than an Acknowledged Non-Conforming Sublease) has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space, as shown on the then-current Market Rent Schedule, then City may, no later than ten (10) business days after receipt of the summary of key terms, notify Tenant that Tenant must resubmit such proposed Sublease as an Acknowledged non-Conforming Sublease in accordance with the provisions of Section 8.3(g) below.

(g) Acknowledged Non-Conforming Subleases. In order to meet certain goals of this Lease, including the maintenance of a diverse and healthy mix of Subtenants, it may be necessary or desirable, from time to time, for Tenant to enter into particular Subleases that are not consistent with the Permitted Uses or have a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space (each, an "**Acknowledged Non-Conforming Sublease**"). If Tenant proposes to enter into an Acknowledged Non-Conforming Sublease, then Tenant shall submit, in addition to the summary of key terms required under Section 8.3(d) above, a written explanation of the reason(s) why the proposed

Acknowledged Non-Conforming Sublease should be approved despite such inconsistency(ies). Such reasons may include, but shall not be limited to, evidence that then-current Market Rent is less than the applicable rent set forth in the Market Rent Schedule.

i. City may, in its sole discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a use other than a Permitted Subtenant Use by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

ii. City may, in its reasonable discretion, disapprove any proposed Acknowledged Non-Conforming Sublease that proposes a rental rate that is inconsistent with the then current Market Rent Schedule by written notice to Tenant given no later than ten (10) business days after receipt of the summary of key terms. If City elects to disapprove the proposed Sublease, then City shall provide a written explanation of the reason(s) therefor.

iii. City may, in its reasonable discretion, request additional information from Tenant regarding the reason(s) why the Acknowledged Non-Conforming Sublease should be approved.

(h) Cooperation. Tenant and City shall use good faith efforts to promptly resolve any dispute about whether a Sublease is inconsistent with the Permitted Uses or other Sublease Conditions or has a Net Effective Rental Rate that is less than ninety percent (90%) of Market Rent for the applicable category of space.

(i) No Execution of Subleases Disapproved or Subject to Information Requests. Tenant shall not enter into any proposed Sublease for which Tenant has timely received a disapproval notice or a request for additional information unless City subsequently approves such proposed Sublease in writing.

(j) Deemed Approval. If City fails or declines to respond to Tenant within the applicable ten (10) business day period described above, then Tenant may at Tenant's election provide written notice to City that no disapproval was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "SUBLEASE APPROVAL REQUEST FOR SFWPM. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Sublease shall be deemed approved if City does not disapprove the Sublease within ten (10) days of such notice.

(k) Post-Execution Deliveries to City; Rent Rolls. Tenant shall provide City with a copy of each Sublease (and each assignment of Sublease and sub-Sublease) within ten (10) business days after execution, amendment or extension thereof, respectively, and, concurrently with delivery to City of the new, amended or extended Sublease and upon the termination of each Sublease, Tenant shall provide City with a current rent roll, which shall summarize key terms of each Sublease, show current vacancies, and include such other matters as reasonably required by City (a "**Rent Roll**")

8.4. Reasonable Grounds for Withholding Consent.

Where a Transfer or Sublease requires City's reasonable consent, it shall be reasonable (1) for City to withhold its consent if Tenant has not supplied sufficient information (including supplemental materials reasonably requested by City) to enable City to make a reasonable determination whether any applicable Transfer Condition or Sublease Condition has been satisfied, and (2) if Tenant is then in default of any of its obligations under this Lease, for City to condition its consent on the cure of such defaults as City may specify in its notice conditionally approving such Transfer or Sublease.

8.5. Non-Disturbance of Subtenants, Attornment, Relevant Sublease Provisions.

(a) Conditions for Non-Disturbance Agreements. From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that in the event of any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). All Non-Disturbance Agreements shall comply with the provisions of this Section 8.5(a) and of Section 8.5(b). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of Section 47.2 [Non-Discrimination] and Section 47.5 [Tobacco Product Advertising Prohibition]; (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non-Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement; and (v) the Subtenant shall have delivered to City an executed estoppel certificate certifying: (A) that the Sublease, including all amendments, is attached thereto and is unmodified, except for such attached amendments, and is in full force and effect, as so amended, or if such Sublease is not in full force and effect, so stating, (B) the dates, if any, to which any rent and other sums payable thereunder have been paid, and (C) that the Subtenant is not aware of any defaults which have not been cured, except as to defaults specified in such certificate. In addition, with respect to Subleases having both a subleased premises of more than fifteen thousand (15,000) square feet and having a term of more than ten (10) years (including options to extend the term), City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is entered into; provided, however, that City acknowledges and agrees that the rental terms of Subleases that propose a Net Effective Rental Rate of at least ninety percent (90%) of Market Rent, as set forth in the most recently approved Market Rent Schedule, with an adjustment of rent at or before the end of the initial ten (10) years to at least ninety-five percent (95%) of then-Market Rent, shall be deemed reasonable and acceptable for purposes of City's review under this Section 8.5(a). City shall in no event be required to enter into a Non-Disturbance Agreement with respect to any period beyond the scheduled expiration of the Term hereof. Nothing in this Section 8.5 shall preclude City in its sole and absolute discretion from granting non-disturbance to other Subtenants.

(b) Form of Non-Disturbance Agreement. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that (i) the Subtenant agrees that in the event this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to City (provided City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and (ii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City, provided, however that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid, shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

(c) Non-Disturbance Agreement for Existing Subtenants. If City delivered a Non-Disturbance Agreement to a subtenant with a sublease under the Existing SFWPM Lease (an "**Existing Tenant**") who remains in possession after the Commencement Date of this Lease, then City shall promptly enter into with that Existing Subtenant (i) a Non-Disturbance Agreement with respect to its Sublease under this Lease substantially similar in form to its existing Non-Disturbance Agreement or (ii) an amendment to such existing Non-Disturbance Agreement stating that such agreement shall apply to that Existing Subtenant's Sublease under this Lease. Tenant shall, upon City's request, provide reasonable assistance to City in obtaining Non-Disturbance Agreements from subtenants.

9. OPERATIONS AND MANAGEMENT

9.1. Operating Standards.

(a) Tenant shall operate or cause Manager to operate the Premises in a commercially reasonable manner consistent with (i) achieving the Project Goals, (ii) establishing Sublease rental rates in accordance with the requirements of Article 7, (iii) maximizing other Gross Revenues, subject to prevailing market conditions and circumstances, and (iv) maintaining a commercially reasonable cost structure that permits the tenant under the Existing SFWPM Lease to construct the Project in accordance with the provisions of the Existing SFWPM Lease, pay all reasonable Operating Expenses, meet the debt service requirements and coverage ratios required by lender(s) for the Premises, if applicable, and maintain the Accounts described in Section 9.3 below.

(b) Tenant shall be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants, to provide), such services as may be necessary or appropriate to achieve and maintain first class operating standards, including, but not limited to, (a) routine and extraordinary repair and maintenance of the Improvements, (b) utility services, (c) cleaning, janitorial, extermination, and trash removal, (d) landscaping and groundskeeping, (e) security services, (f) marketing the Premises, selection of Subtenants and negotiation of Subleases, (g) enforcement of reasonable rules and regulations for the conduct of Subtenants and others present on the Premises, (h) collection of rents and other receivables and preparation of statements, (i) use reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants with the terms, covenants and conditions of their Subleases (i) placement of insurance and payment of premiums and securing certificates of insurance from Subtenants and persons working on the Premises, and (j) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

9.2. Management.

(a) Management Agreement or Manager; Replacement. Tenant, at its election, shall either manage the Premises and negotiate and enter into Subleases by its staff or shall engage one or more third-party entities to manage and market the Premises. Tenant shall manage the Premises, whether directly or indirectly, in a commercially reasonable manner consistent with comparable produce markets within the United States and consistent with (a) best practices of facility management as defined by the International Facility Management Association (IFMA), and (b) best practices of transaction management as defined by the International Right of Way Association (IRWA). The managing employee or agent (the "**Manager**") must have a demonstrated ability to manage facilities like the Premises. If City determines in its reasonable judgment that the Premises is not being operated, managed or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the

Premises. Tenant may elect, by written notice to City, to cause the Manager to cure the defects in performance, in which case such cure must begin as soon as practicable and in all events within forty five (45) days after City's notice and must be completed within seventy-five (75) days after the date of City's notice. If Tenant does not provide timely written notice of Tenant's election to cause the Manager to cure the defects in performance, or if City reasonably determines that the Manager has not cured the defects at the end of the cure period, City, at City's election, may provide Tenant with notice that City will require the selection of a replacement Manager, and City and Tenant shall thereupon work together collaboratively to select a third-party replacement Manager. City shall not unreasonably withhold its consent to a proposed replacement Manager with the requisite skill, experience, and demonstrated ability to manage facilities like the Premises. If City and Tenant do not agree on a replacement Manager within ninety (90) days after the date of City's notice, then City shall have the sole right to make the selection (provided, however, that the Manager selected by City shall possess the requisite skill, experience and demonstrated ability to manage facilities like the Premises, and Tenant shall engage the Manager selected by City on commercially reasonable terms. If applicable, Tenant shall promptly seek approval of any proposed substitute Manager by any Mortgagee whose consent is required. Upon approval of the Manager by City and all other entities with approval rights, Tenant shall promptly dismiss the then Manager, and shall appoint the approved substitute Manager. Two (2) years following engagement of the third party Manager selected by City, provided that Tenant is not then in default under this Lease, Tenant shall have the right to (i) select a new third party management entity, provided that City shall have the right to reasonably disapprove Tenant's selection if City determines by written notice to Tenant setting forth the reasons therefor, that Tenant's selection lacks the requisite skill, experience or demonstrated ability to manage facilities like the Premises, or (ii) resume direct management of the Premises, provided that if the Manager that was previously replaced under this Section was a direct employee of Tenant, Tenant first demonstrates to the satisfaction of City that Tenant can directly, through the proposed Manager employee, properly operate, manage and sublease the Premises in accordance with the requirements and standards of this Lease notwithstanding the earlier deficiency in performance. Any contract for the operation or management or leasing of the Premises entered into by Tenant (a "**Management Agreement**") shall provide that such Management Agreement can be terminated as set forth above without penalty. No act or omission of the Manager pursuant to the Management Agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease.

(b) Preparation and Submittal of Reports. Tenant shall prepare or cause to be prepared and submitted to City all budgets, financial reports, inspection reports and other materials required by this Lease, including, without limitation, the Inspection Report described in Section 16.1(b) below and the annual submittal of the insurance provision of Tenant's then-standard Sublease required by Section 4 of Exhibit E, together with quarterly reports of claims filed against Tenant, 30/60/90 day delinquency reports of Subtenants, and copies of default notices from Tenant to Subtenants.

(c) CAM Agreement. As of the Effective Date of this Lease, Tenant shall enter into a common area maintenance agreement ("CAM Agreement") with SFMC, its successor in interest, or its designee, approved by City. The CAM Agreement shall address such issues related to the harmonious operations of the SFWPM and the various tenants and subtenants thereof, and shall be substantially in the form attached hereto as Exhibit F. The purpose of the CAM Agreement is to maintain conditions and operations on the Premises and within the larger SFWPM that promote the successful maintenance of a wholesale produce market within the City.

9.3. Financial Operations and Reporting

(a) Establishment and Maintenance of Operating and Reserve Accounts.

i. Generally. Tenant shall establish, fund and maintain the bank accounts required to fulfill its obligations under this Section 9.3(a) (collectively, the "**Accounts**") with one or more depository institutions reasonably acceptable to City and approved by City in writing. The following depository institutions shall be deemed approved hereunder: (i) any institution approved by the Controller for deposit by City of City funds, (ii) any institution in which Tenant's deposits will be afforded full FDIC deposit insurance coverage for entire balance in the accounts held in such institution, and (iii) as to any Reserve Account (as defined in Section 9.3(a)(vii), below) required by a Community Development Entity (as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended) in connection with New Markets Tax Credit financing, any depository institution making an investment in such Community Development Entity. Tenant shall respect any limit on the size of the funds held in any account(s) as shall be established from time to time by the Controller for City funds with the goal of ensuring that Tenant is afforded full FDIC deposit insurance coverage for the deposits in such account(s). Any interest accruing on the funds in any Account shall be added to such Account. Funds from the operation of the Premises shall not be commingled with other funds. Tenant shall cause each person who has authority to withdraw or transfer funds from any Account to be bonded or otherwise insured.

ii. Approval Required for Certain Payments. Unless and until there is a Dispossession Event, Tenant must obtain the approval of City's Director of Property prior to issuing checks or other instruments of withdrawal drawn against any Account in amounts greater than or equal to $100,000.00, and the approval of City's Director of Property and Controller prior to issuing checks or other instruments of withdrawal drawn against any Account in amounts greater than or equal to $250,000.00 (such limits, the "**Payment Caps**"), including payments made to construct or maintain facilities under any Separate Parcel Lease that have not already been included in an approved Budget, but excluding payments (i) in favor of the San Francisco Tax Collector, (ii) to utility operators in the event Tenant provides certain central utilities (e.g., central refrigeration); (iii) from the Project Development Account made in accordance with an approved Budget; (iv) from any Account other than the Project Development Account for the construction or maintenance of facilities under a Separate Parcel Lease made in accordance with an approved Budget, provided that the Separate Parcel Tenant provides quarterly accounting reports to City describing the actual costs and expenditures and status of construction, and if applicable, proposed financing plan to account for unexpected costs, in a form approved by City; or (v) made in the normal course in favor of any Mortgagee, which shall not be subject to the Payment Caps. The Payment Caps shall each be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "**Index**"), which is published most immediately preceding the anniversary of the Commencement Date over the Index in effect on the Commencement Date.

iii. Operating Account. Tenant must deposit all Gross Revenues promptly after receipt into a segregated depository account (the "**Operating Account**") established exclusively for the operation of the SFWPM.

iv. Operating Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Operating Reserve Account**") from which Tenant shall withdraw funds solely to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, insurance premiums or other expenses which are payable other than monthly, abnormally high vacancies and other expenses that vary seasonally.

v. Project Development Account. SFMC has established and maintains a separate depository account (the "**Project Development Account**") for the payment of future development costs. Unless and until there is a Dispossession Event, to the extent that funds are not required by Tenant to pay Financing costs, Operating Expenses, Capital Repairs and Replacements (as defined below) or for other purposes or costs approved by City, Tenant shall place such excess funds into the Project Development Account.

vi. Replacement Reserve Account. Tenant shall establish and maintain a separate depository account (the "**Replacement Reserve Account**") in the amount reasonably adequate for the payment of all reasonably anticipated capital repairs and improvements which are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises which are subject to wearing out during the useful life of the buildings on the Premises ("**Capital Repairs and Replacements**"). The funds in the Replacement Reserve Account shall be used by Tenant only for Capital Repairs and Replacements, and shall not be used to fund Project Development Costs or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City's sole discretion. The insufficiency of any balance in the Replacement Reserve Account shall not abrogate Tenant's obligation to fulfill all preservation and maintenance covenants in this Lease.

vii. Other Reserve Accounts. In addition to the Operating Reserve Account and the Replacement Reserve Account, Tenant shall establish and maintain a reserve account for tenant improvements, leasing commissions and related costs to be incurred from time to time to enter into Subleases of the Premises (the "**Leasing Reserve Account**") and such other reserve accounts as shall be advisable for the prudent operation of the Premises in Tenant's good faith judgment, including but not limited to reserve accounts required by a Community Development Entity in connection with New Markets Tax Credit financing. The Operating Reserve Account, Replacement Reserve Account, Leasing Reserve Account and any other reserve account established in connection with the operation of the Premises is sometimes referred to herein as a "**Reserve Account**" or collectively as the "**Reserve Accounts**."

viii. Purpose of Reserve Accounts: Funding Levels and Limits. Tenant shall fund each Reserve Account in the amount reasonably adequate to pay for all reasonably anticipated costs to be paid from such account, consistent with the practices of other prudently, well-managed produce markets, industrial and distribution centers, and food processing facilities in the San Francisco Bay Area of a like age and quality. City's Controller may review the adequacy of deposits to the Replacement Reserve Account periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in any Reserve Account is insufficient to fund the cost of the likely expenditures which will be required to be made from such account, City may require an increase in the amount of monthly deposits into such Reserve Account (subject to the rights of Mortgagees) upon thirty (30) days prior written notice to Tenant, and Tenant shall thereupon make such adjustments. City's Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly deposits into such Reserve Accounts.

(b) Contract Standards; Contracts with Related Parties. When entering into contracts, issuing purchase orders or otherwise arranging for goods or services for the operation of the Premises, Tenant shall attempt to secure the best price reasonably obtainable. Tenant shall not enter into any agreement or arrangement for the furnishing to Tenant of goods or services with any person or entity related to or affiliated with Tenant, Manager or any Subtenant, unless such agreement or arrangement has been approved in advance by City's City Administrator in writing after full disclosure of such relationship, which approval shall not be unreasonably withheld if Tenant demonstrates that the sums payable under the proposed contracts do not exceed the amounts normally payable for similar goods and services under similar circumstances and that the agreement is otherwise consistent with an arms-length transaction.

(c) Books and Records. Tenant shall keep accurate books and records in accordance with the standards of financial accounting of the Governmental Accounting Standards Board, and maintain such books and records for a period of not less than four (4) years. "**Books and Records**" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises. Tenant shall maintain a separate set of accounts, including bank accounts, to allow a determination of expenses incurred and revenues generated. If Tenant operates all or any portion of the Premises through a third-party Manager, Tenant shall cause such third-party Manager to adhere to the foregoing requirements regarding books, records and accounting principles. Tenant shall maintain complete and accurate accounting records of all construction costs for the Project for a period of no less than four (4) years after the date of the issuance of the last certificate of completion for the Project. Promptly (but in no event exceeding thirty (30) days) following a written request from City, Tenant shall make requested Books and Records (or copies thereof) available for inspection and audit by City during customary business hours at a location within the City reasonably satisfactory to City.

(d) Reports. Tenant shall deliver to City annually (and, during construction of any Improvements, quarterly) a statement from the depository institutions in which the Accounts are held, showing the then current balance in such Accounts and any activity on such Accounts which occurred during the immediately prior Lease Year. In the event that Tenant has withdrawn funds from any Reserve Account within the immediately prior Lease Year (or quarter, if applicable), Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City.

(e) Inspection and Audit. City shall have the right to inspect Tenant's Books and Records at any time on notice to Tenant, and shall have audit rights as described in Section 12.2.

(f) Security Interest. Tenant hereby grants to City a lien and security interest in the Accounts to secure the performance by Tenant of all of Tenant's obligations under this Lease. Tenant shall execute, deliver, file and refile, at Tenant's expense, any instruments, financing statements, continuation statements, or other security agreements that City may require from time to time to confirm the lien granted herein. Tenant hereby warrants and represents that the Accounts shall be free and clear of all other liens and encumbrances except only liens granted to a Mortgagee as permitted under Article 44. Tenant shall execute from time to time such additional documents as may be reasonably necessary to effectuate and evidence such lien granted hereby if requested by City, including, without limitation, a security agreement and a depository account control agreement. Subject to the rights of a Mortgagee of which City has been made aware in writing, upon the occurrence of either an Event of Default, or the expiration or earlier termination of this Lease, City shall have the immediate right of possession of the funds in the Accounts. City hereby subordinates its interest in the Accounts to the interests of a Mortgagee of which City has been made aware in writing, which subordination is self-operative. The requirements set forth in this Section are the minimum requirements imposed on Tenant in connection with the Accounts and City acknowledges that a Mortgagee may impose the same or further requirements with respect thereto in such Mortgagee's sole discretion, including, without limitation the requirement that all Accounts be established with and the funds held therein be disbursed by Mortgagee, and that sums deposited with or at the direction of a Mortgagee for the purposes for which a Reserve Account has been established shall be deemed deposited in such Reserve Account to avoid Tenant being required to maintain duplicative reserves.

(g) Joint Control Agreement. At any time upon the recommendation of the City Controller, City may require by sixty (60) days advance written notice to Tenant that Tenant cause the depositary bank in which one or more Accounts are held to enter into a "joint control

agreement," on commercially reasonable terms and conditions, in which such depositary bank agrees that it will require the consent of City in the circumstances described in Section 9.3(a)ii.

(h) Transfer of Project Development Account to City. The Project Development Account will be established in a manner which permits transfer to City or City's designee upon notice from City to the depository institution that City elects to cause the transfer of such account due to a prolonged delay in construction of Project Improvements, subject to the rights of Mortgagees and other provisions set forth in Section 44 [Mortgages].

(i) Transfer of Accounts at Lease Expiration or Termination. Upon the expiration or earlier termination of this Lease all funds in the Accounts shall be transferred to City or City's designee.

10. INTENTIONALLY DELETED.

11. INTENTIONALLY DELETED.

12. RENT

12.1. Tenant's Covenant to Pay Rent; Base Rent.

(a) During the Term of this Lease, unless and until there is a Dispossession Event, Tenant shall account for all Gross Revenues and Operating Expenses under the terms and conditions set forth below and shall pay Rent for the Premises to City at the times and in the manner provided in this Article 12. Unless and until there is a Dispossession Event, Tenant will account for Gross Revenues and Operating Expenses for the Premises together with Gross Revenues and Operating Expenses for the Premises and all other portions of the SFWPM that are subject to separate leases with the City. The intent is to allow Tenant to operate the SFWPM as a single, cohesive wholesale produce market, notwithstanding separate leases with the City for discrete portions thereof. Notwithstanding the foregoing, Tenant and City acknowledge that Tenant may be required by a Mortgagee to maintain separate records of Gross Revenues and Operating Expenses for the Premises.

(b) Commencing on the Commencement Date, on or before the fifteenth (15th) day of each calendar month, unless and until there is a Dispossession Event, Tenant shall pay Base Rent to City in an amount equal to Net Revenues for the previous calendar month. The City will deposit all Base Rent into the Project Development Account under the Existing SFWPM Lease. At Tenant's request and to the extent approved by the Director of Property in consultation with the City Controller, in his or her reasonable discretion, Tenant may from time to time be allowed to prepay some or all of the debt under one or more financing instrument, and in such case such prepayments shall be treated as Debt Service for the purpose of computing Base Rent; provided, however, that nothing in this Section 12.1 shall prohibit Tenant from prepaying debt in the normal course in connection with any refinancing of existing debt. Notwithstanding the foregoing or anything else in this Lease to the contrary, upon a Dispossession Event, Base Rent for the remainder of the Term shall be paid on or before the first (1st) day of each calendar month in an amount in accordance with the Base Rent schedule attached as Exhibit G. If a Dispossession Event does not occur on the first of a calendar month, then the New Tenant shall pay a pro rata share of Base Rent for the month in which the Dispossession Event occurs (calculated using the Base Rent for the first full month of the Term following the Dispossession Event). Upon a Dispossession Event, Section 12.2 shall not apply and City will place the Base Rent into the Project Development Account.

12.2. Net Revenue Payments.

(a) Definitions. The following terms shall be defined as set forth below.

i. "**Capital Grant Funds**" means all grant funds received by Tenant to pay any portion of the Project Development Costs. (The Parties acknowledge that operational

grant funds will be treated as Gross Revenue unless the provisions of the grant dictate otherwise.)

ii. "**Debt Service**" means debt service, including, without limitation, regular payments of interest, amortization of principal, and all financing costs, points and fees actually paid by Tenant on any loans, Qualified Low-Income Community Investments under the New Markets Tax Credits Program, or any other financing vehicle obtained by Tenant in connection with the development of the Project, but excluding any voluntary prepayment of amounts due thereunder, except as approved by City in accordance with the provisions of Section 12.1.

iii. "**Gross Revenues**" means the following items determined on a cash basis in accordance with GAAP: all payments, revenues, income, rental receipts, common area maintenance (CAM) fees, gate receipts, parking charges, proceeds and amounts of any kind whatsoever actually received by Tenant or on behalf of Tenant arising from Tenant's leasehold interest in the Premises, including Subtenant Rent, and third party fees, loan proceeds, checks returned for insufficient funds, refunds and payments received made in the ordinary course of business, proceeds from casualty and public liability insurance, condemnation awards payable for Tenant's business, proceeds from returns to or exchanges with suppliers, shippers, or vendors, and security deposits received from Subtenants, except to the extent and as they are applied to Subtenants' obligations under the Subleases. Except in the event of a Dispossession Event, Gross Revenues include any payments made to Tenant or any Separate Parcel Tenant under any Separate Parcel Lease and any related agreements.

iv. "**Net Revenues**" means Gross Revenues less: (A) Operating Expenses and (B) Debt Service.

v. "**Operating Expenses**" means expenses, fees and costs of any kind or nature whatsoever, incurred in connection with the operation, management, ownership, insurance, maintenance or repair of the Premises paid for by Tenant with no reimbursement from any subtenant, licensee, other occupant of the Premises or from grantors, donors or any other entity or person. Operating Expenses shall include, without limitation (A) the cost of utilities (including any deposit); (B) the cost of security services; (C) the cost of janitorial services; (D) the cost of marketing the Premises (including advertising, reletting, lease inducements, lease buyouts, rent subsidies, moving expenses, tenant improvements, LEED or similar "green building" consultants engaged by Tenant to assist Subtenants in connection with tenant improvements, fees and other costs incurred in connection with any application, registration or certification of Subtenants' Sublease premises with any green building rating organization (e.g., USGBC) and hazardous materials remediation or restoration, if applicable; (E) insurance premiums for all insurance policies carried by Tenant on the Premises or in connection with the use or occupancy thereof; (F) wages, salaries, payroll taxes and other labor costs and employee benefits; (G) management fees, broker commissions and fees and common area maintenance (CAM) expenses; (H) accounting, consulting and legal expenses; (I) deposits into the Operating Reserve Account, Replacement Reserve Account, and any other Reserve Account other than the Project Development Account for the payment of Debt Service, reasonable re-tenanting reserves, and reasonable reserves for insurance premiums, property taxes and other expense items; (J) required permits, certificates and licenses; (K) any and all taxes, impositions and/or assessments levied against or charged to the Premises or Tenant's interest therein pursuant to this Lease or any covenants, conditions and restrictions, easements, or access and maintenance agreements now or hereafter of record; (L) refunds owed to Subtenants for excess repayment of operating expenses or common area maintenance (CAM) charges; and (M) Tenant's Organizational Expenses (subject to the limits set forth in Section 12.2(a)vi below). The computation of Operating Expenses shall be made in accordance with GAAP. Such expenses shall be reasonable and no higher than market rates, and all dealings with affiliates, board members and employees of Tenant shall be disclosed to the City in the Annual Statement. Except in the event of a Dispossession Event, Operating Expenses

include any expenses incurred by Tenant or any Separate Parcel Tenant under any Separate Parcel Lease and any related agreements.

vi. "**Tenant's Organizational Expenses**" means the reasonable costs of operating the entity which is Tenant. Tenant shall operate the entity in a manner that is consistent with best practices for non-profit organizations using commercially reasonable efforts to operate in a manner that is efficient, cost effective and consistent with the Tenant's mission, corporate purposes, applicable Laws and this Lease, at all times avoiding lavish, extravagant or excessive expenditures.

vii. "**Project Development Costs**" means all costs and expenses incurred by Tenant to develop all Phases of the Project including related off-site improvements, including, without limitation, predevelopment, entitlement, design, planning, construction, financing, and professional services costs, abatement of hazardous materials, and any other item that is reasonably necessary to complete the Project.

viii. "**Project Development Account**" has the meaning set forth in Section [1.68]

(b) Agreement to Pay; Determination. Base Rent shall be payable monthly in arrears in accordance with the following terms and conditions. On or before the tenth (10th) day of each full calendar month of the Term of this Lease following the Commencement Date and the tenth (10th) day of the calendar month immediately following the expiration or termination of this Lease, Tenant shall deliver to City a statement certified as correct by an officer of Tenant and otherwise in form satisfactory to City, showing Net Revenue and deposits into the Project Development Account during the last preceding calendar month, as required to determine the Base Rent, if any, payable for such calendar month (a "**Monthly Income Statement**"). The Monthly Income Statement shall also include the current balance of the Accounts, and any amounts paid into or withdrawn from the Accounts during the applicable month. On or before the date which is ninety (90) days following the close of each Lease Year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City a statement (the "**Annual Statement**"), certified as correct by an officer of Tenant, certified or audited by an independent certified public accountant, and otherwise in form satisfactory to City. The Annual Statement shall set forth financial statements in accordance with Governmental Accounting Standards Board (GSAB) standards which will include a balance sheet, statement of activities or income statement (including Account balances), statement of cash flows, and include applicable footnotes and disclosures for the Lease Year just concluded. Unless and until there has been a Dispossession Event, the accounting and reporting requirements set forth in this subsection shall be aggregated into a single statement that covers the Premises and all other portions of the SFWPM leased by Tenant or any affiliate of Tenant.

(c) Audit.

i. Tenant agrees, for the Term of this Lease and until the end of the third (3rd) year after the expiration or termination of this Lease, to make its Books and Records available to City, or to any City auditor, or to any auditor or representative designated by City (hereinafter collectively referred to as "**City representative**"), for the purpose of examining such Books and Records to determine the accuracy of Tenant's reporting of all information required for the purposes of calculating Gross Revenues and Net Revenues pursuant to the terms of this Lease and for Tenant's compliance with the requirements of Section 9.3. Tenant shall cooperate with City representative during the course of any audit. Such Books and Records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing these accounts. If an audit is made within such four-year period and City claims that errors or omissions have occurred, the Books and Records shall be retained and made available until those matters are resolved. If Tenant operates all or any part of the Premises through a third-party Manager,

Tenant shall require each such third-party Manager to provide City with the foregoing audit right with respect to their respective Books and Records.

ii. If an audit reveals that Tenant has understated its Net Revenues or overstated its Operating Expenses, Debt Services Payments, or deposits into the Project Development Account for such audit period, Tenant shall pay City, within thirty (30) business days after demand, the difference between the amount City identified in the audit as Base Rent which would have been payable for such period and the amount of Base Rent actually paid by Tenant to City for such audit period. Further, such misstatement of Net Revenues or Operating Expenses, Debt Services Payments, or deposits into the Project Development Account may be evidence of a defect in the operation and management of the Premises under Section 9.2(a), which could result in a replacement of the Manager in accordance with the provisions of such Section.

12.3. Manner of Payment of Rent.

Tenant shall pay all Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times otherwise provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "upon demand", "promptly following notice", "upon receipt of invoice", or the like, then such Rent shall be due thirty (30) days following the giving by City of such demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

12.4. No Abatement or Setoff.

Tenant shall pay all Rent at the times and in the manner provided in this Lease without any abatement, setoff, deduction, or counterclaim.

12.5. City Costs.

Within sixty (60) days following receipt of a written invoice from the City Tenant shall from time to time pay to the City as Additional Rent the actual costs incurred by City during the Term in connection with the implementation, management or enforcement of this Lease (in City's proprietary role and not its role as a regulatory agency), as determined on a time and materials basis. City will provide Tenant with annual estimate of projected annual reimbursable costs in connection with Tenant's preparation of an annual operating budget, provided such estimate shall not limit Tenant's obligations hereunder. If requested by Tenant, City shall provide such documentation as may be reasonably necessary to substantiate the costs for which City seeks to be reimbursed, including a brief non-confidential description of work completed by the City Attorney or outside counsel. If Tenant in good faith disputes any portion of an invoice, then within sixty (60) calendar days of receipt of the invoice Tenant shall provide written notice of the amount disputed and the reason for the dispute, and the Parties shall use good faith efforts to reconcile the dispute as soon as practicable. Tenant shall have no right to withhold the disputed amount.

12.6. Late Payments.

Tenant acknowledges and agrees that, in addition to and without limiting any of City's rights or remedies hereunder, if (i) an installment of Base Rent is not paid within ten (10) days following the date such payment is due more than three (3) times in any calendar year, or (ii) two consecutive monthly installments of Base Rent are not paid within ten (10) days following the date such payment is due, or (iii) an installment of Base Rent or a payment of Additional Rent is not paid within thirty (30) days following the written notice from City such payment is due, then such late payments shall be evidence of a defect in the operation and management of the Premises under Section 9.2(a), which could result in a replacement of the Manager in accordance with the provisions of such Section.

12.7. Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during or in connection with the Term of this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, shall be deemed Additional Rent. City shall have the same rights, powers and remedies, whether provided by Law or in this Lease, in the case of non-payment of Additional Rent as in the case of non-payment of Base Rent.

12.8. Net Lease.

It is the purpose of this Lease and intent of City and Tenant that all Rent shall be absolutely net to City, so that this Lease shall yield to City the full amount of the Rent at all times during the Term, without deduction, abatement or offset and at no cost to City, except as otherwise expressly set forth herein. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, except as may be specifically set forth herein, shall City be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any Improvements. Without limiting the foregoing, except as otherwise expressly provided in Section 13.1(c), Tenant shall be solely responsible for paying each item of cost or expense of every kind and nature whatsoever, the payment of which City would otherwise be or become liable by reason of City's estate or interests in the Premises and any Improvements, any rights or interests of City in or under this Lease, or the ownership, leasing, operation, management, maintenance, repair, rebuilding, remodeling, renovation, use or occupancy of the Premises, any Improvements, or any portion thereof. No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve Tenant from any of its obligations under this Lease, or shall give Tenant any right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction or suspension of payment of such sums, on account of any such occurrence or situation, provided that such waiver shall not affect or impair any right or remedy expressly provided Tenant under this Lease.

13. TAXES AND ASSESSMENTS

13.1. Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes. Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes assessed, levied or imposed on the Premises or any of the Improvements or Personal Property located on the Premises or Tenant's leasehold estate, to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 13.1(c)). Subject to the provisions of Section 14 hereof, all such taxes shall be paid directly to the City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 14.

i. Acknowledgment of Possessory Interest. Tenant specifically recognizes and agrees that this Lease may create a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by the City's Assessor. Tenant further acknowledges that any Sublease or assignment permitted under this Lease and any exercise of any option to renew or extend this Lease may constitute a change in ownership,

within the meaning of the California Revenue and Taxation Code, and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable Law.

ii. Reimbursement of Costs. Tenant will reimburse City for its actual costs relating to the creation of this Lease and any amendment of this Lease, and Tenant shall be responsible for all closing and recording fees and any taxes or assessments in connection with any transaction in connection with development of the Project Improvements on the Premise.

iii. Reporting Requirements. San Francisco Administrative Code Sections 23.38 and 23.39 require that City report certain information relating to this Lease, and the creation, renewal, extension, assignment, sublease, or other transfer of any interest granted hereunder, to the County Assessor within sixty (60) days after any such transaction. Within thirty (30) days following the date of any transaction that is subject to such reporting requirements, Tenant shall provide such information as may be reasonably requested by City to enable City to comply with such requirements.

(b) Other Impositions. Without limiting the provisions of Section 13.1(a), Tenant shall pay or cause to be paid all Impositions (as defined below), to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 13.1(c)), which may be assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any Improvements now or hereafter located thereon, any Personal Property now or hereafter located thereon (but excluding the personal property of any Subtenant whose interest is separately assessed), the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, any Subtenant or any other person or entity may have acquired pursuant to this Lease. Subject to the provisions of Section 14, Tenant shall pay or cause to be paid all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so. In addition, Tenant shall pay or cause to be paid any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any Imposition, except to the extent such fine, penalty, interest or cost relates to nonpayment or delinquency of taxes separately assessed, levied or imposed on any Personal Property of any Subtenant. As used herein, "**Impositions**" means all taxes, assessments, liens, levies, charges or expenses of every description, levied, assessed, confirmed or imposed on the Premises, any of the Improvements or Personal Property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character, including, without limitation all community benefits district assessments imposed on the Premises. Notwithstanding the foregoing provisions to the contrary, Tenant shall not be responsible for paying any transfer taxes resulting from the City's transfer of its fee ownership interest in the Premises or any business or gross rental taxes assessed to the City.

(c) Prorations. All Impositions imposed for the tax years in which the Commencement Date occurs or during the tax year in which this Lease terminates shall be apportioned and prorated between Tenant and City on a daily basis.

(d) Proof of Compliance. Within a reasonable time following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts from the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

13.2. City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 14, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency, City, at its sole option, may (but is

not obligated to) pay or discharge the same, provided that prior to paying any such delinquent Imposition, City shall give Tenant written notice specifying a date at least ten (10) business days following the date such notice is given after which City intends to pay such Impositions. If Tenant fails, on or before the date specified in such notice, either to pay the delinquent Imposition or to notify City that it is contesting such Imposition pursuant to Section 14, then City may thereafter pay such Imposition, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within ten (10) business days following demand.

14. CONTESTS

14.1. Right of Tenant to Contest Impositions and Liens.

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any Imposition or other lien, charge or encumbrance against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or any Subtenant or other person or entity to improve the Premises or any portion of the Premises, by appropriate proceedings conducted in good faith and with due diligence, at no cost to City. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to contest. Tenant shall be responsible for the payment of any interest, fines, penalties or other charges which may accrue as a result of any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in any instance where City's interest in the Property may be subjected to such lien or claim. Tenant shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If City is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Property, City, at the request of Tenant and at no cost to City, with counsel selected and engaged by Tenant, subject to City's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. City, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of City or any owner of the Property. Except as provided in the preceding sentence, City shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding, and without limiting Article 23, Tenant shall Indemnify City for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, which City may be legally obligated to pay.

14.2. City's Right to Contest Impositions.

At its own cost and after notice to Tenant of its intention to do so, City may but in no event shall be obligated to contest the validity, applicability or the amount of any Impositions, by appropriate proceedings conducted in good faith and with due diligence. Nothing in this Section shall require City to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition to be forfeited to the entity levying such Imposition as a result of its nonpayment. City shall give notice to Tenant within a reasonable period of time of

the commencement of any such contest and of the final determination of such contest. If City undertakes any such contest, and any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, City shall be responsible for complying with such condition as a condition to its right to contest. City shall be responsible for the payment of any interest, penalties or other charges which may accrue as a result of any contest, and City shall provide a statutory lien release bond or other security reasonably satisfactory to Tenant in any instance where Tenant's interest in the Property may be subjected to such lien or claim. City shall not be required to pay any Imposition or lien being so contested during the pendency of any such proceedings unless payment is required by the court, quasi-judicial body or administrative agency conducting such proceedings. If Tenant is a necessary party with respect to any such contest, or if any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant, Tenant, at the request of City and at no cost to Tenant, with counsel selected and engaged by City, subject to Tenant's reasonable approval, shall join in or initiate, as the case may be, any such proceeding. Tenant, at its own expense and at its sole option, may elect to join in any such proceeding whether or not any Law now or hereafter in effect requires that such proceedings be brought by or in the name of Tenant. Except as provided in the preceding sentence, Tenant shall not be subjected to any liability for the payment of any fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, in connection with any such proceeding.

15. COMPLIANCE WITH LAWS

15.1. Compliance with Laws and Other Requirements.

(a) Tenant's Obligation to Comply. Tenant shall comply, at no cost to City, (i) with all applicable Laws (including Regulatory Approvals), (ii) with all Mitigation and Improvement Measures, and (iii) with the requirements of all policies of insurance required to be maintained pursuant to Section 24 of this Lease. The foregoing sentence shall not be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers. In particular, Tenant acknowledges that the Permitted Uses under Section 4.1 do not limit Tenant's responsibility to obtain Regulatory Approvals for such uses, including but not limited to, building permits, nor do such uses limit City's responsibility in the issuance of any such Regulatory Approvals to comply with applicable Laws, including the California Environmental Quality Act. It is understood and agreed that Tenant's obligation to comply with Laws shall include the obligation to make, at no cost to City, all additions to, modifications of, and installations on the Premises that may be required by any Laws regulating the Premises, subject to the provisions of Section 15.1(b).

(b) Unforeseen Requirements. The Parties acknowledge and agree that Tenant's obligation under this Section 15.1 to comply with all present or future Laws is a material part of the bargained-for consideration under this Lease. Tenant's obligation to comply with Laws shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the Parties contemplated the particular Law involved, or the relationship between the Law involved and Tenant's particular use of the Premises. Except as provided in Article 20 or 21, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, except to the extent provided in Article 20 or 21, or to compel

City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

(c) Proof of Compliance. Tenant shall promptly upon request provide City with evidence of its compliance with any of the obligations required under this Section.

15.2. Regulatory Approvals.

(a) City Approvals. Tenant understands and agrees that City is entering into this Lease in its proprietary capacity as the holder of fee title to the Property and not in its regulatory capacity. Tenant understands that the entry by City into this Lease shall not be deemed to imply that Tenant will be able to obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Premises. By entering into this Lease, City is in no way modifying Tenant's obligations to cause the Premises to be used and occupied in accordance with all Laws, as provided herein.

(b) Approval of Other Agencies; Conditions. Tenant understands that the Project and Tenant's contemplated uses and activities on the Premises, any subsequent changes in Permitted Uses, and any alterations or Subsequent Construction to the Premises, may require that approvals, authorizations or permits be obtained from governmental agencies with jurisdiction. Tenant shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section. In any instance where City will be required to act as a co-permittee, or where Tenant proposes Subsequent Construction which requires City's approval under Article 18, Tenant shall not apply for any Regulatory Approvals (other than a building permit from the City) without first obtaining the approval of City, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any Regulatory Approval, Tenant shall consult and coordinate with City in Tenant's efforts to obtain such Regulatory Approval, and City shall cooperate reasonably with Tenant in its efforts to obtain such Regulatory Approval, provided that City shall have no obligation to make expenditures or incur expenses other than administrative expenses. However, Tenant shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any regulatory agency other than City, if City is required to be a co-permittee under such permit or the conditions or restrictions could create any obligations on the part of City whether on or off the Property, unless in each instance City has previously approved such conditions in writing in City's sole and absolute discretion. No such approval by City shall limit Tenant's obligation to pay all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, City shall join, where required, in any application by Tenant for a required Regulatory Approval, and in executing such permit, provided that City shall have no obligation to join in any such application or execute the permit if City does not approve the conditions imposed by any regulatory agency under such permit as provided herein. All costs associated with applying for and obtaining any necessary Regulatory Approval shall be borne by Tenant. Tenant shall be responsible for complying, at no cost to City, with any and all conditions imposed by any regulatory agency as part of a Regulatory Approval. With the consent of City (which shall not be unreasonably withheld or delayed), Tenant shall have the right to appeal or contest in any manner permitted by Law any condition imposed upon any such Regulatory Approval. Tenant shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of Tenant to comply with the terms and conditions of any Regulatory Approval and City shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Article 23, Tenant shall Indemnify the Indemnified Parties from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to comply with any Regulatory Approval.

16. REPAIR AND MAINTENANCE

16.1. Covenants to Repair and Maintain the Premises.

(a) Tenant's Duty to Maintain. Throughout the Term of this Lease, Tenant shall maintain and repair, at no cost to City, the Premises, in condition and repair as is appropriate to maintain the Premises as a part of a first class produce market and distribution center in compliance with all applicable Laws and the requirements of this Lease.

(b) Inspection Reports. Not less frequently than once every seven (7) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises in good order and repair and to keep the Improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify capital repairs and improvements which are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises ("**Replacements**") as well as routine maintenance and repairs. If at any time City determines that repairs, improvements or replacements which are not detailed on the Inspection Report are advisable to keep the Premises in good order and repair or to prevent deterioration ("**Additional Replacements**"), City may send Tenant written notice of the need for such Additional Replacements.

(c) Maintenance and Repair. Tenant shall promptly make (or cause others to make) all necessary or appropriate repairs, renewals and replacements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, foreseen or unforeseen, including the Replacements and Additional Replacements, except as otherwise provided in Article 20 or Article 21. Tenant shall make such repairs with materials, apparatus and facilities at least equal in quality, design standards, public safety and durability to the materials, apparatus and facilities repaired, replaced or maintained. Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

(d) No Obligation of City; Waiver of Rights. As between City and Tenant, Tenant shall be solely responsible for the condition, repair, and maintenance of the Premises, including any and all Improvements, from and after the Commencement Date. City shall not, as a result of this Lease, have any obligation to make repairs or replacements of any kind or maintain the Premises or any portion of any of them. Tenant waives the benefit of any existing or future Law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced or restated.

(e) Notice. Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority (other than City) having responsibility for the enforcement of any applicable Laws (including Disabled Access Laws or Hazardous Materials Laws), asserting that the Premises is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under Article 24, asserting that the requirements of such insurance policy or policies are not being met.

17. TITLE TO IMPROVEMENTS

During the Term of this Lease, Tenant shall own all of the Improvements, including all Subsequent Construction and all appurtenant fixtures, machinery and equipment installed therein

(except for trade fixtures and other personal property of Subtenants). At the expiration or earlier termination of this Lease, title to the Improvements, including appurtenant fixtures (but, except as otherwise set forth in this Lease, excluding trade fixtures and, other Personal Property of Tenant and its Subtenants other than City), will vest in City without further action of any party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term of this Lease, to remove trade fixtures and other Personal Property from the Premises in the ordinary course of business; provided, however, that if the removal of Personal Property causes material damage to the Premises, Tenant shall promptly cause the repair of such damage at no cost to City.

18. SUBSEQUENT CONSTRUCTION

18.1. City's Right to Approve Subsequent Construction.

(a) Construction Requiring Approval. Tenant shall have the right, from time to time during the Term, to perform Subsequent Construction in accordance with the provisions of this Article 18, provided that Tenant shall not do any of the following, without City's prior written approval (which approval may be withheld by City in its sole discretion):

i. Construct additional buildings or other additional structures, other than to replace or Restore those previously existing, the approval and construction of which shall be governed by a separate instrument entered into with City;

ii. Increase the bulk or height of any Improvements beyond the bulk or height approved for the Premises;

iii. Materially alter the exterior architectural design of any Improvements (other than changes reasonably required to conform to changes in applicable Law); and

iv. Materially decrease the building area within the Premises in a manner which would adversely affect the Gross Revenues generated.

(b) Notice by Tenant. At least thirty (30) days before commencing any Subsequent Construction which requires City's approval under Section 18.1(a) above, Tenant shall notify City of such planned Subsequent Construction. City shall have the right to object to any such Subsequent Construction, to the extent that such Subsequent Construction requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Subsequent Construction within the thirty (30) day period described above, then Tenant may submit a second written notice to City that such objection was not received within the period provided by this Section 18.1(b) and requesting City's response within five (5) business days after Tenant's second notice. If the City fails to object to such planned Subsequent Construction within such five (5) business day period, then Tenant shall proceed with compliance with the procedures for approval and performance of the Subsequent Construction as set forth below.

(c) Permits. Tenant acknowledges that the provisions of this Section are subject to Sections 15.1(a) and 18.7. In particular, Tenant acknowledges that City's approval of Subsequent Construction (or the fact that Tenant is not required to obtain City's approval) does not alter Tenant's obligation to obtain all Regulatory Approvals and all permits required by applicable Law to be obtained from governmental agencies having jurisdiction, including, where applicable, from the City itself in its regulatory capacity.

18.2. Minor Alterations.

Unless otherwise required under Section 18.1(a), City's approval hereunder shall not be required for (a) the installation, repair or replacement of furnishings, fixtures, or equipment which do not materially affect the structural integrity of the Improvements, or (b) any other

Subsequent Construction which does not require a building permit, approval from the Planning Department or other departments of the City (collectively, "**Minor Alterations**").

18.3. Tenant Improvements.

Except as otherwise specifically provided hereunder, City's approval hereunder shall not be required for the installation of tenant improvements and finishes to prepare portions of the Premises for occupancy or use by Subtenants, provided that the foregoing shall not alter Tenant's obligation to obtain any required Regulatory Approvals and permits, including, as applicable, a building permit from City, acting in its regulatory capacity.

18.4. Construction Documents in Connection with Subsequent Construction.

(a) Preparation, Review and Approval of Construction Documents. With regard to any Subsequent Construction which requires City's approval under this Article 18, Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed Schematic Drawings, and following City's approval of such Schematic Drawings, Final Construction Documents which are consistent with the approved Schematic Drawings (collectively, Schematic Drawings and Final Construction Documents are referred to as "**Construction Documents**"). City may waive the submittal requirement of Schematic Drawings if it determines in its discretion that the scope of the Subsequent Construction does not warrant such initial review. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall approve or disapprove Construction Documents submitted to it for approval within thirty (30) days after submission. Any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact within thirty (30) days after submission and shall indicate which portions of the Construction Documents it deems to be incomplete. If City notifies Tenant that the Construction Documents are incomplete, such notification shall constitute a disapproval of such Construction Documents. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents in accordance with the provisions of Section 18.5, City shall review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection, and City shall approve or disapprove the revisions to the Construction Documents within fifteen (15) days after resubmission. If City fails to approve, conditionally approve or disapprove the Construction Documents (including Construction Documents which have been revised or supplemented and resubmitted) within the times specified within this Section 18.4, such failure shall not constitute a default under this Lease on the part of City, but such Construction Documents shall be deemed approved, provided that Tenant first submits a second written notice to City that such approval or disapproval was not received within the period provided by this Section 18.4 and requesting City's approval or disapproval within ten (10) days after Tenant's second notice prior written notice that Tenant intends to deem said Construction Documents so approved and City fails to respond within such ten (10) day period, provided that the original request met the requirements of this Section.

(b) Progress Meetings; Coordination. From time to time at the request of either Party during the preparation of the Construction Documents, City and Tenant shall hold regular progress meetings to coordinate the preparation, review and approval of the Construction Documents. City and Tenant shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any Construction Documents to City can receive prompt and speedy consideration.

18.5. City Approval of Construction Documents.

Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's written objections. Tenant shall resubmit such

revised portions to City as soon as possible after receipt of the notice of disapproval. City shall approve or disapprove such revised portions in the same manner as provided in Section 18.4 for approval of Construction Documents (and any proposed changes therein) initially submitted to City. If Tenant desires to make any substantial change in the Final Construction Documents after City has approved them, then Tenant shall submit the proposed change to City for its reasonable approval. City shall notify Tenant in writing of its approval or disapproval within fifteen (15) days after submission to City. Any disapproval shall state, in writing, the reasons therefor, and shall be made within such fifteen (15)-day period.

18.6. Construction Schedule.

(a) Performance. Tenant shall prosecute all Subsequent Construction with reasonable diligence, subject to Force Majeure.

(b) Reports and Information. During periods of construction, Tenant shall submit to City written progress reports when and as reasonably requested by City.

18.7. Construction.

(a) Commencement of Construction. Tenant shall not commence any Subsequent Construction until the following conditions have been satisfied or waived by City:

i. City shall have approved the Final Construction Documents (or those aspects of the Final Construction Documents as to which City has an approval right under Section 18.1);

ii. Tenant shall have obtained all permits and other Regulatory Approvals necessary to commence such construction in accordance with Article 15;

iii. Tenant shall have submitted to City in writing its good faith estimate of the anticipated total construction costs of the Subsequent Construction. If such good faith estimate exceeds One Million Dollars ($1,000,000), Tenant shall also submit evidence reasonably satisfactory to City of Tenant's ability to pay such costs as and when due; provided, however, that the threshold amount set forth in this Section 18.7(iii) shall be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "**Index**"), which is published most immediately preceding the most recent anniversary of the Commencement Date over the Index in effect on the Commencement Date.

(b) Construction Standards. All Subsequent Construction shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. In addition, in the case of Subsequent Construction which begins after the Improvements have opened for business to the general public, Tenant shall erect construction barricades substantially enclosing the area of such construction and maintain them until the Subsequent Construction has been substantially completed, to the extent reasonably necessary to minimize the risk of hazardous construction conditions.

(c) Costs of Construction. City shall have no responsibility for costs of any Subsequent Construction. Tenant shall pay (or cause to be paid) all such costs.

(d) Rights of Access. During any period of Subsequent Construction, City and its Agents shall have the right to enter areas in which Subsequent Construction is being performed, on reasonable prior notice during customary construction hours, subject to the rights

of Subtenants and to Tenant's right of quiet enjoyment under this Lease, to inspect the progress of the work. The City and its Agents shall conduct their activities in such a way as to minimize interference with operations of Tenant and its Subtenants to the extent reasonably practicable. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

(e) Prevailing Wages. Tenant agrees that any person performing labor in connection with Subsequent Construction (other than tenant improvements performed by Subtenants) shall be paid not less than the highest general prevailing rate of wages and that Tenant shall include, or cause to be included, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest general prevailing rate of wages for the labor so performed and shall use reasonable and diligent efforts to enforce such contract provisions. Tenant further agrees that highest prevailing wage shall be determined in accordance with the applicable provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22 of the San Francisco Administrative Code that relate to payment of prevailing wages. At City's written request, Tenant shall require any contractor to provide, and shall deliver to City every month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements (other than tenant improvements performed by Subtenants) to document compliance with this Section 18.7(e).

18.8. Safety Matters.

Tenant, while performing any Subsequent Construction or maintenance or repair of the Improvements (for purposes of this Section only, "**Work**"), shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its Work.

18.9. As-Built Plans and Specifications.

With respect to any Subsequent Construction costing One Hundred Thousand and No/100 Dollars ($100,000.00) as indexed, or more, for which City's approval was required under Article 18, Tenant shall furnish to City one set of as-built plans and specifications with respect to such Subsequent Construction(reproducible transparencies and CAD files) within one hundred twenty (120) days following completion. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Subsequent Construction, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Subsequent Construction under applicable regulations adopted by City in its regulatory capacity.

19. UTILITY SERVICES

City, in its proprietary capacity as fee owner of the real property comprising the Premises and landlord under this Lease, shall not be required to provide any utility services to the Premises or any portion of the Premises. Tenant and its Subtenants shall be responsible for contracting with, and obtaining, all necessary utility and other services, as may be necessary and appropriate to the uses to which the Premises are put. Tenant will pay or cause to be paid as the same become due all deposits, charges, meter installation fees, connection fees and other costs for all public or private utility services at any time rendered to the Premises or any part of the Premises, and will do all other things required for the maintenance and continuance of all such services. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as a provider of public utility services, shall

abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any Losses arising from or in connection with City's provision (or failure to provide) public utility services, except to the extent that failure to raise such claim in connection with such litigation would result in a waiver of such claim. The foregoing shall not constitute a waiver by Tenant of any claim it may now or in the future have (or claim to have) against any such public utility provider relating to the provision of (or failure to provide) utilities to the Premises.

20. DAMAGE OR DESTRUCTION

20.1. General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage or Destruction, the rights and obligations of the Parties shall be as set forth in this Section. For purposes hereof, "damage or destruction" shall not include a Release of Hazardous Materials at or affecting the Premises to the extent that such release is not covered by insurance carried (or required to be carried) by Tenant.

(b) Notice. If there is any damage to or destruction of the Premises or of the Improvements thereon or any part thereof, (i) which would materially impair use or operation of any material portion of the Improvements for their intended purposes for a period of thirty (30) days or longer, or (ii) the repair of which would exceed twenty-five percent (25%) of the funds in the Replacement Reserve Account, or (iii) exceeds the amount of any deductible for the applicable insurance policy maintained by Tenant, Tenant shall promptly, but not more than thirty (30) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction.

(c) Waiver. The Parties intend that this Lease fully govern all of their rights and obligations in the event of any damage or destruction of the Premises. Accordingly, City and Tenant each hereby waive the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated.

20.2. Intentionally Deleted.

20.3. Tenant's Obligation to Restore.

If all or any portion of the Improvements are damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 20.4, and such casualty arises from a risk required to be covered by insurance described in this Lease, then, provided that the funds in the Replacement Reserve Account, plus the amount of funds payable to the Replacement Reserve Account but not yet deposited, immediately prior to the event of damage or destruction ("**Replacement Reserve Account Funds**"), together with the Property Related Insurance proceeds and the applicable deductible payable by Tenant in connection with such Property Related Insurance (Tenant shall apply funds from all reserve accounts to the extent necessary to pay such deductibles) (collectively, "**Tenant's Restoration Funds**") are sufficient for such purpose, as mutually determined by Tenant and City and as approved by any Mortgagee ("**Sufficient Restoration Funds**") **[NTD: Mortgagee will require the right to hold and disburse such funds]**, then subject to Section 20.4, Tenant shall, within a reasonable period of time, including such time as may be necessary or desirable for Tenant to obtain all Regulatory Approvals, commence and diligently, subject to Force Majeure, Restore the Improvements to the condition they were in immediately before such damage or destruction, to the extent possible in accordance with then

applicable Laws (including, but not limited to, any required code upgrades). City may agree to reduce the size or scope of the Improvements in order to ensure that there are or will be Sufficient Restoration Funds, subject to a Mortgagee's right to object to any such reduction if it determines that its security would be impaired. All Restoration performed by Tenant shall be in accordance with the procedures set forth in Article 18 relating to Subsequent Construction and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

20.4. Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction occurs, or if, a change in Laws has occurred which prohibits the Premises from being rebuilt for the Permitted Use, or if an event of Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (i) electing to commence and complete Restoration of the Improvements substantially to the condition they were in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Laws (including any required code upgrades); or (ii) electing to terminate this Lease (subject to Section 20.4(b)). Tenant shall provide City with the Casualty Notice no later than the earlier to occur of the date that is (x) thirty (30) days following receipt of an initial written demand of repayment or acceleration of a Mortgage from any Mortgagee or (y) ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. Except in the case of Uninsured Casualty, as a condition to making such election, Tenant shall pay or cause to be paid to City, immediately upon receipt thereof, the proceeds of the rental interruption or business interruption insurance required hereunder arising out of or in connection with the casualty causing such Major Damage or Destruction to the extent attributable to the Rent payable to City under this Lease for the duration of such event of damage or destruction or Major Damage or Destruction. If Tenant elects to Restore the Improvements, all of the provisions of Article 18 that are applicable to Subsequent Construction of the Improvements shall apply to such Restoration of the Improvements substantially to the condition they were in prior to such Major Damage or Destruction as if such Restoration were Subsequent Construction. For purposes hereof, "**Uninsured Casualty**" will mean any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) exceeds the Replacement Reserve Account Funds, and which is not insured (or required to be insured) under the policies of insurance that Tenant is required to carry under Article 24 hereof; or (2) an event of damage or destruction occurring at any time during the Term which is covered under any of Tenant's insurance policies required to be maintained pursuant to this Lease for which Sufficient Restoration Funds are not available.

(b) Conditions to Termination. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 20.4(a) above, Tenant shall do all of the following:

i. In Tenant's Casualty Notice electing to terminate described in Section 20.4(a), Tenant shall provide evidence of the estimated cost of Restoration, and, in the case of earthquake or flood damage, the amount by which the cost of Restoration plus the amount of any applicable policy deductible and the Replacement Reserve Account Funds exceed insurance proceeds payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder); and

ii. City may elect, to the extent of Tenant's Restoration Funds (and subject to Mortgagee's rights under Section 44.5 below), to require that Tenant cause the Improvements to be repaired to the extent required to alleviate any condition caused by such event of damage or destruction that could cause an immediate threat to public safety, as reasonably determined by City ("**Safety Restoration Work**"). Any remaining balance of Tenant's Restoration Funds shall be payable as follows: (w) first, to City (or Tenant, if such

work is performed by, or on account of, Tenant at its cost) for the Safety Restoration Work; (x) second, to the Mortgagee demanding payment thereof in accordance with its Mortgage and applicable Law (in order of lien and not pro rata), that portion of the remaining casualty proceeds arising out of or in connection with the casualty causing such Major Damage or Destruction in an amount not to exceed the aggregate amounts then owed to the Mortgagee and secured by the Mortgage under the loan documents therefor; (y) third, to City in the amount owed to City, if any, by Tenant on account of Tenant's obligations hereunder as of the date of the event of damage or destruction; and (z) fourth, the balance of the proceeds shall be divided pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest as defined in Section 21.3(b).

(c) City's Election Upon Notice of Termination. Notwithstanding the foregoing, if Tenant elects to terminate this Lease under circumstances permitted by Section 20.4(a), then City may, by notice in writing given to Tenant within sixty (60) days after Tenant's Casualty Notice, elect any of the following: (i) terminate the Lease and accept the surrender of the Premises in their then-existing condition, free of any existing Subleases (unless otherwise assumed by City), or (ii) continue the Lease in effect, and pay the amount by which the cost of Restoration (including the cost of any required code upgrades) will exceed Tenant's Restoration Funds and require Tenant to Restore the Premises in accordance with Section 20.4(b); provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment; or (iii) continue the Lease in effect and undertake the Restoration of the Premises itself, without contribution from Tenant, provided that such Restoration is anticipated to be completed within eighteen (18) months after such event of damage or destruction, as determined by City in its reasonable judgment. If City elects to continue the Lease in accordance with this Section 20.4(c), then Rent shall abate until the Premises is delivered to Tenant with the Restoration substantially complete for resumption of Tenant's business operations as a Permitted Use at the Premises.

20.5. Effect of Termination.

Provided that there shall not have occurred any Event of Default (or Unmatured Event of Default) under this Lease that has not been waived in writing by City, if Tenant elects to terminate the Lease under Section 20.4(a) above, and City elects not to continue the Lease in effect as allowed under Section 20.4(c), then, on the date that Tenant shall have fully complied with all other provisions of Section 20.4(b) to the reasonable satisfaction of City, this Lease shall terminate. Upon such termination, except otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination; provided, however, that the following provisions shall survive such termination: (i) all indemnification provisions contained in this Lease with respect to matters arising before the effective date of any such termination only, and (ii) any rights of the Parties or Mortgagee to receive insurance proceeds in accordance with this Lease. In addition, termination of this Lease under this Article 20 shall not limit the right of a Mortgagee to a New Lease under Article 44.11(d) unless such Mortgagee has agreed otherwise. At City's request following any termination, Tenant shall promptly deliver to City a duly executed and acknowledged quitclaim deed with respect to all of Tenant's interests related to this Lease and the Premises suitable for recordation and in form and content satisfactory to City.

20.6. Distribution Upon Lease Termination.

If Tenant is obligated to and fails to Restore the Improvements as provided herein and this Lease is terminated, all insurance proceeds held by City, Tenant and, subject to Article 44, any Mortgagee or not yet collected, shall be paid to and retained by the party entitled thereto in accordance with this Lease.

20.7. Event of Default.

Subject to Article 44, if there shall have occurred an Event of Default (or Unmatured Event of Default) under this Article 20 that has not been waived in writing by City, City shall receive all Property Related Insurance proceeds to the extent required to satisfy Tenant's obligations under this Article 20.

20.8. Use of Insurance Proceeds.

(a) Restoration. Except in the event of termination of this Lease, all Property Related Insurance proceeds paid to City or Tenant by reason of damage to or destruction of any Improvements, if any, must be used by Tenant for the repair or rebuilding of such Improvements except as specifically provided to the contrary in this Article 20 or Article 44 or as otherwise approved by the City.

(b) Payment to Trustee. Except as otherwise expressly provided to the contrary in this Article 20 or in Article 44, and if Tenant Restores the Improvements, any insurer paying compensation under any Property Related Insurance policy required to be carried hereunder shall pay such proceeds to Mortgagee or a trustee designated by Mortgagee (which shall be a bank or trust company). Subject to Mortgagee's rights under Section 44.5 below, such trustees or Mortgagee shall pay to Tenant, from time to time as the work of Restoration shall progress, in amounts designated by certification, by architects licensed to do business in the State, showing the application of such amounts as payment for such Restoration. The trustee or Mortgagee, as the case may be, shall be required to make such payments upon satisfaction that the amount necessary to provide for Restoration of any buildings and other Improvements destroyed or damaged, which may exceed the amount received upon such policies, has been provided by the insured for such purposes and its application for such purposes is assured.

Payment to Tenant shall not be construed as relieving the Tenant from the necessity of repairing such damage promptly in accordance with the terms of this Lease. Tenant shall pay all reasonable fees of the trustee, bank or trust company for its services. Tenant shall use good faith efforts to cause any proceeds held by a trustee or Mortgagee pursuant to this Section 20.8(b) to be held in an interest-bearing, federally insured account, with all interest thereon to be added to the proceeds. Provided that no Event of Default (or Unmatured Event of Default) that has not been waived by City shall exist on the date of such Restoration, the Improvements shall have been Restored in accordance with the provisions of this Section 20.8(b) and all sums due under this Lease shall have then been paid in full, subject to the rights of any Mortgagee under a Permitted Mortgage, any excess of monies received from insurance remaining with the trustee or Mortgagee after the Restoration or repair of the Improvements as required by this Section shall be paid to Tenant.

20.9. No Release of Tenant's Obligations.

No damage to or destruction of the Premises or Improvements or any part thereof by fire or any other cause shall permit Tenant to surrender this Lease or relieve Tenant from any obligations, including, but not limited to, the obligation to pay Rent, except as otherwise expressly provided herein.

21. CONDEMNATION

21.1. General; Notice; Waiver.

(a) General. If, at any time during the Term, there is any Condemnation of all or any part of the Premises, including any of the Improvements, the rights and obligations of the Parties shall be determined pursuant to this Article 21.

(b) Notice. In case of the commencement of any proceedings or negotiations which might result in a Condemnation of all or any portion of the Premises during the Term, the Party learning of such proceedings shall promptly give written notice of such proceedings or

negotiations to the other Party. Such notice shall describe with as much specificity as is reasonable, the nature and extent of such Condemnation or the nature of such proceedings or negotiations and of the Condemnation which might result therefrom, as the case may be.

(c) Waiver. Except as otherwise provided in this Article 21, the Parties intend that the provisions of this Lease shall govern their respective rights and obligations in the event of a Condemnation. Accordingly, but without limiting any right to terminate this Lease given Tenant in this Article 21, Tenant waives any right to terminate this Lease upon the occurrence of a Partial Condemnation under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure, as such sections may from time to time be amended, replaced or restated.

21.2. Total Condemnation.

If there is a Condemnation of the entire Premises or Tenant's leasehold interest therein (a "**Total Condemnation**"), this Lease shall terminate as of the Condemnation Date. Upon such termination, except as otherwise set forth in this Lease, the Parties shall be released thereby without further obligations to the other Party as of the effective date of such termination, subject to the payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that all indemnification provisions hereof shall survive any such termination with respect to matters arising before the effective date of such termination.

21.3. Substantial Condemnation, Partial Condemnation.

If there is a Condemnation of any portion but less than all of the Premises, the rights and obligations of the Parties shall be as follows:

(a) Substantial Condemnation. If there is a Substantial Condemnation of a portion of the Premises or Tenant's leasehold estate, this Lease shall terminate, at Tenant's option, as of the Condemnation Date, as further provided below. For purposes of this Article 21, a Condemnation of a substantial portion of the Premises or of Tenant's leasehold estate, or of property located outside the Premises that substantially or materially eliminates access to the Premises where no alternative access can be constructed or made accessible, shall be a "**Substantial Condemnation**", and this Lease shall terminate, at Tenant's option (which shall be exercised, if at all, at any time within ninety (90) days after the Condemnation Date by delivering written notice of termination to City) if Tenant reasonably determines that such Condemnation renders the Premises unsuitable, untenantable and economically infeasible for its intended use as described in this Lease; provided, however, a Condemnation described above shall not be a Substantial Condemnation, and Tenant shall have no right to terminate this Lease under this Section, if the condition rendering the Premises unsuitable, untenantable and economically infeasible for its intended use as described in this Lease, as the case may be, can be cured by the performance of Restoration, and (i) the cost of such Restoration does not exceed the portion of the Award fairly allocable to severance damages suffered by Tenant plus Tenant's Restoration Funds, as applicable, or (ii) City (in its sole and absolute discretion and without any obligation to do so) gives written notice to Tenant within ninety (90) days (subject to extension as provided below) after receipt of Tenant's termination notice that City agrees, at its cost and expense, to pay all amounts by which the cost of such Restoration exceeds the amount of the Tenant's severance damages and such Restoration can be completed within eighteen (18) months after the date of the Substantial Condemnation in City's reasonable judgment. In either such case, this Lease shall not terminate, and Tenant shall perform such Restoration, subject to the provisions of Article 18 and Section 21.4, within a reasonable time, subject to events of Force Majeure. City's right to exercise the option described in clause (ii) above shall be conditioned upon City and Tenant reaching an agreement with respect to the schedule for performance of required work, the timing of payments of City's contribution to the costs of such work (to the extent not available from City's share of the Award), and any other related issues which may be necessary or appropriate for resolution in connection with such work and the payment for such work. If no satisfactory agreement is reached within such period, City shall have no right to exercise such

right, and such Condemnation shall be deemed a Substantial Condemnation for which Tenant may terminate this Lease.

(b) Partial Condemnation. If there is a Condemnation of any portion of the Premises or Tenant's leasehold estate which does not result in a termination of this Lease under Section 21.2 or Section 21.3(a) (a "**Partial Condemnation**"), this Lease shall terminate only as to the portion of the Premises taken in such Partial Condemnation, effective as of the Condemnation Date. In the case of a Partial Condemnation, this Lease shall remain in full force and effect as to the portion of the Premises (or of Tenant's leasehold estate) remaining immediately after such Condemnation, and in accordance with all applicable Laws, Tenant shall promptly commence and complete, subject to events of Force Majeure, any necessary Restoration of the remaining portion of the Premises, at no cost to City. Any Award in connection with a Partial Condemnation shall be payable to Tenant to be applied to the Restoration, with the balance of such Award payable pari passu between City and Tenant in accordance with City's Percentage Interest and Tenant's Percentage Interest, as defined below. Any such Restoration shall be performed in accordance with the provisions of Article 18.

For purposes of this Lease: (1) "**City's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of City's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements; and (2) "**Tenant's Percentage Interest**" shall mean the ratio, expressed as a percentage, that the value of Tenant's interest in the Improvements for the remaining unexpired portion of the Term of this Lease (assuming that the Term would expire on the Expiration Date) bears to the total then-current value of the Improvements.

21.4. Awards.

Except as provided in Sections 21.3(b) and 21.5, Awards and other payments to either City or Tenant on account of a Condemnation, less costs, fees and expenses (including, without limitation, Attorneys' Fees and Costs) incurred in the collection thereof ("**Net Awards and Payments**") shall be allocated between City and Tenant as follows:

(a) first, if this Lease is not terminated as a result of such Condemnation, to the costs of Restoration;

(b) second, to the extent of Tenant's share of the Net Award and Payment, to the Mortgagee pursuant to the Mortgage for payment of all amounts outstanding thereunder, together with such Mortgagee's reasonable out of pocket expenses and charges in connection with collection of the Net Award and Payment, including, but not limited to its reasonable Attorneys' Fees and Costs incurred in the Condemnation;

(c) third, City and Tenant shall each be allocated the value of their respective interests in the Premises (to the extent Condemned), together with interest thereon from the Condemnation Date to the date of payment at the rate paid on the Award, and Attorneys' Fees and Costs, to the extent awarded. The values of City's and Tenant's respective interests in the Premises shall be established by the same court of law that establishes the amount of the Award, and the amounts distributed to the Mortgages pursuant to Section 21.4(b), shall be deducted from the value of Tenant's interest in the Premises;

(d) fourth, to City from the share otherwise allocated to Tenant, in an amount equal to any accrued and unpaid Rent owed by Tenant to City under this Lease for periods prior to the Condemnation Date;

(e) fifth, to Tenant from the share otherwise allocated to City, in an amount equal to any sum which City has agreed to pay towards the cost of Restoration under clause (ii) of Section 21.3(a).

21.5. Temporary Condemnation.

If there is a Condemnation of all or any portion of the Premises for a temporary period lasting less than the remaining Term of this Lease, other than in connection with a Substantial Condemnation or a Partial Condemnation of a portion of the Premises for the remainder of the Term, this Lease shall remain in full force and effect, there shall be no abatement of Rent, and the entire Award shall be payable to Tenant; provided that Tenant shall be relieved from all obligations under this Lease requiring possession of that portion of the Premises so condemned for the period of such temporary Condemnation.

21.6. Safety Restoration Work; Personal Property; Goodwill; Relocation Benefits.

Notwithstanding any provision to the contrary in this Article 21, prior to any termination of this Lease in connection with a Substantial Condemnation or Partial Condemnation, Tenant shall conduct Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable. Provided that Tenant completes the Safety Restoration Work to the extent of Tenant's Net Awards and Payments and Tenant's Restoration Funds, as applicable, City shall not be entitled to any portion of any Net Awards and Payments payable in connection with the Condemnation of the Personal Property of Tenant or any of its Subtenants, the loss of business or loss of goodwill by Tenant or any of its Subtenants, or relocation benefits or moving expenses for Tenant or any of its Subtenants.

22. LIENS

22.1. Liens.

Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises, Tenant's leasehold estate or the Accounts, other than the following (collectively, the "**Permitted Title Exceptions**"): (i) this Lease, any Subleases and any exceptions to title existing as of the Effective Date and not caused or suffered to arise by Tenant or Tenant's use and occupancy of the Premises, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of Subtenants), except only for Impositions being contested as permitted by Article 14, (iii) Permitted Mortgages (as defined in Article 44), (iv) Mortgages encumbering the subleasehold interests of Subtenants approved by City, provided such Mortgage is permitted under Article 44; and (v) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Article 14. The provisions of this Section do not apply to liens created by Tenant on its Personal Property.

22.2. Mechanics' Liens.

Nothing in this Lease shall be deemed or construed in any way as constituting the request of City, express or implied, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Premises or the Improvements, or any part thereof. Tenant agrees that at all times when the same may be necessary or desirable, Tenant shall take such action as may be required by City or under any Law in existence or hereafter enacted which will prevent the enforcement of any mechanics' or similar liens against the Premises, Tenant's leasehold interest, or City's fee interest in the Premises for or on account of labor, services or materials furnished to Tenant, or furnished at Tenant's request. Tenant shall provide such advance written notice of any Subsequent Construction such as shall allow City from time to time to post a notice of non-responsibility on the Premises. Subject to Section 14.1 above, if Tenant does not, within sixty (60) days following the Imposition of any such lien, cause the same to be released of record, it shall be a material default under this Lease, and City shall have, in addition to all other remedies provided by this Lease or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including

without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable expenses incurred by City in connection therewith shall be payable to City by Tenant within thirty (30) days following written demand by City. City shall include reasonable supporting documentation with any such demand.

23. INDEMNIFICATION

23.1. Indemnification.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein, arising in connection with Tenant's use or operation of the Premises, including without limitation, the occurrence or existence of any of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring on the Premises or any part thereof; (ii) any accident, injury to or death of persons or loss of or damage to property occurring near or around the Premises which is caused directly or indirectly by Tenant or any of Tenant's Agents, Invitees or Subtenants; (iii) any use, non-use, possession, occupation, operation, maintenance, management or condition of the Premises, or any part thereof; (iv) any use, non-use, possession, occupation, operation, maintenance, management or condition of property near or around the Premises by Tenant or any of Tenant's Agents, Invitees or Subtenants; (v) any latent, design, construction or structural defect relating to the existing Improvements and any subsequent Improvements constructed by or on behalf of Tenant, and any other matters relating to the condition of the Premises caused by Tenant or any of its Agents, Invitees, or Subtenants; (vi) any failure on the part of Tenant or its Agents, Invitees or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits; (vii) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Agents, Invitees or Subtenants; (viii) any civil rights actions with respect to the Premises due to Tenant's operation of the Premises other than in accordance with this Lease; and (ix) any claim or dispute relating to the creation of this Lease and any dispute between Tenant and SFMC, its successor in interest, or its designee, relating to the Produce Market financing, use, management or operations, including but not limited to the CAM Agreement. Notwithstanding the foregoing, however, Tenant shall not be required to Indemnify the Indemnified Parties (i) in the event that any indemnification required hereunder is held to be void or otherwise unenforceable under any applicable Laws, or (ii) against Losses to the extent, and only to such extent, caused by the gross negligence or willful misconduct of the Indemnified Party being so indemnified, or caused by third party claims arising from the condition or use of the Premises prior to February 1, 2013, and to the extent not arising from the negligence or willful misconduct of Tenant or any of its Agents, Invitees or Subtenants. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing.

23.2. Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 23.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. In the event that it is determined conclusively by a court of law with jurisdiction (and all possible periods for appeal have expired) that no Indemnified Party is entitled to the indemnification provided in Section 23.1 above, and provided that the provision of the defense of

such Indemnified Party is not provided by any policy of insurance that Tenant is required to carry under the terms of this Lease (or would not have been provided but for Tenant's default in its obligations to maintain such insurance), then Tenant may offset from the next installments of Net Revenues the reasonable and actual out-of-pocket expenses incurred by Tenant in connection with the defense of the Indemnified Party following Tenant's notification of such amounts owed, which notification shall be accompanied by detailed paid statements supporting such amounts.

23.3. Not Limited by Insurance.

None of the other provisions of this Lease shall limit the indemnification obligations under Section 23.1 or any other indemnification provision of this Lease.

23.4. Survival.

Tenant's indemnity obligations under this Lease shall survive the expiration or sooner termination of this Lease.

23.5. Other Obligations.

The agreement to Indemnify set forth in this Article 23 and elsewhere in this Lease is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City under this Lease.

23.6. Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any such matter through counsel of Tenant's own choice; provided, however, in all cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise, or settle such suit or claim, City shall have the right promptly to use the City Attorney or hire outside counsel, at Tenant's sole expense, to carry out such defense, compromise, or settlement, which expense shall be due and payable to City twenty (20) business days after receipt by Tenant of an invoice therefor.

23.7. Release of Claims Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against the City and any and all Indemnified Parties from any Losses, including damages to goods, wares, goodwill, merchandise, equipment or business opportunities and by persons in, upon or about the Premises arising from the City's or any Indemnified Party's exercise of any of their rights or obligations in connection with this Lease, but excluding any claims to the extent arising from the gross negligence or willful misconduct of City or the Indemnified Parties.

24. INSURANCE

24.1. Property and Liability Coverage.

(a) Required Types and Amounts of Insurance. Tenant shall, at no cost to City, obtain, maintain and cause to be in effect at all times from the Commencement Date to the later of (i) the last day of the Term, or (ii) the last day Tenant (A) is in possession of the Premises or (B) has the right of possession of the Premises (except as otherwise specified in this Section 18.1(a)), the following types and amounts of insurance:

i. Builders Risk Insurance. During any period of Subsequent Construction, Tenant shall maintain, on a form reasonably approved by City, builders' risk insurance in the amount of 100% of the completed value of all new construction, insuring all new construction with no coinsurance penalty provision, including all materials and equipment incorporated into the Improvements, and in transit or storage off-site, against hazards including

earthquake (subject to the provisions of Section 24.1(b)(iii)), water damage (including, if appropriate and if available at commercially reasonable rates, groundwater damage and water damage resulting from backed up sewers and drains) and flood insurance (subject to the provisions of Section 24.1(b)(iv)), the Builder's Risk policy shall identify the City as the sole payee, with any deductible not to exceed Ten Thousand Dollars ($10,000) (except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 24.1(a)(i) and the insurance required under Section 24.1(a)(vii) may be required in order to comply with the requirements of Section 24.1(b)(iii) and Section 24.1(b)(iv).

ii. Property Insurance; Earthquake and Flood Insurance. Tenant shall maintain, or shall cause to be maintained by Manager, property insurance policies with coverage at least as broad as Insurance Services Office ("**ISO**") form CP 10 30 06 07 ("Causes of Loss - Special Form"), including earthquake, subject to the provisions of Section 24.1(b)(iii), and flood, subject to the provisions of Section 24.1(b)(iv), in an amount not less than 100% of the then-current full replacement cost of the Improvements and other property being insured pursuant thereto (including building code upgrade coverage) with any deductible not to exceed Ten Thousand Dollars ($10,000) (except as to earthquake insurance and flood insurance); provided, however, that as to both earthquake insurance and flood insurance separate sublimits of the insurance required under this Section 24.1(a)(ii) and the insurance required under Section 24.1(a)(vii) may be required in order to comply with the requirements of Section 24.1(b)(iii) and Section 24.1(b)(iv). In addition to the foregoing, Tenant shall insure its Personal Property in such amounts as Tenant deems reasonably appropriate (provided, however, that a Mortgagee which is a Bona Fide Institutional Lender shall be permitted to self-insure such Personal Property) and City shall have no interest in the proceeds of such Personal Property insurance.

iii. Commercial General Liability Insurance. Tenant shall, and shall cause Manager to, maintain "Commercial General Liability" insurance policies with coverage at least as broad as ISO form CG 00 01 12 07, insuring against claims for bodily injury (including death), property damage, personal injury, advertising liability, contractual liability and products and completed operations, occurring upon the Premises (including the Improvements), and operations incidental or necessary thereto, such insurance to afford protection in an amount not less than One Million Dollars ($1,000,000) each occurrence and Two Million Dollars ($2,000,000) in the aggregate, with an umbrella policy of Two Million Dollars ($2,000,000) (the "**Umbrella Policy**"), provided that: (A) during any period of Subsequent Construction, such amount shall be not less than Five Million Dollars ($5,000,000) each occurrence covering bodily injury and broad form property damage including contractual liability (which includes coverage of the indemnity in Section 23.1 and any other indemnity of City by Tenant) independent contractors, explosion, collapse, underground (XCU), and products and completed operations coverage, with an umbrella policy of Ten Million Dollars ($10,000,000); (B) if Tenant has (or is required under Laws to have) a liquor license and is selling or distributing alcoholic beverages on the premises, or is selling or distributing food products on the Premises, then Tenant shall carry liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, and food products liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence, with excess coverage provided by the Umbrella Policy, as applicable, and (C) Tenant shall require any Subtenant who has (or is required under Laws to have) a liquor license and who is selling or distributing alcoholic beverages and food products on the Premises, to maintain coverage in amounts at least comparable to Tenant's base policies.

iv. Workers' Compensation Insurance. During any period in which Tenant has employees as defined in the California Labor Code, Tenant shall maintain policies of workers' compensation insurance, including employer's liability coverage with limits not less than the greater of those limits required under applicable Law, and One Million Dollars

($1,000,000) each accident (except that such insurance in excess of One Million Dollars ($1,000,000) each accident may be covered by a so-called "umbrella" or "excess coverage" policy, covering all persons employed by Tenant in connection with the use, operation and maintenance of the Premises and the Improvements.

v. Boiler and Machinery Insurance. Tenant shall maintain boiler and machinery insurance covering damage to or loss or destruction of machinery and equipment located on the Premises or in the Improvements that is used by Tenant for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment.

vi. Business Automobile Insurance. Tenant shall maintain policies of business automobile liability insurance covering all owned, non-owned or hired motor vehicles to be used in connection with Tenant's use and occupancy of the Premises, affording protection for bodily injury (including death) and property damage in the form of Combined Single Limit Bodily Injury and Property Damage policy with limits of not less than One Million Dollars ($1,000,000) per occurrence.

vii. Business Interruption Insurance. Tenant shall maintain business interruption insurance for loss caused by any of the perils or hazards set forth in and required to be insured pursuant to the Property Related Insurance provisions, with a coverage period of not less than eighteen (18) months, and with an annual limit of not less than Five Million Dollars ($5,000,000).

viii. Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

ix. Professional Liability. Tenant shall maintain or require to be maintained, professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000) each claim and Two Million Dollars ($2,000,000) in the aggregate, with respect to all professional services, including, without limitation, architectural, engineering, geotechnical, and environmental, reasonably necessary or incidental to Tenant's activities under this Lease, with any deductible not to exceed Ten Thousand Dollars ($10,000) each claim during any period for which such professional services are engaged and for five (5) years following the completion of any such professional services.

x. Other Insurance. Tenant shall obtain such other insurance as is reasonably requested by City's Risk Manager and is customary for the Permitted Use.

(b) General Requirements. All insurance required under this Lease:

i. Shall be carried under a valid and enforceable policy or policies issued by insurers of recognized responsibility that are rated Best A-:VIII or better (or a comparable successor rating) and legally authorized to sell such insurance within the State of California;

ii. As to property and boiler and machinery insurance shall name City as loss payee as its interest may appear, and as to both property and liability insurance, shall name as additional insureds the following: "THE CITY AND COUNTY OF SAN FRANCISCO AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS." Tenant shall cause such additional insured endorsements to be issued on Form CG2010(1185);

iii. As to earthquake insurance only:

(1) during the Term of this Lease; unless City reasonably agrees with Tenant that earthquake insurance is not generally commercially available at commercially reasonable rates, such insurance shall be in an amount at least equal to the lesser of (i) the maximum amount as is available at commercially reasonable rates from recognized carriers (with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation), except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates), and (ii) one hundred percent (100%) of the maximum probable loss that would be sustained by the Premises (based on the full value of the Improvements) as a result of the occurrence of an earthquake measuring 8.3 on the Richter scale (which maximum probable loss shall be determined not less frequently than every five (5) years by a consultant chosen and paid for by Tenant who is reasonably satisfactory to City), with a deductible of up to but not to exceed five percent (5%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation);

(2) rates for all earthquake insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one third of one percent (.33%) of the then-current full replacement cost of the Improvements;

iv. As to flood insurance only, unless City reasonably agrees with Tenant in writing that flood insurance is not generally available at commercially reasonable rates:

(1) during construction of any Improvement, such insurance shall be in an amount at least equal to the maximum amount as is available at commercially reasonable rates from recognized insurance carriers (with a deductible up to, but not to exceed fifteen percent (15%) of the then-current, full replacement cost of the Improvements or other property being insured pursuant thereto (including building code upgrade coverage and the cost of any foundations, excavations and footings and without any deduction being made for depreciation) except that a greater deductible will be permitted to the extent that such coverage is not available from recognized insurance carriers or at commercially reasonable rates);

(2) from and after Completion of the Improvements, such insurance shall be in an amount at least equal to the amount available at commercially reasonable rates from recognized insurance carriers, with a deductible of up to but not to exceed an amount that is necessary to make such flood insurance available at commercially reasonable rates;

(3) rates for all flood insurance required under this Lease shall be deemed to be commercially reasonable in the event that they are less than or equal to one tenth of one percent (.1%) of the then-current full replacement cost of the Improvements;

v. Shall be evaluated by City and Tenant for adequacy not less frequently than every five (5) years. Following consultation with Tenant, City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if in the reasonable judgment of the City's Risk Manager it is the general commercial practice in San Francisco or in other cities or counties around the country to carry insurance for facilities similar to the Premises in amounts substantially greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises. If the City's Risk Manager determines that insurance limits required under this Section may be decreased in light of such commercial practice and the risks associated with use of the Premises, City shall notify Tenant of such determination, and Tenant shall have the right to decrease the insurance coverage required under this Lease accordingly. In any such event, Tenant shall promptly deliver to City a certificate evidencing

such new insurance amounts and meeting all other requirements under this Lease with respect thereto;

vi. Intentionally deleted;

vii. As to Commercial General Liability only, shall provide that it constitutes primary insurance to any other insurance available to additional insureds specified hereunder, with respect to claims insured by such policy, and that insurance applies separately to each insured against whom claim is made or suit is brought;

viii. Shall provide for waivers of any right of subrogation that the insurer of such Party may acquire against each Party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 24.1(a)(i), (ii) and (v);

ix. Shall be subject to the approval of City, which approval shall be limited to whether or not such insurance meets the terms of this Lease;

x. Except for professional liability insurance which shall be maintained in accordance with Section 24.1(a)(ix), if any of the insurance required hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of two (2) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

xi. Shall for Property Related Insurance only, provide that all losses payable under all such policies that are payable to City shall be payable notwithstanding any act or negligence of Tenant.

(c) Certificates of Insurance; Right of City to Maintain Insurance. Tenant shall furnish City certificates with respect to the policies required under this Section, together with (if City so requests) copies of each such policy within thirty (30) days after the Commencement Date and, with respect to renewal policies, at least thirty (30) business days prior to the expiration date of each such policy. Tenant shall provide City with thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to the City. If at any time Tenant fails to maintain the insurance required pursuant to Section 24.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) business days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) business days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

(d) Insurance of Others. Tenant shall require that liability insurance policies that Tenant requires to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, include Tenant and City (using the wording described in Section 24.1(b)(ii)) as additional insureds, as their respective interests may appear.

24.2. City Entitled to Participate.

With respect to Property Related Insurance, City shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Five Million Dollars ($5,000,000) covered by the insurance required to be carried hereunder; provided, however, that City's consent shall not be unreasonably withheld, conditioned or delayed.

24.3. Release and Waiver.

Each Party hereby waives all rights of recovery and causes of action, and releases each other Party from any liability, losses and damages occasioned to the property of each such Party, which losses and damages are of the type covered under the property policies required by Sections 24.1(a)(i), (ii) or (v) to the extent that such loss is reimbursed by an insurer.

25. HAZARDOUS MATERIALS

25.1. Hazardous Materials Compliance.

(a) Compliance with Hazardous Materials Laws. Tenant shall comply and cause (i) all persons or entities under any Sublease, (ii) all Invitees or other persons or entities entering upon the Premises, and (iii) the Premises and the Improvements, to comply with all Hazardous Materials Laws and prudent business practices, including, without limitation, any deed restrictions, deed notices, soils management plans or certification reports required in connection with the approvals of any regulatory agencies in connection with the Premises. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, nor will it transport or permit the transport of Hazardous Materials to or from the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction of the Improvements, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable Laws, (D) janitorial or office supplies or materials in such limited amounts as are customarily used for general office purposes so long as such Handling is at all times in full compliance with all Environmental Laws, and (E) pre-existing Hazardous Materials in, on or under the Premises that are required by Law or prudent business practices to be Handled for Remediation purposes; provided that Tenant Handles such pre-existing Hazardous Materials in compliance with all applicable Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 25.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) business days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Article 25) and all communication with any person or entity relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Article 25).

(c) City's Approval of Remediation. Except as required by Law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld, conditioned or delayed, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. City shall approve or

disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, but in any event within thirty (30) days after receipt thereof. If City disapproves of any such Hazardous Materials Remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (x) in compliance with all applicable Hazardous Materials Laws, (y) to the reasonable satisfaction of City, and (z) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the RWQCB and the San Francisco Department of Public Health.

(d) Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the **"Pesticide Ordinance"**) which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Tenant to submit to the City's Department of the Environment an integrated pest management ("**IPM**") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the Term of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Tenant, acting through the City, from seeking a determination from the City's Commission on the Environment that Tenant is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

25.2. Hazardous Materials Indemnity.

Without limiting the indemnity in Section 23.1, Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, whether by Tenant, any Subtenants or any other person or entity directly or indirectly arising out of (A) the Handling, transportation or Release of Hazardous Materials by Tenant, its Agents, Invitees or any Subtenants or any person or entity on or about the Premises (other than City and its Agents and Invitees), (B) any failure by Tenant, its Agents, Invitees or Subtenants (other than City and its Agents and Invitees) to comply with Hazardous Materials Laws, or (C) any failure by Tenant to comply with the obligations contained in Section 25.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (a) discovery of any such Hazardous Materials on, under or about the Premises, or (b) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage. Tenant acknowledges and agree that it has an immediate obligation to defend City as set forth in Section 23.2.

26. INTENTIONALLY DELETED.

27. CITY'S RIGHT TO PERFORM TENANT'S COVENANTS

27.1. City May Perform in Emergency.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if Tenant fails to perform any maintenance or repairs required to be performed by Tenant hereunder within the time provided for such performance, which failure gives rise to an emergency which creates an

imminent danger to public health or safety, as reasonably determined by City, City may at its sole option, but shall not be obligated to, perform such obligation for and on behalf of Tenant, provided that, if there is time, City first gives Tenant such notice and opportunity to take corrective action as is reasonable under the circumstances. Nothing in this Section shall be deemed to limit City's ability to act in its legislative or regulatory capacity, including the exercise of its police powers, nor to waive any claim on the part of Tenant that any such action on the part of City constitutes a Condemnation or an impairment of Tenant's contract with City.

27.2. City May Perform Following Tenant's Failure to Perform.

Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City for any default on the part of Tenant under this Lease, if at any time Tenant fails to pay any sum required to be paid by Tenant pursuant to this Lease to any party other than City (other than any Imposition, with respect to which the provisions of Section 13.2 shall apply), or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following written notice from City for a period of thirty (30) days, subject to Force Majeure (or, if Section 24.1(c) is applicable, which failure continues for five (5) business days after written notice from City), and is not the subject of a contest under Article 14, then, City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

27.3. Tenant's Obligation to Reimburse City.

If pursuant to the terms of this Lease, City pays any sum or performs any obligation required to be paid or performed by Tenant hereunder, Tenant shall reimburse City within thirty (30) days following demand (or by such earlier date specifically provided herein with respect to a particular cost or expense), as Additional Rent, the sum so paid, or the reasonable expense incurred by City in performing such obligation, together with interest thereon at the Default Rate, if such payment is not made within such period, computed from the date of City's demand until payment is made. City's rights under this Article 27 shall be in addition to its rights under any other provision of this Lease or under applicable Laws.

28. EVENTS OF DEFAULT; TERMINATION

28.1. Events of Default.

Subject to the provisions of Section 28.2, the occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Prior to any Dispossession Event, Tenant fails to commence construction of the Project in accordance with the Schedule of Performance, or after commencement of any Phase fails to prosecute diligently to obtain all Regulatory Approvals, all elements of financing, the construction of the Improvements to be constructed in such Phase on or before the required completion dates set forth in the Schedule of Performance (in each case as such dates shall have been extended due to Force Majeure or Significant Deviation From Economic Model, if applicable), or abandons or substantially suspends construction for more than thirty (30) consecutive days, and the failure, abandonment or suspension continues for a period of: (i) thirty (30) days following the date of written notice from the City as to failure to commence construction; or (ii) sixty (60) days following the date of written notice from the City as to abandonment, suspension or a failure to complete construction of the Improvements, if any (provided that, if ,within such cure period, Tenant gives notice to City that such failure is due to delay caused by Force Majeure, then such cure period shall be extended by a period of time equal to the duration of the Force Majeure event; provided, that within thirty (30) days after the beginning of any such Force Majeure event, Tenant shall have first notified City of the cause or causes of such delay, and provided further that Tenant continues diligently to prosecute such cure or the resolution of such event of Force Majeure); or

(b) Prior to any Dispossession Event, Tenant does not submit the Construction Documents, Budgets, or other documents that are required to be submitted under the provisions of Article 5 within the times provided in Article 5, and Tenant does not cure such default within fifteen (15) days after the date of written demand by City specifying the items missing or due;

(c) Tenant fails to pay any Rent to City when due, which failure continues for ten (10) days following written notice from City (it being understood and agreed that the notice required to be given by City under this Section 28.1(c) shall also constitute the notice required under Section 1161 of the California Code of Civil Procedures or its successor, and shall satisfy the requirements that notice be given pursuant to such section); provided, however, City shall not be required to give such notice on more than two (2) occasions during any calendar year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;

(d) Tenant files a petition for relief, or an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency Law, or any comparable Law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed or stayed within sixty (60) days;

(e) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within sixty (60) days;

(f) Tenant makes a general assignment for the benefit of its creditors;

(g) Tenant abandons the Premises, within the meaning of California Civil Code Section 1951.2, or otherwise abandons or ceases to use the Premises for the uses permitted hereunder which abandonment is not cured within fifteen (15) days after notice of belief of abandonment from City;

(h) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for five (5) business days after written notice from City; or

(i) Tenant violates any provision of Article 9 or fails to perform any other obligation to be performed by Tenant under such Article at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within sixty (60) days after such written notice from City.

(j) Tenant suffers or permits a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease and such violation continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15)-day period, if Tenant does not within such fifteen (15)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within thirty (30) days after such written notice from City;

(k) Tenant engages in or allows any use not permitted hereunder or engages in any activity prohibited by Section 4.5(a)(ii), and such activity continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such fifteen (15)-day period, if Tenant does not within such fifteen (15)-day period commence such cure, or having so

commenced, does not prosecute such cure with diligence and dispatch to completion within thirty (30) days after such written notice from City;

(l) Prior to any Dispossession Event, Tenant fails to maintain its status as a tax exempt non-profit entity, except as approved by City, and such failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, and provided such failure is curable, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable period of time after such written notice from City; provided, however, that if Tenant's failure to maintain its status as a tax exempt non-profit entity is the result of a change in applicable Laws that prohibits Tenant from qualifying for tax-exempt status, such failure shall be an Event of Default only under the terms and conditions set forth in Section 46.1(c) below; or

(m) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease (including, but not limited to, any Mitigation and Improvement Measures) at the time such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter; or

(n) Prior to any Dispossession Event, Tenant fails to commence construction of the Project Improvements or diligently proceed with the completion of the Project Improvements in accordance with the Schedule of Performance, subject to force majeure delays.

Unless otherwise provided above, there shall be no cure period for a default on the part of Tenant.

28.2. Special Provisions Concerning Mortgagees and Events of Default.

Notwithstanding anything in this Lease to the contrary, the exercise by a Mortgagee of any of its remedies under its Mortgage shall not, in and of itself, constitute an Event of Default under this Lease.

29. REMEDIES

29.1. City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease (but without obligation on the part of City following the occurrence of an Event of Default to accept a cure of such Event of Default other than as required by Law or the terms of this Lease), City shall have all rights and remedies provided in this Lease or available at law or equity; provided, however, notwithstanding anything to the contrary in this Lease, the remedies of City for any Event of Default by Tenant under the prevailing wage provisions (described in Section 18.7(e) above), the First Source Hiring Program (described in Section 47.10 below) shall be limited to the remedies provided in such programs. All of City's rights and remedies shall be cumulative, and except as may be otherwise provided by applicable Law, the exercise of any one or more rights shall not preclude the exercise of any others.

29.2. Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect, as permitted by California Civil Code Section 1951.4 (or any successor provisions). Specifically, City has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign,

subject only to reasonable limitations). In the event City elects this remedy, City shall have the right to enforce by suit or otherwise, all covenants and conditions hereof to be performed or complied with by Tenant and exercise all of City's rights, including the right to collect Rent, when and as such sums become due, even though Tenant has breached this Lease and is no longer in possession of the Premises or actively managing or operating the Premises. If Tenant abandons the Premises in violation of this Lease, City may (i) enter the Premises and relet the Premises, or any part thereof, to third parties for Tenant's account without notice to Tenant, Tenant hereby waiving rights, if any, to any such notice under any applicable Law, and (ii) alter, install or modify the Improvements or any portion thereof. Tenant shall be liable immediately to City for all costs City incurs in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of Restoration and of repairing, securing, servicing, maintaining and preserving the Premises or the Improvements, or any portion thereof. Reletting may be for a period equal to, shorter or longer than the remaining Term of this Lease, provided Tenant's obligations shall in no event extend beyond the Term unless such obligations are otherwise specified in this Lease to remain in effect after the termination or expiration of the Term.

(b) No Termination without Notice. No act by City allowed by this Section 29.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If City elects to relet the Premises as provided in Section 29.2(a), the rent that City receives from reletting shall be applied to the payment of:

i. First, all costs incurred by City in enforcing this Lease, whether or not any action or proceeding is commenced, including, without limitation, Attorneys' Fees and Costs, brokers' fees or commissions, the costs of removing and storing the Personal Property of Tenant, costs incurred by City in connection with reletting the Premises, or any portion thereof, and altering, installing, modifying and constructing tenant improvements required for a new tenant, and the costs of repairing, securing and maintaining the Premises or any portion thereof;

ii. Second, the satisfaction of all obligations of Tenant hereunder (other than the payment of Rent) including, without limitation, the payment of all Impositions or other items of Additional Rent owed from Tenant to City, in addition to or other than Rent due from Tenant;

iii. Third, Rent, due and unpaid under this Lease;

iv. After deducting the payments referred to in this Section 29.2(c), any sum remaining from the rent City receives from reletting shall be held by City and applied to monthly installments of Rent as such amounts become due under this Lease. In no event shall Tenant be entitled to any excess rent received by City. If, on a date Rent or other amount is due under this Lease, the rent received as of such date from the reletting is less than the Rent or other amount due on that date, or if any costs, including those for maintenance which City incurred in reletting, remain after applying the rent received from the reletting as provided in Section 29.2(c)(i)-(iii), Tenant shall pay to City, upon demand, in addition to the remaining Rent or other amounts due, all such costs.

(d) Payment of Rent. Tenant shall pay to City the Rent due under this Lease on the dates the Rent is due, less the rent City has received from any reletting which exceeds all

costs and expenses of City incurred in connection with Tenant's default and the reletting of all or any portion of the Premises.

29.3. Right to Terminate Lease.

(a) Damages. Subject to the rights of a Mortgagee pursuant to Article 44, City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination and termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following:

i. The worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease;

ii. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

iii. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

iv. Any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom.

v. "**The worth at the time of the award**", as used in Section 29.3(a)(i) and (ii) shall be computed by allowing interest at a rate per annum equal to the Default Rate. "The worth at the time of the award", as used in Section 29.3(a)(iii), shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid when due shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. In the event City terminates Tenant's right to possession of the Premises pursuant to this Section 29.3, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Assign or Sublet. Upon the occurrence of an Event of Default, notwithstanding anything in Section 8, to the contrary, Tenant shall have no right to sublet or assign its interest in the Premises or this Lease without City's written consent, which may be given or withheld in City's sole and absolute discretion, subject to the rights of Mortgagees as set forth in Article 44.

29.4. Continuation of Subleases and Other Agreements.

Following an Event of Default and termination of Tenant's interest in this Lease, and subject to the terms of any non-disturbance agreements entered into by City, City shall have the right, at its sole option, to assume any and all Subleases and agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement. Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to

City, or cause to be executed, acknowledged and delivered to City, such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing Subleases and other agreements then in force, as above specified.

30. EQUITABLE RELIEF

30.1. City's Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, City shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

30.2. Tenant's Equitable Relief.

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such default. In addition, after the occurrence of an Event of Default, Tenant shall be entitled to any other equitable relief which may be appropriate to the circumstances of such Event of Default.

31. NO WAIVER

31.1. No Waiver by City or Tenant.

No failure by City or Tenant to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by the Party against which waiver is being asserted. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, or the respective rights of City or Tenant with respect to any other then existing or subsequent breach.

31.2. No Accord or Satisfaction.

No submission by Tenant or acceptance by City of full or partial Rent or other sums during the continuance of any failure by Tenant to perform its obligations hereunder shall waive any of City's rights or remedies hereunder or constitute an accord or satisfaction, whether or not City had knowledge of any such failure. No endorsement or statement on any check or remittance by or for Tenant or in any communication accompanying or relating to such payment shall operate as a compromise or accord or satisfaction unless the same is approved as such in writing by City. City may accept such check, remittance or payment and retain the proceeds thereof, without prejudice to its rights to recover the balance of any Rent, including any and all Additional Rent, due from Tenant and to pursue any right or remedy provided for or permitted under this Lease or in law or at equity. No payment by Tenant of any amount claimed by City to be due as Rent hereunder (including any amount claimed to be due as Additional Rent) shall be deemed to waive any claim which Tenant may be entitled to assert with regard to the making of such payment or the amount thereof, and all such payments shall be without prejudice to any rights Tenant may have with respect thereto, whether or not such payment is identified as having been made "under protest" (or words of similar import).

32. DEFAULT BY CITY; TENANT'S REMEDIES

32.1. Default by City; Tenant's Exclusive Remedies.

City shall be deemed to be in default hereunder only if City shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time of any cure period provided herein, or, (ii) if no cure period is provided herein, for more than thirty (30) days after written notice thereof from Tenant, or, (iii) if such default cannot

reasonably be cured within such thirty (30)-day period, City shall not within such period commence with due diligence and dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with diligence and dispatch the curing of such default. Upon the occurrence of default by City described above, which default substantially and materially interferes with the ability of Tenant to conduct the use on the Premises provided for hereunder, Tenant shall have the exclusive right (a) to offset or deduct only from the Rent becoming due hereunder, the amount of all Losses incurred by Tenant as a direct result of City's default, but only after obtaining a final, unappealable judgment in a court of competent jurisdiction for such damages in accordance with applicable Law and the provisions of this Lease, or (b) to seek equitable relief in accordance with applicable Laws and the provisions of this Lease where appropriate and where such relief does not impose personal liability on City or its Agents; provided, however, (i) in no event shall Tenant be entitled to offset from all or any portion of the Rent becoming due hereunder any Losses other than Tenant's Losses as described in the foregoing clause (a), (ii) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a default by City hereunder, and (iii) Tenant shall have no remedy of self-help.

33. NO RECOURSE AGAINST SPECIFIED PERSONS

33.1. No Recourse Beyond Value of Property Except as Specified.

Tenant agrees that except as otherwise specified in this Section 33.1, Tenant will have no recourse with respect to, and City shall not be liable for, any obligation of City under this Lease, or for any claim based upon this Lease, except to the extent of the fair market value of City's fee interest in the Premises (as encumbered by this Lease). By Tenant's execution and delivery hereof and as part of the consideration for City's obligations hereunder, Tenant expressly waives such liability.

33.2. Tenant's Recourse Against City.

No commissioner, officer, director or employee of City, or any other Indemnified Parties will be personally liable to Tenant, or any successor in interest, for any default by City, and Tenant agrees that it will have no recourse with respect to any obligation or default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

33.3. City's Recourse Against Tenant.

No member, officer, director, shareholder, agent or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

34. LIMITATIONS ON LIABILITY

34.1. Limitation on City's Liability Upon Transfer.

In the event of any transfer of City's interest in and to the Premises, City, subject to the provisions hereof (and in case of any subsequent transfers, the then transferor), will automatically be relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this Lease thereafter to be performed on the part of City, but not from liability incurred by City (or such transferor, as the case may be) on account of covenants or obligations to be performed by City (or such transferor, as the case may be) hereunder before the date of such transfer; provided, however, that such subsequent transferor assumes the covenants and obligations of City hereunder.

34.2. Mutual Release.

Tenant and City, as a material part of the consideration of this Lease, each hereby waives and releases any and all claims against each other and their respective Agents (and, with respect to the Tenant's waiver and release, also against the Indemnified Parties) for any indirect, special, consequential or incidental damages (including without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) in connection with this Lease and the Premises, regardless of whether such party has been informed of the possibility of such damages or is negligent for any cause arising at any time, including, without limitation, all claims arising from the joint or concurrent negligence of such party. It is understood and agreed that for purposes of this Lease, third party claims for personal injury and the cost of repairing or replacing damaged property shall be deemed to constitute direct damages and therefore not subject to the foregoing waiver and release.

35. ESTOPPEL CERTIFICATES BY TENANT

35.1. Estoppel Certificate by Tenant.

Tenant shall execute, acknowledge and deliver to City (or at City's request, to a prospective purchaser or mortgagee of City's interest in the Property), within fifteen (15) business days after a request, a certificate stating to the best of Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder or in the CAM Agreement which has not been cured, except as to defaults specified in such certificate and (d) any other matter actually known to Tenant, directly related to this Lease and reasonably requested by City. In addition, if requested, Tenant shall attach to such certificate a copy of this Lease, and any amendments thereto, and include in such certificate a statement by Tenant that, to the best of its knowledge, such attachment is a true, correct and complete copy of this Lease, as applicable, including all modifications thereto. Any such certificate may be relied upon by City, and any purchaser, prospective purchaser, Mortgagee or prospective Mortgagee of the Premises or any part of City's interest therein. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into each Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within ten (10) business days after request, an estoppel certificate covering the matters described in clauses (a), (b), (c) and (d) above with respect to such Sublease.

36. ESTOPPEL CERTIFICATES BY CITY

36.1. Estoppel Certificate by City.

City shall execute, acknowledge and deliver to Tenant (or at Tenant's request, to any Subtenant, prospective Subtenant, Mortgagee, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease), within fifteen (15) business days after a request, a certificate stating to the best of City's knowledge (limited to only that of the Director of Property) (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), (d) the amount of the security deposit (if any) being held by City under this Lease, and (e) any other matter actually known to City, directly related to this Lease and reasonably requested by the requesting Party. Additionally, the certificate may contain such additional matters relating to the Mortgage and Financing secured thereby as may be requested by the Mortgagee and approved by the City Administrator as provided in Section 44.11(k) below. In addition, if requested, City shall attach

to such certificate a copy of this Lease and any amendments thereto and include in such certificate a statement by City that, to the best of its knowledge (limited to only that of the Director of Property), such attachment is a true, correct and complete copy of this Lease, including all modifications thereto. The non-economic provisions of any such certificate may be incorporated into any Memorandum of Lease (as defined below) or amendment thereto recorded in the Official Records of the City and County of San Francisco, relied upon by Tenant or any Subtenant, prospective Subtenant, Mortgagee, prospective Mortgagee, or other prospective permitted transferee of Tenant's interest under this Lease, and in the case of a Mortgagee, prospective Mortgagee or prospective permitted transferee, shall be in substantially the form requested by such party if agreed upon by City.

37. APPROVALS BY CITY

37.1. Approvals by City.

The City Administrator or his or her designee, is authorized to execute on behalf of City any closing or similar documents if the City Administrator determines, after consultation with, and approval as to form by, the City Attorney, that the document is necessary or proper and in City's best interests. The City Administrator's signature of any such documents shall conclusively evidence such a determination by him or her. Wherever this Lease requires or permits the giving by City of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City, the City Administrator, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable Law, including the City's Charter.

37.2. Fees for Review.

Within thirty (30) days after City's written request, Tenant shall pay City, as Additional Rent, City's costs, including, without limitation, Attorneys' Fees and Costs incurred in connection with the review, investigation, processing, documentation and/or approval of any proposed assignment or Sublease, Mortgage, estoppel certificate, Non-Disturbance Agreement or Subsequent Construction. Tenant shall pay such costs regardless of whether or not City consents to such proposal, except only in any instance where City has wrongfully withheld, delayed or conditioned its consent in violation of this Lease.

38. NO MERGER OF TITLE

38.1. No Merger of Title.

There shall be no merger of the leasehold estate with the fee estate in the Premises by reason of the fact that the same party may own or hold (a) the leasehold estate or any interest in such leasehold estate, and (b) any interest in such fee estate. No such merger shall occur unless and until all parties having any interest in the leasehold estate and the fee estate in the Premises shall join in and record a written instrument effecting such merger.

39. QUIET ENJOYMENT

39.1. Quiet Enjoyment.

Subject to the terms and conditions of this Lease and applicable Laws, City agrees that Tenant, upon paying the Rent and observing and keeping all of the covenants under this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term of this Lease without hindrance or molestation of anyone claiming by, through or under City. Notwithstanding the foregoing, City shall have no liability to Tenant in the event any defect exists in the title of City as of the Commencement Date, whether or not such defect affects Tenant's rights of quiet enjoyment (unless such defect is due to City's willful misconduct) and, except as otherwise expressly provided for under the terms and provisions of this Lease, no such defect shall be grounds for a termination of this Lease by Tenant. Tenant's sole remedy with

respect to any such existing title defect shall be to obtain compensation by pursuing its rights against any title insurance company or companies issuing title insurance policies to Tenant.

40. SURRENDER OF PREMISES

40.1. Expiration or Termination.

(a) Conditions of Premises. Upon the expiration or other termination of the Term of this Lease, Tenant shall quit and surrender to City the Premises in good order and in clean and operable condition, reasonable wear and tear excepted to the extent the same is consistent with maintenance of the Premises in the condition required hereunder, and free of any liens or encumbrances except for any Permitted Title Exceptions. Except as provided elsewhere in this Lease, including, without limitation in Section 40.1(c) below, the Premises shall be surrendered exclusive of any Personal Property pursuant to Article 17. The Premises shall be surrendered with all Improvements, repairs, alterations, additions, substitutions and replacements thereto subject to Section 40.1(c) and Section 40.1(d) below. Tenant hereby agrees to execute all documents as City may deem necessary to evidence or confirm any such other termination.

(b) Subleases and Agreements. Upon any termination of this Lease, City shall have the right to terminate all Subleases hereunder and any and all agreements for the maintenance or operation of the Premises, including without limitation, the Management Agreement, except for those Subleases with respect to which City has entered into Non-Disturbance Agreements, and any and all agreements for the maintenance or operation of the Premises with respect to which City has agreed to assume pursuant to Section 29.4.

(c) Personal Property. If an Event of Default exists at the expiration or termination of this Lease, title to the Personal Property, shall vest in City without any further action by any Party, subject to the rights of a Mortgagee in such Personal Property which are superior to the rights of City pursuant to the terms of this Lease. If no Event of Default exists at the expiration or termination of this Lease, Tenant and all Subtenants shall have the right to remove their respective trade fixtures and other Personal Property. At City's request, Tenant shall remove, at no cost to City, any Personal Property belonging to Tenant which then remains on the Premises. If the removal of such Personal Property causes damage to the Premises, Tenant shall promptly repair such damage, at no cost to City.

(d) Safety Restoration Work. Upon the expiration or termination of this Lease resulting from an event of damage or destruction pursuant to Section 20.4, a Condemnation event under Section 21, or an Event of Default pursuant to Article 28, upon written instructions from City, Tenant shall, at Tenant's sole cost and expense, complete all Safety Restoration Work, and return the Premises to City in a clean condition. Such Safety Restoration Work shall be conducted in accordance with the provisions of this Lease relating to construction on the Premises, including without limitation, Article 18.

41. HOLD OVER

41.1. Hold Over.

Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. In any such event, at City's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant at the Rent in effect at the expiration of the Term, payable on a monthly basis.

42. NOTICES

42.1. Notices.

All notices, demands, consents, and requests which may or are to be given by any Party to the other shall be in writing, except as otherwise provided herein. All notices, demands, consents and requests to be provided hereunder shall be deemed to have been properly given and

effective (i) on the date of receipt or refusal if delivered by a reputable overnight delivery service, all fees for such delivery prepaid, or if served personally on a day that is a business day (or on the next business day if served personally on a day that is not a business day), or (ii) if mailed, on the date that is three business days after the date when deposited with the U.S. Postal Service for delivery by United States registered or certified mail, postage prepaid, in either case, addressed as follows:

To Tenant:	[_____] [_____] [_____] [_____] [_____]
with a copy to:	Farella Braun + Martel LLP The Russ Building 235 Montgomery Street, 17th Floor San Francisco, CA 94104 Attention: CJ Higley
To City:	Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attention: Director of Property Re: SF Produce Market Facsimile: (415) 552-9216
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attention: Real Estate/Finance Team Re: SF Produce Market Facsimile: (415) 554-4755

or at such other place or places in the United States as each such Party may from time to time designate by written notice to the other in accordance with the provisions hereof. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth above or such other number as may be provided from time to time by notice given in the manner required hereunder; however, neither Party may give official or binding notice by telefacsimile. Notices given to any Mortgagee, shall be given to such addresses of which such Mortgagee may notify City in writing from time to time.

42.2. Form and Effect of Notice.

Every notice given to a Party or other party under this Section must state (or shall be accompanied by a cover letter that states):

(a) the section of this Lease pursuant to which the notice is given and the action or response required, if any;

(b) if applicable, the period of time within which the recipient of the notice must respond thereto; and

(c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the subject matter of the notice.

In no event shall a recipient's approval of or consent to the subject matter of a notice be deemed to have been given by its failure to object thereto if such notice (or the accompanying cover letter) does not comply with the requirements of this Section 42.2.

43. INSPECTION OF PREMISES BY CITY

43.1. Entry.

Subject to the rights of Subtenants, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (and at any time in the event of an emergency which poses an imminent danger to public health or safety) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that City may have a right to perform under Section 27, or (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate for evaluation of Hazardous Materials or other environmental conditions. Nothing herein shall imply any duty upon the part of City to perform any work which under any provision of this Lease Tenant may be required to perform, nor to place upon City any obligation, or liability, for the care, supervision or repair of the Premises. City agrees to use reasonable efforts to minimize interference, to the extent practicable, with the activities and tenancies of Tenant, Subtenant and their respective Invitees. If City elects to perform work on the Premises pursuant to Section 21, City shall not be liable for inconvenience, loss of business or other damage to Tenant by reason of the performance of such work on the Premises, or on account of bringing necessary materials, supplies and equipment into or through the Premises during the course thereof, provided City uses reasonable diligence to minimize the interference any such work may cause with the activities of Tenant, its Subtenants, and their respective Invitees.

43.2. Exhibit for Lease.

Subject to the rights of Subtenants, Tenant shall permit City and its Agents to enter the Premises during regular business hours upon reasonable prior notice (i) to exhibit the same in a reasonable manner in connection with any sale, transfer or other conveyance of City's interest in the Premises, and (ii) during the last twenty-four (24) months of the Term, for the purpose of leasing the Premises.

43.3. Notice, Right to Accompany.

City agrees to give Tenant reasonable prior notice of City's entering on the Premises for the purposes set forth in Section 43.1 and 43.2, except in an emergency. Such notice shall be not less than forty-eight (48) hours prior notice. Tenant shall have the right to have a representative of Tenant accompany City or its Agents on any entry into the Premises. Notwithstanding the foregoing, no notice shall be required for City's entry onto public areas of the Premises during regular business hours unless such entry is for the purposes set forth in Section 43.1 and 43.2.

43.4. Rights with Respect to Subtenants.

Tenant agrees to use commercially reasonable efforts (including efforts to obtain the agreement of each Subtenant to include a provision similar to this Section 43 in its Sublease) to require each Subtenant to permit City to enter its premises for the purposes specified in this Section 43.

44. MORTGAGES

44.1. No Mortgage Except as Set Forth Herein.

(a) Restrictions on Financing. Except as expressly permitted in this Article 44, Tenant shall not:

i. engage in any financing or other transaction creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises, the Accounts, or Tenant's interest in the Improvements under this Lease; or

ii. place or suffer to be placed upon Tenant's leasehold estate in the Premises, the Accounts or interest in the Improvements hereunder any lien or other encumbrances other than as permitted by Section 22.1.

(b) No Subordination of Fee Interest. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in the Premises to any Mortgagee of Tenant; notwithstanding the foregoing, the City Administrator may amend any provision in this Article 44 if the City Administrator determines that such amendment is necessary or desirable to facilitate transactions required for the Premises to benefit from the use of New Markets Tax Credits, is in the best interest of the City, furthers the City's interest in the operation of the Premises, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease. In the event City encumbers its fee interest in the Premises pursuant to any mortgage, deed of trust or other security agreement or instrument (a "**Fee Mortgage**"), each such Fee Mortgage shall be expressly subject and subordinate to this Lease, to any New Lease (as defined below), to the Subleases and to any extensions, amendments, modifications, and supplements thereof. The provisions of the immediately preceding sentence shall be self-operative and no further instrument of subordination shall be required; however, in confirmation of such subordination, upon the request of Tenant or any Mortgagee, Landlord shall execute, and shall cause any Fee Mortgagee to execute, any subordination agreements necessary to maintain such priority and a commercially reasonable non-disturbance agreement (a "**Fee Mortgage NDA**") from the holder(s) of each Fee Mortgage (a "**Fee Mortgagee**") agreeing (i) to recognize Tenant and Mortgagee's respective interests under this Lease and the Mortgage or the New Lease, as applicable, and the Subtenants' rights under their respective Subleases; (ii) to not disturb Tenant's (or any New Tenant's) use and occupancy of the Premises pursuant to this Lease or the New Lease, as applicable, or any Subtenant's use and occupancy of its sublease premises pursuant to its Sublease so long as there is no uncured event of default under this Lease, the New Lease or the applicable Sublease, and subject to Mortgagee's rights under this Article 44 and (iii) to not interfere with any exercise of Mortgagee's rights and remedies under the Mortgage.

(c) Violation of Covenant. Any mortgage, deed of trust, encumbrance or lien not permitted by this Article 44 shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

44.2. Leasehold Liens.

(a) Tenant's Right to Mortgage Leasehold. Subject to compliance with this Article 44, at any time and from time to time, Tenant shall have the right to assign, mortgage, or encumber Tenant's leasehold estate in the Premises, Tenant's right to receive Rent, Tenant's interest in the Improvements and any and all right, title and interest of Tenant under this Lease by way of leasehold mortgages, deeds of trust or other security instruments of any kind, to the extent permitted hereby. Notwithstanding anything to the contrary in this Lease, Tenant and each and every Subtenant shall have the right to assign, mortgage or encumber and grant a

security interest in and to its personal property located in the Premises to any lender, equipment lessor or other financier without City's consent.

(b) Leasehold Mortgages Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease or in any other document or agreement executed by City in favor of or for the benefit of Mortgagee, including, without limitation, the Mortgage Confirmation Statement and in any non-disturbance agreement entered into among City, Tenant and a Mortgagee pursuant to Section 44.2(e), the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder.

(c) Limitation of Number of Leasehold Mortgagees Entitled to Protection Provisions. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one (1) Mortgagee at any one time. If at any time there is more than one (1) Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Article 44 to the exclusion of the holder of any junior Mortgage. For purposes of this Section 44.2 (c) and Section 44.11(d)(ii) below, in the absence of an order from a court with jurisdiction that is properly served on City, a title report prepared by a reputable title company licensed to do business in the State of California and having offices in the City, setting forth the order of priority of lien of the Mortgages, may be relied on by City as conclusive evidence of priority.

(d) No Invalidation of Lien of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including the use of any proceeds of any debt, the repayment of which is secured by a Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of a Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards expressed in Article 9 above.

(e) Agreements Regarding Personal Property. Upon the request of Tenant, or any Subtenant, City shall enter into any commercially reasonable written agreement with Tenant and its Mortgagee or other lessor and/or lender for Tenant's or such Subtenant's Personal Property, wherein City shall agree to subordinate any landlord lien rights it may have in and to such Personal Property to the interest of Mortgagee, lessors and/or lenders therein and waive any claim that the same are part of the Premises by virtue of being affixed thereto but only to the extent that the provisions of this Lease authorize Tenant to remove such Personal Property upon the expiration or earlier termination of this Lease. As a condition to entering into such agreement, Tenant shall reimburse City for all its costs associated with reviewing, negotiating and approving such agreement. Additionally, such agreement shall (a) contain a requirement that each such Mortgagee, lessor and/or lender give proper notice to City (i) of any such default by Tenant, and (ii) prior to any entry of the Premises to remove any Personal Property due to such default and City's approval of the timing thereof, (b) prohibit the sale of such Personal Property on the Premises, (c) contain an agreement by such Mortgagee, lessor and/or lender to repair any damage to the Premises caused by such entry and removal and Indemnify City for Losses related to such entry and removal, and (d) provide that such agreement will terminate with respect to any of Personal Property that is not removed from the Premises within thirty (30) days after the expiration or any earlier termination of this Lease or the applicable Sublease, regardless of whether full payment or performance by Tenant or such Subtenant under its agreement with such Mortgagee, lessor and/or lender has then yet occurred.

44.3. Notice of Liens.

Tenant shall notify City promptly of any lien or encumbrance other than the Permitted Title Exceptions of which Tenant has knowledge and which has been recorded against or

attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

44.4. Purpose of Mortgage.

(a) Purpose. A Mortgage shall be made only for the purposes of securing traditional, permanent debt financing for the Project; the financing of repairs, alterations, or improvements to the Project and/or the Premises and permanent take-out financing thereof, or refinancing any of the foregoing (any such financing, a "**Financing**"); and for no other purpose except as may be approved in writing by the City Administrator, in consultation with the City Controller but otherwise at his her sole discretion, and any Mortgage made for such other purpose shall be subject to such other conditions and restrictions as the City Controller deems reasonably prudent. With the City Administrator's approval, a Financing may also be used to help pay for the construction of a new building at another site at the SFWPM. No Mortgage shall be cross-collateralized with any other debt of the Tenant or any other party, except with City's consent in City's sole and absolute discretion. With respect to any issuance of corporate debt or other securitized financings, Tenant shall not be permitted to create any structure that would directly or indirectly be an obligation or security of City.

(b) Statement. City agrees after request by Tenant to give to any Mortgagee or proposed Mortgagee a statement in recordable form as to whether a Mortgage is permitted hereunder, or if permitted subject to conditions, then listing all such conditions (a "**Mortgage Confirmation Statement**"). In making a request for such Mortgage Confirmation Statement, Tenant shall furnish City true, accurate and complete copies of the form of promissory note and form of Mortgage to be executed by Tenant in connection with the Financing and any other documents or information as are required reasonably by City to permit City to make the determination whether such Mortgage is permitted hereby, together with a draft of the form and content of the Mortgage Confirmation Statement proposed by Tenant or such Mortgagee (collectively, the "**Proposed Financing Documents**"). If a Mortgage Confirmation Statement provided by City confirms (or confirms with conditions) that a Mortgage is permitted hereunder (a "**Permitted Mortgage**"), such Mortgagee Confirmation Statement shall conclusively establish that (i) the proposed Mortgagee is approved for purposes of Section 44.6 below, (ii) the City consents to Tenant's execution of the Mortgage and the assignment of the Tenant's leasehold estate and other interests conveyed thereby pursuant to the Mortgage and other Proposed Financing Documents, subject to the terms, if any, contained in the Mortgage Confirmation Statement, and (iii) that the Mortgage that is subject to the Mortgage Confirmation Statement is a Permitted Mortgage for all purposes of this Lease. Upon the City's execution of a Mortgage Confirmation Statement, no further consent of City shall be required with respect to such Mortgage and City shall be estopped thereafter from asserting against Tenant or the Mortgagee that such Mortgage is an unpermitted Transfer or otherwise constitutes an Event of Default hereunder, but the City's execution of a Mortgagee Confirmation Statement shall create no liability for the City under the Mortgage or otherwise. City shall deliver to Tenant an executed Mortgage Confirmation Statement (in form and content approved by City, with such modifications or additions as such prospective Mortgagee may reasonably request and City shall reasonably approve) within thirty (30) days following receipt by City of the Proposed Financing Documents. Tenant shall pay City's costs for all Attorneys' Fees and Costs and other costs, including staff time, incurred in connection with reviewing the financing documents and preparing the Mortgage Confirmation Statement within ten (10) days following demand, and notwithstanding any provision in this Section 44.4(b) to the contrary, if City demands such reimbursement prior to the deadline provided above for City's deemed approval of the proposed Mortgage Confirmation Statement, City may condition delivery and deemed approval of the Mortgage Confirmation Statement on receipt of such reimbursement.

44.5. Interest Covered by Mortgage.

A Mortgage may attach to any and all of the following interests in the Premises: (i) Tenant's leasehold interest in the Premises created hereby and Tenant's interest in the Improvements or some portion thereof granted hereunder, (ii) Tenant's interest in any permitted Subleases thereon, including, without limitation, all rent derived therefrom, (iii) any Personal Property of Tenant, (iv) products and proceeds of the foregoing, and (v) any other property rights and interests of Tenant arising under this Lease, including, without limitation, Tenant's interests in all insurance policies carried by Tenant and all Awards and other payments on account of Condemnation. A standard mortgagee clause naming Mortgagee shall be added to all insurance policies required to be carried by Tenant hereunder. Tenant shall not amend any insurance policies without the prior written consent of Leasehold Mortgagee. Mortgagee shall have the right to participate in the adjustment of losses with any insurance company with respect to any damage or destruction of the Premises or the Improvements, provided that Mortgagee will keep City informed of such adjustments and will not consent to any settlement or adjustment of an insurance award without the City's written approval, which approval will not be unreasonably withheld or delayed. Mortgagee shall have the right to supervise and control the receipt, disbursement, and application of all insurance proceeds in accordance with the terms of the Mortgage, subject to the terms of this Lease and applicable law; provided Mortgagee will not unreasonably delay the disbursement and application of such proceeds in the event that Mortgagee has elected or is otherwise required by applicable law or this Lease to disburse or apply such proceeds other than to the amounts secured by the Mortgage. If Tenant is in monetary or other material default under the Mortgage or related loan documents at the time of any damage or destruction or Substantial Condemnation, then any insurance proceeds or Awards or other payments on account of the damage, destruction or Condemnation will, subject to applicable law, be applied first to the payments due under the loan documents in order to cure the Tenant's default (without acceleration of the entire loan balance, unless the Mortgagee's security under the Mortgage is impaired). If Tenant is not in monetary or other material default under the Mortgage and related loan documents, all such insurance proceeds, Awards, and other payments on account of damage or destruction or Substantial Condemnation will promptly be used or paid over to Restore the Improvements as provided in this Lease; provided, however, that, notwithstanding anything to the contrary contained in this Lease, Mortgagee shall not be required to pay over such insurance proceeds, Awards and other payments to Restore the Improvements, irrespective of whether or not Tenant is in default thereunder, if (a) more than fifty percent (50%) of the Improvements are destroyed or are damaged by fire or other casualty, and (b) the insurance proceeds, Awards, reserves and other funds available are not sufficient to Restore the Improvements, and Mortgagee determines that its security would be impaired, based on Mortgagee's customary underwriting criteria for similar properties, by application of the insurance proceeds, Awards or other payments to Restore the Improvements. Notwithstanding the foregoing or anything to the contrary contained in this Lease, (1) if Tenant terminates the Lease following damage or destruction under Article 20 or (2) if Tenant terminates the Lease following a Substantial Condemnation, and Mortgagee elects not to cure or enter into a New Lease as set forth in Section 44.11, then all insurance proceeds and Awards or other payments on account of Condemnation shall be distributed first to pay the costs of any code-required Safety Restoration Work and then to Mortgagee to the extent required to pay and retire the entire outstanding principal balance of the loan secured by the Mortgage, all interest accrued thereon and all other charges due pursuant to the terms of the Mortgage, with the remainder to be disbursed pursuant to the terms and conditions of Article 20 or Article 21 above as applicable. As provided in Section 44.1(b), Tenant may not in any manner encumber City's interest in or under this Lease or City's fee simple interest in the Property or City's personal and other property in, on or around the Property, which shall not include the City's interest in any insurance proceeds, Awards and other payments to which Tenant is entitled pursuant to the terms of this Lease.

44.6. Institutional Lender; Other Permitted Mortgagees.

A Mortgage may be given only to (i) a Bona Fide Institutional Lender, (ii) any Community Development Entity, as such terms is defined in Section 45D(c)(1) of the Internal Revenue Code of 1986, as amended, or (iii) any other lender which shall have been approved by City in writing in its sole and absolute discretion. In any instances in which City's consent is so required, City shall be deemed to have approved such other lender if the written notice from Tenant of the identity of such other lender specifies that no notification of disapproval within sixty (60) days after the receipt of such written notice constitutes approval, and City sends no notification of disapproval within such period.

44.7. Mortgage Subordinate to Lease. Any Mortgage shall be subject and subordinate to the terms of this Lease. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the consenting to such Mortgage, except as expressly provided in this Lease or otherwise specifically agreed to by City in writing.

44.8. City's Right to Cure Mortgage Defaults. Tenant shall give written notice to the City (in the same manner as provided in Article 42) of any notice of default or notice of enforcement action under the Mortgage promptly upon receipt thereof. Every Permitted Mortgage shall permit City to cure any Mortgage default on Tenant's behalf within the cure period provided to Tenant under the Mortgage plus an additional thirty (30) days if City notifies Mortgagee during the cure period that it intends to cure before the end of the additional thirty (30) day period, provided that Mortgagee shall not be obligated to accept such cure by the City more than two (2) times per calendar year. Notwithstanding any cure effected by City under any Mortgage, City acknowledges and agrees that it shall not in any manner be deemed or construed to assume any of Tenant's obligations under such Mortgage or the related Financing.

44.9. Required Provisions of any Mortgage.

Every Mortgage permitted under this Lease shall provide: (a) that the Mortgagee will give written notice to City (in the same manner as provided in Article 42) of the occurrence of any default under the Mortgage (and any event of default under the Mortgage) at the same time that such Mortgagee notifies Tenant thereof and permit City to cure such default on Tenant's behalf if a cure is feasible by City on the terms and conditions provided in Section 44.8 above; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

44.10. Notices to Mortgagee. City shall give a copy of each notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, or of City's consent to any Transfer to any Mortgagee provided that City has received written notice of an address for such Mortgagee. Copies of such notices shall be given to Mortgagees at the same time as notices are given to Tenant by City, addressed to such Mortgagee at the address last furnished to City. City's delay or failure to give such notice to a Mortgagee shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee for cure. In no event shall City exercise any termination right against Tenant with respect to any default or Event of Default unless and until written notice thereof has been delivered to Mortgagee in accordance with the terms of this Lease and Mortgagee's cure period as provided in Section 44.11 below has expired without such default or Event of Default having been cured or remedied by Tenant or Mortgagee. Any such notices to Mortgagee shall be given in the same manner as provided in Article 42.

44.11. Mortgagee's Right to Cure.

So long as any Mortgage shall remain of record, the following provisions shall apply:

(a) Cure Periods. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Lease to pay the Rents due hereunder, to obtain any

insurance, to pay taxes or assessments, to make any repairs or improvements, to do any other act required of Tenant hereunder and to do any act which may be necessary and proper to be done in the performance and observance of the agreements, covenants and conditions hereof to prevent termination of this Lease. Except following a Dispossession Event, no such action shall constitute an assumption by such Mortgagee of the obligations of Tenant under this Lease. Subject to the delivery of a certificate of insurance evidencing general liability insurance with commercially reasonable coverage limits, and the written agreement to repair any damage caused by Mortgagee's entry on the Premises, each Mortgagee and its agents and contractors shall have full physical access to the Premises for purposes of accomplishing any of the foregoing. Any of the foregoing done by any Mortgagee shall be as effective to comply with Tenant's obligations under the Lease to cure a default by Tenant or an Event of Default under the Lease or to prevent a termination of this Lease, each as the same would have been if done by Tenant. In the case of any written notice of default or Event of Default given by City to Tenant and/or Mortgagee in accordance with Section 44.10, the Mortgagee shall have the same concurrent cure periods as are given to Tenant under this Lease for remedying a default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (i) the expiration of Tenant's cure period, and (ii) the date that City has delivered such notice of default or Event of Default to Mortgagee. If a non-monetary default or Event of Default cannot reasonably be cured or remedied within such additional thirty (30) day period, Mortgagee shall have such additional reasonable period of time as shall be required to complete such cure or remedy provided that Mortgagee commences the cure or remedy within such 30-day period, and prosecutes the completion thereof with diligence and dispatch, subject to Force Majeure or any delay caused by City, Tenant or any of their respective employees, agents, contractors or subtenants, or if such default or Event of Default cannot be reasonably cured or remedied by Mortgagee within such (30) day period without obtaining possession of the Premises (if possession is required to cure or remedy) the cure period shall be extended so long as Mortgagee is diligently seeking to obtain possession and thereafter commences the cure or remedy within such period as is reasonable.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than a monetary Event of Default or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession of which Mortgagee received written notice pursuant to Section 44.10 above, City shall take no action to effect a termination of this Lease if, within ninety (90) days after notice of such Event of Default is given to each Mortgagee, a Mortgagee shall have (i) obtained possession of the Premises (including possession by a receiver), or (ii) notified City in writing of its intention to institute foreclosure proceedings (or to commence actions to obtain possession of the Premises through a receiver) or otherwise acquire Tenant's interest under this Lease (a "**Foreclosure Notice**"), and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch, subject to normal and customary postponements and compliance with any judicial orders relating to the timing of or the right to conduct such proceedings and delays caused by Force Majeure or by City. Following a Dispossession Event, the New Tenant shall be required to promptly cure all monetary defaults occurring within the thirty (30)-day period immediately prior the Dispossession Event, and promptly commence to cure and thereafter prosecute to completion with diligence and dispatch all non-monetary defaults, provided that Mortgagee or the New Tenant receives written notice thereof pursuant to Section 44.10 above, and provided further that New Tenant shall not be responsible for curing any default of Tenant that arises from (i) any lien or encumbrance attaching solely to Tenant's leasehold estate (and not City's fee estate) that is junior to the Mortgage under which the Dispossession Event was conducted otherwise provided herein; (ii) Tenant's bankruptcy or insolvency; (iii) the failure of Tenant to provide financial statements or perform other covenants contained in this Lease that are personal to Tenant; (iv) any breach of the Tenant's representations and warranties contained in this Lease or in any documents executed in connection herewith; (v) the failure to complete any construction or restoration to be performed by Tenant under this Lease within the time periods

provided therein; or (vi) any other default of Tenant that is not reasonably susceptible to being cured by New Tenant (collectively, "**Tenant-Specific Defaults**").

(c) Construction. If a Dispossession Event occurs following any damage or destruction but prior to completion of the Restoration of the Improvements, to the extent this Lease obligates Tenant to Restore, Mortgagee, during the twenty-four (24) month period following the Dispossession Event, shall not be obligated to Restore the Improvements beyond the extent necessary to preserve or protect the Improvements or construction already made.

(d) In performing any Restoration required hereunder, Mortgagee or any New Tenant shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such Restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the construction or Restoration to the date of the Dispossession Event (or the expiration of the twenty-four (24) month period following the Dispossession Event if Mortgagee is the Tenant hereunder) plus an additional one hundred fifty (150) days or such longer period of time as may be reasonably required provided that Mortgagee or any other New Tenant promptly commences such work and thereafter diligently prosecutes such work to completion, subject to Force Majeure or any delay caused by City, Tenant or any of their respective employees, agents, contractors or subtenants.

(e) New Lease. In the event of the termination of this Lease before the expiration of the Term, including, without limitation, the termination of this Lease by the City on account of an Event of Default or rejection of this Lease by a trustee of Tenant in bankruptcy by Tenant as a debtor in possession, except in the event of a termination (i) due to a Substantial Condemnation, or (ii) as the result of Major Damage or Destruction as provided in Article 20 (subject to Section 20.5), and even if Mortgagee failed to timely exercise its cure rights for a Tenant default, City shall deliver to Mortgagee written notice that this Lease has been terminated, together with a statement of any and all sums which would at that time be due under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to City (the "**Termination Notice**"). Each Mortgagee shall thereupon have the option to obtain a new Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

i. Within thirty (30) days following the written request of the most senior Mortgagee of record to obtain a New Lease following City's delivery of a Termination Notice, City shall enter into a New Lease of the Premises with such Mortgagee or its designee, subject to the provisions set forth in this Section and provided that such Mortgagee assumes Tenant's obligations as sublandlord under any Sublease then in effect in accordance with the terms of any subordination, non-disturbance and attornment or non-disturbance agreement executed between Mortgagee and any subtenant under any Sublease;

ii. Such New Lease shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term of this Lease and at the Rent and upon all the agreements, terms, covenants and conditions hereof, including any applicable rights of renewal and in substantially the same form as this Lease; provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Commencement Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease; such New Lease shall exclude the terms and conditions that would be excluded from this Lease if a Dispossession Event occurs (*i.e.*, terms and conditions listed in Exhibit H); and such New Lease shall include the Base Rent schedule in Exhibit G. The New Lease shall have the same priority as this Lease, including priority over any mortgage or other lien, charge or encumbrance on the title to the Premises. Other than Tenant-Specific Defaults, the New Lease shall require Mortgagee to perform any unfulfilled monetary obligation of Tenant under this Lease that occurred within the thirty (30)-day period immediately preceding the Dispossession Event and any unfulfilled non-monetary obligations, provided that Mortgagee received written notice thereof. Upon the execution of such New Lease, subject to the terms of the immediately-preceding sentence, the Mortgagee shall pay any

and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all reasonable expenses, including reasonable Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of such New Lease, in each case to the extent not paid by or otherwise recouped from Tenant. The provisions of this Section 44.11(e) shall survive any termination of this Lease (except as otherwise expressly provided herein), and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee; and

iii. City and Mortgagee shall execute a Memorandum of Lease with respect to the New Lease, which shall be recorded in the Official Records of the City and County of San Francisco and shall otherwise be subject to the terms and conditions of Section 48.10 below.

(f) Nominee. Any rights of a Mortgagee under this Section 44.11, may be exercised by or through its nominee or designee (other than Tenant) identified in writing by Mortgagee.

(g) Subleases/Interim Period. If this Lease terminates, Landlord shall not disturb the possession, interest or quiet enjoyment of any Subtenant not in default beyond applicable cure periods under its Sublease provided that Mortgagee or any other New Tenant has advised the City in writing that it intends to enter into a New Lease within ninety (90) days following the date of City's written request for notification of Mortgagee or any other New Tenant's intentions to enter into a New Lease. Effective upon the commencement of the term of any New Lease executed pursuant to Subsection 44.11(e), any Sublease then in effect shall be assigned and transferred to Mortgagee. Between the date of termination of this Lease and commencement of the term of the New Lease, City shall not (1) operate the Premises in an unreasonable or unlawful manner or in any manner prohibited by this Lease, (2) lease all or any portion of the Premises except to Mortgagee or any nominee or designee identified in writing by Mortgagee, (3) enter into any new subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor which would be binding upon Mortgagee if Mortgagee enters into a New Lease, (4) cancel or modify (other than de minimis modifications having no effect on the rent, term or any of the material obligations of the parties thereunder) existing subleases, management agreements or agreements for the maintenance of the Premises or the supplies therefor, or (5) accept any cancellation, termination or surrender thereof without the written consent of Mortgagee provided that the Subtenant thereunder is not in default beyond applicable cure periods under its Sublease. Effective upon the commencement of the term of the New Lease, City shall also transfer to Mortgagee, its designee or nominee (other than Tenant), all existing management agreements, or agreements for the maintenance of the Premises or the supplies therefor, and all Personal Property that City has in its possession and with respect to which City has the right to so transfer.

(h) Limited to Permitted Mortgagees. Anything herein contained to the contrary notwithstanding, the provisions of this Section shall inure only to the benefit of the holders of the Permitted Mortgages.

(i) Consent of Mortgagee. No modification, amendment, termination or cancellation of this Lease shall be effective as against a Mortgagee without the prior written consent of Mortgagee, which approval will not be unreasonably withheld, conditioned, or delayed; provided that Mortgagee may withhold its approval of any termination or cancellation of this Lease, or any amendment providing for a termination or cancellation of this Lease that is not effected in accordance with the terms of this Lease, in its sole and absolute discretion. No voluntary surrender of the Lease shall be accepted by the City without the approval of Mortgagee. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation or surrender, as applicable, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice

within such thirty (30) day period shall be deemed disapproval. No merger of this Lease and the fee estate in the Premises shall occur on account of the acquisition by the same or related parties of the leasehold estate created by this Lease and the fee estate in the Premises without the prior written consent of Mortgagee.

(j) Limitation on Liability of Mortgagee. Anything contained in this Lease to the contrary notwithstanding, no Mortgagee, or its permitted designee or nominee, shall become liable under the provisions of this Lease, unless and until such time as it becomes the owner of the leasehold estate created hereby, and then only for so long as it remains the owner of the leasehold estate and only with respect to the obligations arising during such period of ownership. If a Mortgagee or other New Tenant becomes the owner of the leasehold estate under this Lease or under a New Lease, (i) except to the extent further limited by other provisions hereof, such Mortgagee or other New Tenant shall be liable to City for the obligations of Tenant hereunder only to the extent such obligations arise or continue during the period that such Mortgagee or other New Tenant remains the owner of the leasehold estate, and (ii) in no event will Mortgagee have personal liability under this Lease or New Lease, as applicable, greater than Mortgagee's interest in this Lease or such New Lease, and the City will have no recourse against Mortgagee's assets other than its interest herein or therein.

(k) Cooperation. City, through its City Administrator, and Tenant shall cooperate in including in this Lease by suitable written amendment from time to time any provision which may be reasonably requested by any Mortgagee to implement the provisions and intent of this Article 44 and any other provisions of this Lease relating to Mortgagee's interest in this Lease, provided that the City Administrator determines that the proposed amendment is in the best interest of the City and is necessary or desirable to effectuate the purpose and intent of such Sections, does not materially increase the obligations or liabilities of the City, and does not adversely affect in any material respect any of the City's rights and remedies under this Lease.

44.12. Assignment by Mortgagee.

Notwithstanding any provision of this Lease to the contrary, including, without limitation, Article 8, foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the Tenant hereunder. Such Mortgagee's or transferee's right thereafter to Transfer this Lease or such New Lease shall be subject to the restrictions of Article 23. In the event Mortgagee subsequently Transfers its interest under this Lease after acquiring the same by foreclosure or deed in lieu of foreclosure or subsequently Transfers its interest under any New Lease obtained pursuant to Section 44.11(d), and in connection with any such Transfer, Mortgagee takes back a mortgage or deed of trust encumbering such leasehold interest to secure a portion of the purchase price given to Mortgagee for such Transfer, then such mortgage or deed of trust shall be considered a Mortgage, and Mortgagee shall be entitled to receive the benefit and enforce the provisions of this Article 44 and any other provisions of this Lease intended for the benefit of the holder of a Mortgage.

44.13. Transfer of Mortgage.

City hereby consents to a Transfer or encumbrance by Mortgagee, absolutely or as collateral security for performance of its obligations, of its Mortgage or any interest therein, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and in the event of any such Transfer, the new holder or pledgee of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

44.14. Appointment of Receiver.

In the event of any default under a Mortgage, the holder of the Mortgage shall be entitled to have a receiver appointed, irrespective of whether such Mortgagee accelerates the maturity of all indebtedness secured by its Mortgage

44.15. Changes to Lease Terms upon Dispossession Event.

Upon a Dispossession Event, the provisions in this Lease listed in Exhibit H shall be deleted from this Lease and not apply to a Mortgagee or a New Tenant.

44.16. Inconsistencies or Conflicts.

In the event of any inconsistencies or conflicts between the terms of this Article 44 and the terms of any other provisions of this Lease (including, without limitation, the exhibits hereto), the terms of this Article 44 shall govern and control.

45. NO JOINT VENTURE

45.1. No Joint Venture.

Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant, between City and any other party, including, without limitation any Mortgagee or between Tenant and any Mortgagee, cause City to be responsible in any way for the debts or obligations of Tenant or cause any Mortgagee to be responsible in any way for the debts or obligations of Tenant except as expressly provided herein. The subject of this Lease is a lease with neither Party acting as the agent of the other Party in any respect except as may be expressly provided for in this Lease.

46. REPRESENTATIONS AND WARRANTIES

46.1. Representations and Warranties of Tenant.

(a) Representations and Warranties. Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

i. Valid Existence; Non-Profit Status; Good Standing. Tenant is a non-profit organization duly organized and validly existing under the Laws of the State of California. Tenant has all requisite power and authority to own its property and conduct its business as presently conducted. Tenant has made all filings and is in good standing in the State of California.

ii. Authority. Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and the agreements contemplated by this Lease.

iii. No Limitation on Ability to Perform. Neither Tenant's formation documents or governing documents, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Tenant is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other party is required for the due execution, delivery and performance by the Tenant of this Lease or any of the terms and covenants contained in this Lease, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no pending or threatened suits or proceedings or undischarged judgments affecting Tenant before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant.

iv. Valid Execution. The execution and delivery of this Lease and the agreements contemplated hereby by the Tenant have been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of the Tenant, enforceable against Tenant in accordance with its terms. Tenant has provided to City a written resolution of Tenant authorizing the execution of this Lease and the agreements contemplated by this Lease.

v. Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which Tenant or any member is a party or by which Tenant's or any member's assets may be bound or negatively affected, (B) any Law, statute, ordinance, regulation, applicable to the Tenant, its business or the Property or (C) the formation or governing documents of Tenant, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or those with an ownership interest in Tenant, except as set forth in this Lease.

vi. Meeting Financial Obligations. No federal or state tax liens have been filed against Tenant; and Tenant is not in default and has not received notice asserting that it is in default under any agreement for borrowed money. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to Tenant's knowledge, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code.

(b) Survival. The representations and warranties in this Section shall survive any termination of this Lease.

(c) Tax-Exempt Status. Tenant shall maintain its status as a tax-exempt non-profit entity throughout the Term. This requirement shall not apply to a Mortgagee or New Tenant following a Dispossession Event.

47. SPECIAL PROVISIONS

47.1. Municipal Codes Generally; Incorporation.

The San Francisco Municipal Codes (available at www.sfgov.org) described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinances and any related implementing regulations as they may be amended from time to time. Capitalized or highlighted terms used in this Section and not otherwise defined in this Lease shall have the meanings ascribed to them in the cited ordinance. Failure of Tenant to comply with any provision of this Lease relating to any such code provision shall be governed by Article 28 of this Lease, unless (i) such failure is otherwise specifically addressed in this Lease or (ii) such failure is specifically addressed by the applicable code section.

47.2. Non-Discrimination.

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

(b) Subleases and Other Subcontracts. Tenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such

Subtenant or other subcontractor in substantially the form of Subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Lease elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Lease. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

47.3. MacBride Principles - Northern Ireland.

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Tenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

47.4. Tropical Hardwood/Virgin Redwood Ban.

City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant will not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease, that are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Tenant fails to comply with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant will be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater. Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code Chapter 13 is obtained from the Department of Environment.

47.5. Tobacco Product Advertising Prohibition.

Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. In addition, Tenant acknowledges and agrees that no Sales, Manufacture, or Distribution of Tobacco Products (as such capitalized terms are defined in Health Code Section 19K.1) is allowed on the Premises and such prohibition must be included in all subleases or other agreements allowing use of the Premises. The prohibition against Sales, Manufacture, or Distribution of Tobacco Products does not apply to persons who are affiliated with an accredited academic institution where the Sale, Manufacture, and/or Distribution of Tobacco Products is conducted as part of academic research.

47.6. Sunshine Ordinance.

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

47.7. Waiver of Relocation Assistance Rights.

If Tenant holds over in possession of the Premises following the expiration of this Lease under Article 41, Tenant shall not be entitled, during the period of any such holdover, to rights, benefits or privileges under the California Relocation Assistance Law, California Government Code Section 7260 et seq., or the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Section 4601 et seq., or under any similar law, statute or ordinance now or hereafter in effect, and Tenant hereby waives any entitlement to any such rights, benefits and privileges with respect to any such holdover period.

47.8. Card Check Ordinance.

City has adopted an Ordinance (San Francisco Administrative Code Sections 23.50-23.56) that requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause Tenant's subtenants to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

47.9. Conflicts of Interest.

Tenant states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the 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, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City. Tenant further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Tenant believes any officer or employee of the City presently has or will have in this Lease or in the performance thereof or in any portion of the profits thereof. Willful failure by Tenant to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Lease.

47.10.First Source Hiring Ordinance.

City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions, prior to the Commencement Date, Tenant shall enter into agreements (the "**First Source Hiring Agreements**") substantially in the form and content of the sample First Source Hiring Program agreements attached hereto as Exhibit I. Tenant shall comply with such First Source Hiring Agreements, with respect to the operation and leasing of the Premises, and shall include such applicable provisions in its Subleases in accordance with the First Source Hiring Agreement.

47.11.Public Access to Meetings and Records.

If Tenant receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Tenant shall comply with and be bound by all the applicable provisions of that Chapter. Tenant agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the San Francisco Administrative Code. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Lease. Tenant further acknowledges that such material breach of the Lease shall be grounds for City to terminate and/or not renew this Lease, partially or in its entirety.

47.12.Resource-Efficient Building Ordinance.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and green building design requirements. Tenant hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

47.13.Drug Free Work Place.

Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Tenant agrees that any violation of this prohibition by Tenant, its Agents or assigns shall be deemed a material breach of this Lease.

47.14.Preservative Treated Wood Containing Arsenic.

Tenant may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Tenant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Tenant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "**saltwater immersion**" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

47.15.Compliance with Disabled Access Laws.

Tenant acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Tenant or contractor, must be accessible to the disabled public. Tenant shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Premises and shall comply at all times with the provisions of the Disabled Access Laws.

47.16.Graffiti.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and its residents, and to prevent the further spread of graffiti.

Tenant shall remove all graffiti from the Premises and any real property owned or leased by Tenant in the City and County of San Francisco within two (2) business days of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Tenant to breach any lease or other agreement that it may have concerning its use of the real property. The term "**graffiti**" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

In addition to the enforcement mechanisms and abatement procedures for graffiti removal available to City in its regulatory capacity under Sections 1300 et seq. of the San Francisco Administrative Code, any failure of Tenant to comply with this Section of this Lease shall constitute a default of this Lease.

47.17.Notification of Limitations in Contributions.

For the purposes of this Section, a "**City Contractor**" is a party that contracts with, or seeks to contract with, the City for the sale or leasing of any land or building to or from 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. Through its execution of this Agreement, Tenant acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits a City Contractor 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 that contract or twelve (12) months after the date that contract is approved. Tenant 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. Tenant further acknowledges that (i) the prohibition on contributions applies to Tenant, each member of Tenant's board of directors, Tenant's chief executive officer, chief financial officer and chief operating officer, any person with an ownership interest of more than ten percent (10%) in Tenant, any subcontractor listed in the contract, and any committee that is sponsored or controlled by Tenant, and (ii) within thirty (30) days of the submission of a proposal for the contract, the City department seeking to enter into the contract must notify the Ethics

Commission of the parties and any subcontractor to the contract. Additionally, Tenant certifies it has informed each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 by the time it submitted a proposal for the contract to the City, and has provided the names of the persons required to be informed to the City department seeking to enter into that contract within thirty (30) days of submitting its contract proposal to the City department receiving that submittal, and acknowledges the City department receiving that submittal was required to notify the Ethics Commission of those persons.

47.18. Food Service Waste Reduction.

Tenant will comply with and is bound by all of the applicable provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. Accordingly, Tenant acknowledges that City contractors and lessees may not use Food Service Ware for Prepared Food in City Facilities and while performing under a City contract or lease (1) where the Food Service Ware is made, in whole or in part, from Polystyrene Foam, (2) where the Food Service Ware is not Compostable or Recyclable, or (3) where the Food Service Ware is Compostable and not Fluorinated Chemical Free. The capitalized terms (other than Tenant and City) in the previous sentence are defined in San Francisco Environment Code Section 1602.

47.19. Prohibition of Alcoholic Beverage Advertising.

No advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" is defined as set forth in California Business and Professions Code Section 23004, and does not include cleaning solutions, medical supplies, and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product.

47.20. Requiring Health Benefits for Covered Employees.

(a) Unless exempt, Tenant will comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as they may be amended from time to time. The provisions of Chapter 12Q are incorporated into this Lease by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease have the meanings assigned to those terms in Chapter 12Q.

(b) For each Covered Employee, Tenant will provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(c) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3(e) of the HCAO, it will have no obligation to comply with subsection (a) above.

(d) Tenant's failure to comply with the HCAO will constitute a material breach of this Lease. City may notify Tenant if a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure the breach or, if the breach cannot reasonably be cured within the thirty (30) days period, and Tenant fails to commence efforts to cure within that period, or fails diligently to pursue the cure

to completion, then City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to City.

(e) Any Subcontract entered into by Tenant will require the Subcontractor to comply with the requirements of the HCAO and contain contractual obligations substantially the same as those set forth in this Section. Tenant will notify City's Purchasing Department when it enters into a Subcontract and will certify to the Purchasing Department that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Tenant will be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, City may pursue the remedies set forth in this Section against Tenant based on the Subcontractor's failure to comply, provided that City has first provided Tenant with notice and an opportunity to cure the violation.

(f) Tenant may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City regarding Tenant's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(h) Tenant will keep itself informed of the current requirements of the HCAO.

(i) Tenant will provide reports to City in accordance with any reporting standards promulgated by City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

(j) Tenant will provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least five (5) business days to respond.

(k) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant will cooperate with City when it conducts the audits.

(l) If Tenant is exempt from the HCAO when this Lease is executed because its amount is less than Twenty-Five Thousand Dollars ($25,000) (Fifty Thousand Dollars ($50,000) for nonprofits), but Tenant later enters into an agreement or agreements that cause Tenant's aggregate amount of all agreements with City to reach Seventy-Five Thousand Dollars ($75,000), then all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Tenant and the Contracting Department to be equal to or greater than Seventy-Five Thousand Dollars ($75,000) in the fiscal year.

47.21. San Francisco Packaged Water Ordinance.

Tenant will comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant may not sell, provide, or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Lease or on City property unless Tenant obtains a waiver from City's Department of the Environment. If Tenant violates this requirement, City may exercise all remedies in this Lease and the Director of City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

47.22. Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, Tenant will comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions), as amended from time to time ("**Chapter 12T**"), which are incorporated into this Lease as if fully set forth, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant will incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and require all subtenants to comply with those provisions. Tenant's failure to comply with the obligations in this subsection will constitute a material breach of this Lease.

(c) Tenant and subtenants may not inquire about, require disclosure of, or if the information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: **(i)** Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; **(ii)** participation in or completion of a diversion or a deferral of judgment program; **(iii)** a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; **(iv)** a Conviction or any other adjudication in the juvenile justice system; **(v)** a Conviction that is more than seven years old, from the date of sentencing; or **(vi)** information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Tenant and subtenants may not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Tenant and subtenants may not require that disclosure or make any inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Tenant and subtenants will state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Tenant or subtenant at the Premises, that the Tenant or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Tenant and subtenants will post the notice prepared by the Office of Labor Standards Enforcement ("**OLSE**"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice will be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Tenant and subtenants understand and agree that on any failure to comply with the requirements of Chapter 12T, City will have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant, or other person as to whom a violation occurred or continued, or termination of this Lease in whole or in part.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

47.23. Vending Machines; Nutritional Standards.

Tenant may not install or permit any vending machine on the Premises without the prior written consent of the Director of Property. Any permitted vending machine will comply with the food and beverage nutritional standards and calorie labeling requirements set forth in San Francisco Administrative Code Section 4.9-1(c), as may be amended from time to time (the "**Nutritional Standards Requirements**"). Tenant will incorporate the Nutritional Standards Requirements into any contract for the installation of a vending machine on the Premises or for the supply of food and beverages to that vending machine. Failure to comply with the Nutritional Standards Requirements or to otherwise comply with this Section **Error! Reference source not found.** will be a material breach of this Lease. Without limiting City's other rights and remedies under this Lease, City will have the right to require the immediate removal of any vending machine on the Premises that is not permitted or that violates the Nutritional Standards Requirements. In addition, any restaurant located on the Premises is encouraged to ensure that at least 25% of Meals offered on the menu meet the nutritional standards set forth in San Francisco Administrative Code Section 4.9-1(e), as may be amended.

47.24. All-Gender Toilet Facilities.

If applicable, Tenant will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of the Building where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost of providing the toilet facilities required by Administrative Code Section 4.1-3. If Tenant has any question about applicability or compliance, Tenant should contact the Director of Property for guidance.

47.25. Employee Signature Authorization Ordinance.

City has adopted an Employee Signature Authorization Ordinance (San Francisco Administrative Code Sections 23.50–23.56). That ordinance requires employers of employees in hotel or restaurant projects on public property with fifty (50) or more employees (whether full-time or part-time) to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a labor union to act as their exclusive bargaining representative. Tenant will comply with the requirements of the ordinance, if applicable, including any requirements in the ordinance with respect to its subtenants, licensees, and operators.

47.26. Tenant's Compliance with City Business and Tax Regulations Code

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

47.27. Stormwater Flood Risk Disclosure

Under San Francisco Police Code Article 51, property owners in San Francisco are required to disclose to transferees and prospective transferees (including tenants and prospective tenants) if the leased premises is susceptible to flooding in a 100-year storm, as shown on the San Francisco Public Utilities Commission's 100-Year Storm Flood Risk Map. The Premises are at risk for flooding in a 100-year storm. Please see Exhibit G to this Lease for additional information.

47.28. Consideration of Salary History.

In addition to Tenant's obligations as an employer under San Francisco Police Code Article 33J, Tenant must comply with San Francisco Administrative Code Chapter 12K. For each employment application to Tenant for work of eight (8) or more hours per week at the Premises, Tenant must not consider the applicant's current or past salary (a "**Salary History**") in deciding whether to hire the applicant or what salary to offer the applicant unless the applicant voluntarily discloses that Salary History without prompting. In addition, Tenant must not (1) ask those applicants about their Salary History, (2) refuse to hire, or otherwise disfavor, injure, or retaliate against applicants that do not disclose their Salary History, or (3) disclose a current or former employee's Salary History without that employee's authorization unless it is required by law, publicly available, or subject to a collective bargaining agreement.

Tenant is subject to the posting, enforcement, and penalty provisions in Chapter 12K. Information about Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history.

47.29. Contractor Vaccination Requirements.

Tenant acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency ("Emergency Declaration"), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator ("Contractor Vaccination Policy"), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors. Any undefined, initially-capitalized term used in this Section has the meaning given to that term in the Contractor Vaccination Policy.

A Contract as defined in the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the contractor or subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a facility owned, leased, or controlled by the City. A Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. A Contract does not include an agreement with a state or federal governmental entity or agreements that does not involve the City paying or receiving funds.

Tenant has read the Contractor Vaccination Policy. In accordance with the Emergency Declaration, if this Lease is or becomes a Contract as defined in the Contractor Vaccination Policy, Tenant agrees that:

(1) Where applicable, Tenant shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are fully vaccinated for COVID-19 or obtain an exemption based on medical or religious grounds; and

(2) If Tenant grants Covered Employees an exemption based on medical or religious grounds, Tenant will promptly notify City by completing and submitting the Covered Employees Granted Exemptions Form ("Exemptions Form"), which can be found at https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors (navigate to "Exemptions" to download the form).

48. GENERAL

48.1. Time of Performance.

(a) Expiration. All performance dates (including cure dates) expire at 5:00 p.m., San Francisco, California time, on the performance or cure date.

(b) Weekend or Holiday. A performance date which falls on a Saturday, Sunday or City, State or Federal holiday is deemed extended to the next working day.

(c)Days for Performance. All periods for performance or notices specified herein in terms of days shall be calendar days, and not business days, unless otherwise provided herein.

(d) Time of the Essence. Time is of the essence with respect to each provision of this Lease, including, but not limited, the provisions for the exercise of any option on the part of Tenant hereunder and the provisions for the payment of Rent and any other sums due hereunder.

48.2. Interpretation of Agreement.

(a)Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Lease unless otherwise specifically identified. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only. Such captions shall define or limit the scope or intent of any provision of this Lease.

(c) Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Lease 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, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

(e) Fees and Costs. The Party on which any obligation is imposed in this Lease shall be solely responsible for paying all costs and expenses incurred in the performance thereof, unless the provision imposing such obligation specifically provides to the contrary.

(f) Lease References. Wherever reference is made to any provision, term or matter "in this Lease," "herein" or "hereof" or words of similar import, the reference shall be deemed to refer to any and all provisions of this Lease reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Lease or any specific subdivision thereof.

48.3. Successors and Assigns.

This Lease is binding upon and will inure to the benefit of the successors and assigns of City, Tenant and any Mortgagee, subject to the other terms and provisions of this Lease. Where the term "Tenant," "City" or "Mortgagee" is used in this Lease, it means and includes their respective successors and assigns, including, as to any Mortgagee, any transferee and any successor or assign of such transferee.

48.4. No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other party and shall not be deemed to have conferred any rights, express or implied, upon any other party, except as provided in Article 44 with regard to Mortgagees.

48.5. Real Estate Commissions.

City is not liable for any real estate commissions, brokerage fees or finder's fees which may arise from this Lease. Tenant and City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, agent or finder makes a claim, the Party through whom such claim is made agrees to Indemnify the other Party from any Losses arising out of such claim.

48.6. Counterparts.

This Lease may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

48.7. Entire Agreement.

This Lease (including the Exhibits hereto), for so long as such agreement is in effect, constitute the entire agreement between the Parties with respect to the subject matter set forth therein and supersede all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned herein or incidental hereto. No parole evidence of any prior of other agreement shall be permitted to contradict or vary the terms of this Lease.

48.8. Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties. No termination, amendment or modification which requires the prior approval of a Mortgagee shall become effective without the prior approval of such Mortgagee pursuant to Section 44.10(h).

48.9. Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the Laws of the State of California and the City's Charter. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having suits within the City and County of San Francisco of the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

48.10. Recordation.

On the Effective Date, City and Tenant shall execute the memorandum of lease in the form attached hereto as Exhibit J (the "**Memorandum of Lease**"), and City shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Promptly upon City's request following the expiration of the Term or any other termination of this Lease, Tenant shall deliver to City a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records and in form and content satisfactory to City and the City Attorney, for the purpose of evidencing in the public records the termination of Tenant's interest under this Lease. City may record such quitclaim deed at any time on or after the termination of this Lease, without the need for any approval or further act of Tenant.

48.11.Extensions by City.

Upon the request of Tenant, City in its sole discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

48.12.Further Assurances.

The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

48.13.Attorneys' Fees.

If either Party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment.

48.14.Effective Date.

This Lease shall become effective on the Effective Date.

48.15.Severability.

If any provision of this Lease, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other party or circumstance, and the remaining portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease.

48.16.Reasonably Prompt Approval.

City and Tenant agree that unless otherwise set forth in this Lease, any approval or consent required to be given by either Party shall be given or denied reasonably promptly; provided that the Party required to give approval or consent receives reasonably complete information or documentation upon which such decision must be made.

[NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT

UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE BOARD OF DIRECTORS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AUTHORITY AND CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.]

[No further text this page.]

IN WITNESS WHEREOF, City and Tenant have executed this Lease as of the dates appearing below their respective signatures below.

TENANT: [_____,
a _____]

By: _____
Name: _____
Title: _____

Date: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
ANDRICO PENICK
Director of Property

Date: _____

APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: _____
Jessica Alfaro-Cassella
Deputy City Attorney

Date: _____
_____

Board of Supervisors Resolution No.: _____

EXHIBIT A

DESCRIPTION OF PREMISES

EXHIBIT B

GENERAL DEPICTION OF EXISTING MAIN SANITARY DRAIN LINE

EXHIBIT C

DEPICTION OF RESTRICTED AREA

EXHIBIT D

DEPICTION OF REDEDICATION AREA

EXHIBIT E

SUBLEASE REQUIREMENTS

Except as otherwise approved by the City in writing, each Sublease shall include the following provisions:

1. Subject to Lease. A provision describing this Lease and providing that (a) the leasehold of the Subtenant is subject to this Lease, (b) the Subtenant shall not perform, or cause to be performed, any act in violation of this Lease, and (c) if any provision of the Sublease is inconsistent with any provision of this Lease, this Lease shall control.

2. City as Beneficiary. A provision providing that City shall be a third-party beneficiary of the Sublease.

3. Indemnification and Release. An indemnification clause and release of claims provision identical to that set forth in Article 23, provided that references to Tenant shall be changed to Subtenant, references to the Premises shall be changed to refer to the subleased premises, and references to Subtenant shall be changed to refer to sub-subtenants.

4. Insurance. A provision requiring the Subtenant to provide liability and other insurance in form and amounts reasonably approved by City's Risk Manager from time to time, with a clause requiring the Subtenant to cause to be named as additional insureds under all liability and other insurance policies "The City and County of San Francisco, and its Officers, Agents, Employees and Representatives" and acknowledging City's rights to demand increased coverage to normal amounts consistent with the Subtenant's business activities on the subleased premises. Tenant shall submit the insurance provision of Tenant's standard Sublease form to City for approval by the Risk Manager prior to entering into any Subleases using such form, and Tenant shall submit such insurance provision annually to City for approval or revision by the Risk Manager.

5. Effect of Master Lease Termination. A provision stating that if for any reason whatsoever this Lease is terminated, such termination shall at City's election operate to terminate the Sublease, except as otherwise provided in any non-disturbance agreement executed by City.

6. Payment of Rent on Default. A provision directing Subtenant to pay the Sublease rent and other sums due under the Sublease directly to City upon receiving written notice from City that an Event of Default has occurred.

7. Waiver of Relocation Assistance. A provision in which the Subtenant expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease.

8. City Entry Rights. A provision similar to Article 43, requiring the Subtenant to permit City to enter the subleased premises for the purposes specified in Article 43 and acknowledging and agreeing that City shall have all of the rights of access to the subleased premises described in this Lease.

9. Sublease and Assignment Profit Sharing. A provision requiring profit sharing between Tenant and the Subtenant in the event of a "Transfer" (defined in Section 9(c) below), substantially in accordance with subsections (a) – (c) of Section 9.

(a) 50/50 Split for Sub-subleases. Except as set forth in (i) and (ii), below, or as otherwise approved by City from time to time, such profit sharing provision shall require Subtenant to pay to Tenant at least 50% of any "Transfer Premium" in connection with sub-subleases. "Transfer Premium" shall be defined substantially as follows: all rent, additional rent or other consideration payable by a sub-subtenant in connection with the sub-sublease in excess of the base rent and additional rent payable by Subtenant under the Sublease during the term of the Transfer, on a per rentable square foot basis, after first deducting the reasonable expenses incurred by Subtenant for: (i) the unamortized cost of tenant improvements and alterations made by Subtenant to the sub-sublease premises and not funded by a tenant improvement allowance from Tenant; (ii) any brokerage commissions in connection with the Transfer; (iii) legal fees reasonably incurred in connection with the Transfer; and (iv) any reimbursement of City's legal and administrative costs, as set forth in Section 9(c)(i), below ("Subtenant's Sub-subleasing Costs"). "Transfer Premium" shall also include, but not be limited to, key money, bonus money or other cash consideration paid by a sub-subtenant to Subtenant in connection with such Transfer, and any payment in excess of fair market value for services rendered by Subtenant to sub-subtenant or for assets, fixtures, inventory, equipment, or furniture transferred by Subtenant to sub-subtenant in connection with such Transfer.

i. The profit sharing provision described in subsection (a) shall not apply to sub-subleases of all or substantially all of Subtenant's Sublease Premises, which sub-subleases shall be governed by subsection (b), below.

ii. The profit sharing provision described in subsection (a) shall not apply to sub-subleases of Subtenants with Acknowledged Non-Conforming Subleases that required City's approval because the Net Effective Rental rate was less than 90% of Market Rent, which sub-subleases shall be governed by subsection (b) below.

iii. Tenant shall promptly provide City with written notice of the Transfer Premium identified by a Subtenant in connection with a sub-sublease. If City reasonably believes that the Transfer Premium disclosed by the Subtenant is unreasonably low, given the then-current Market Rent, then City shall provide a Tenant with written notice thereof, which notice shall include an explanation of the reason(s) for City's objection and shall identify the data City used to support its determination of Market Rent. Upon receipt of any such notice from City, Tenant shall require the Subtenant to certify under penalty of perjury that the entire Transfer Premium is as disclosed by the Subtenant and that no additional consideration was given in a manner designed to avoid Subtenant's obligations to pay Tenant a share of the Transfer Premium. Such certificate shall provide that any misstatement in the certificate shall be an event of default under the Sublease.

(b) Rent Re-set for Assignments and Acknowledged Non-Conforming Subleases. In connection with all other Transfers (other than Transfers described in subsection (a)(ii), above), except as may otherwise be approved by City in writing from time to time, such profit sharing provision shall provide that, if Market Rent in the most recently updated Leasing Schedule is greater than the Net Effective Rental Rate specified in the Sublease, then the base rent payable under the Sublease for that portion of space that is subject to the Transfer shall be increased during the term of the Transfer by an amount equal to fifty percent (50%) of the difference thereof. Further, for sub-subleases of Subtenants with Acknowledged Non-Conforming Subleases that required City's approval because the Net Effective Rental rate was less than 90% of Market Rent, such profit sharing provision shall provide that the base rent payable under the Sublease for that portion of space that is subject to the sub-sublease shall be increased during the term of the sub-sublease to an amount equal to the mid-point between (x) the applicable Market Rent in the Leasing Schedule that was in effect at the time the Sublease was entered into, and (y) the applicable Market Rent in the most recently updated Leasing Schedule. If Subtenant believes in good faith that the Market Rent in the applicable Leasing Schedule is higher than the current actual fair market value, Subtenant may request in writing that Tenant, with City's consent, use such lower value for purpose of calculating the increase

described in subsection (b), above. In making any such request, Subtenant shall provide Tenant and City with supporting data and other information to substantiate its claim. Tenant and City may approve or decline such request in their reasonable discretion.

(c)Transfer Defined. Except to the extent considered "Permitted Family Transfers," as defined in subsection (d) below or "Permitted Incubator Transfers," as defined in subsection (e) below, the term "Transfer" as used in this Section 9 shall mean the following: (i) any direct or indirect, transfer, sub-sublease, sublicense, grant of right to use the subleased premises, space-sharing arrangement with respect to the subleased premises, or assignment of Sublease, or change of ownership or control of the Subtenant (including, but not limited to, a change of any managing member of a limited liability company) in a transaction or a series of transactions; (ii) any dissolution, merger, consolidation or other reorganization of Subtenant (excluding a reorganization where Subtenant remains the controlling party); (iii) the sale or other transfer of ownership interests in Subtenant or any entity controlling Subtenant representing fifty percent (50%) or more of the outstanding ownership or interests (other than with respect to ownership interests traded through an exchange or over the counter) in a transaction or a series of transactions; (iv) the sale or other transfer of the ownership of (or the right to vote) stock possessing fifty percent (50%) or more of the total combined voting power of all classes of Subtenant's capital stock issued, outstanding, and entitled to vote for the election of directors (other than with respect to ownership interests traded through an exchange or over the counter) in a transaction or a series of transactions; and (iv) the sale of assets of Subtenant representing fifty percent (50%) or more of the aggregate value of all assets of Subtenant in a transaction or a series of transactions. If Subtenant consists of more than one person, a purported assignment (voluntary, involuntary, or by operation of law) by any one of the persons executing this Sublease shall be deemed a voluntary assignment of this Sublease by Subtenant and shall be a Transfer as defined herein.

(d) Special Permitted Family Transfers. An assignment, sublease or other transaction that would otherwise be a Transfer shall be considered a "Permitted Family Transfer" that is not subject to subsection (a) and subsection (b) of this Section 9 (but shall be subject to Section 10 below) if the transferee is:

i. a lineal descendant or antecedent, spouse or registered domestic partner of the Subtenant or of the party transferring an interest in the Subtenant, including adopted relations (each, a "Family Member");

ii. an entity in which any Family Member or any combination of Family Members holds a majority ownership interest; or

iii. a trust for the benefit of and controlled by the transferor or a Family Member or any combination of the transferor and Family Members.

(e)Special Permitted Incubator Transfers. An assignment, sublease or other transaction or event that would otherwise be a Transfer hereunder shall be considered a "Permitted Incubator Transfer" that is not subject to subsection (a) and subsection (b) of this Section 9 (but shall be subject to Section 10 below) if (i) the transferee is a parent, subsidiary or affiliate of Subtenant, and (ii) neither Subtenant, Subtenant's parent, any entity controlling Subtenant's parent, nor the transferee had annual revenue exceeding $100,000,000 (the "Revenue Cap") in the year immediately preceding the assignment. As used herein, (A) "parent" shall mean a company which owns a majority of Subtenant's voting equity; (B) "subsidiary" shall mean an entity wholly owned by Subtenant or at least 51% of whose voting equity is owned by Subtenant; and (C) "affiliate" shall mean an entity under common control with Subtenant. If Subtenant asserts that a Transfer is a Permitted Incubator Transfer, then Subtenant shall deliver to Tenant and City reasonable evidence that such Transfer is a Permitted Incubator Transfer, including evidence of the ownership structure of Subtenant and the proposed transferee sufficient to establish that the requirements of this subparagraph have been satisfied and financial statements prepared and certified by a nationally recognized certified public accounting firm in

accordance with generally accepted accounting principles consistently applied evidencing that the Revenue Cap for the required parties was not exceeded. Notwithstanding the foregoing, if following a Permitted Incubator Transfer there is a sale or transfer of voting equity, ownership or control of Subtenant or of the party to which the interest in the Sublease has been transferred such that the affiliation which originally qualified for the Permitted Incubator Transfer no longer exists, Subtenant shall promptly provide Tenant and City with notice thereof, and such sale or transfer shall be deemed to be a Transfer under the Sublease and the provisions of Subsection (a) and subsection (b) of this Section 9 shall apply on the date of such Transfer. Following any Permitted Incubator Transfer, Subtenant shall deliver to Tenant and City not less than annually evidence of the ownership structure of Subtenant and the transferee sufficient to establish that the affiliation required by this subparagraph continues to be satisfied. The Revenue Cap shall be increased annually by the same percentage as the increase, if any, in the Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984=100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Statistics (the "Index"), which is published most immediately preceding the anniversary of the Commencement Date of the Master Lease over the Index in effect on the Commencement Date of the Master Lease.

10. Other Transfer Provisions. A provision requiring the Subtenant to reimburse Tenant upon demand for Tenant's and City's reasonable attorneys' fees and administrative expenses incurred in connection with the review, processing and/or preparation of any documentation in connection with any requested Transfer, and a provision in which the transferee, assignee, sub-subtenant, licensee, or concessionaire expressly waives entitlement to any and all relocation assistance and benefits in connection with this Lease, the Sublease or the subject sub-sublease, as applicable.

11. Estoppel Certificate for City. A provision requiring the Subtenant to execute, acknowledge and deliver to City, within fifteen (15) business days after request, a certificate stating to the best of the Subtenant's knowledge after diligent inquiry (a) the Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is in full force and effect, as modified, and stating the modifications or, if the Sublease is not in full force and effect, so stating), (b) the dates, if any, to which any rent and other sums payable under the Sublease have been paid, (c) that no notice has been received by the Subtenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, and (d) that Tenant is not then in default under the Sublease (or if Tenant is then in default, describing such default).

12. Pesticide Prohibition. A provision incorporating the requirements of Section 25.1(d) of this Lease, regarding compliance with City's Pesticide Ordinance.

13. Non-Discrimination. A provision incorporating the requirements of Section 47.2(b) of this Lease, regarding non-discrimination.

14. Prohibition on Tobacco and Alcohol Advertising. A provision substantially as follows:

> Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including property which is the subject of this Sublease. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local or, nonprofit or

other entity designed to (i) communicate the health hazards of cigarettes or/and tobacco products, or to (ii) encourage people not to smoke or to stop smoking.

[NOTE: INCLUDE THE FOLLOWING SECTION EXCEPT FOR WHEN THE SUBLEASED PREMISES IS USED FOR THE OPERATION OF A RESTAURANT OR OTHER FACILITY OR EVENT WHERE THE SALE, PRODUCTION OR CONSUMPTION OF ALCOHOL IS PERMITTED: Subtenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.]

15. No Personal Liability of City Personnel. A provision stating that no elective or appointive board, commission, member, officer, employee or other agent of City shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by City under the Lease or Sublease, or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of City under the Lease or Sublease.

16. MacBride Principles – Northern Ireland. A clause identical to that set forth in Section 47.3, provided that references to Tenant shall be changed to Subtenant.

17. Tropical Hardwood/Virgin Redwood Ban. A clause identical to that set forth in Section 47.4, provided that references to Tenant shall be changed to Subtenant and references to the Premises shall be changed to the subleased premises.

18. Card Check Ordinance. A clause identical to that set forth in Section 47.8, provided that references to Tenant shall be changed to Subtenant, the reference to subtenants shall be changed to sub-subtenants, and the reference to the Premises shall be changed to the subleased premises.

19. Resource-Efficient Building Ordinance. A clause identical to that set forth in Section 47.12, provided that the reference to Tenant shall be changed to Subtenant and the reference to the Premises shall be changed to the subleased premises.

20. Drug-Free Workplace. If any federal grants apply to the subleased premises, a clause identical to that set forth in Section 47.13, provided that the reference to Tenant shall be changed to Subtenant and the reference to the Lease shall be changed to the Sublease.

21. Preservative Treated Wood Containing Arsenic. A clause identical to that set forth in Section 47.14, provided that references to Tenant shall be changed to Subtenant.

22. Food Service Waste Reduction Ordinance. A provision substantially as follows:

Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, with respect to food sold or produced that the

premises which are the subject of this Sublease, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth herein. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Landlord, as tenant under the Master Lease, will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting Landlord's other rights and remedies, Subtenant agrees that the sum of One Hundred Dollars ($100.00) liquidated damages for the first breach, Two Hundred Dollars ($200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Landlord, as tenant under the Master Lease, will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Landlord, as tenant under the Master Lease, because of Subtenant's failure to comply with this provision.

23. Conflicts of Interest. A provision substantially as follows:

Subtenant certifies that it has made a complete disclosure to Landlord and City of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the City presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for termination of this Sublease.

EXHIBIT F

FORM CAM AGREEMENT

EXHIBIT G

BASE RENT SCHEDULE

EXHIBIT H

LIST OF TERMS THAT DO NOT APPLY TO A MORTGAGEE OR NEW TENANT UPON A DISPOSSESSION EVENT

Article 7 and any other terms or conditions pertaining to the Leasing Schedule, Market Rent, Gross Revenues, and Net Effective Rental Rate, shall not apply.

[A Mortgagee or New Tenant are not required to obtain City approval of a Leasing Schedule or Market Rents.]

Article 8 shall not apply to the Dispossession Event (i.e., to a transfer to a Mortgagee or a New Tenant), but thereafter shall apply to subsequent Transfers, except Sections 8.1(j) and 8.3(c) through (j) shall not apply. Notwithstanding the foregoing, all Subleases must be consistent with the Permitted Uses. In addition, Tenant (including any New Tenant) must provide to City copies of all Subleases and a Rent Roll on request.

[Transfers to a Mortgagee or New Tenant are not subject to City's prior consent or the Transfer Conditions. Subsequent Transfers are subject to the requirements of Article 8 but excluding Sections 8.1(j) and 8.3(c) through (j).]

Article 9, other than Section 9.1(b) and 9.2(c), shall not apply. Tenant shall operate the Premises in a commercially reasonable manner, and pay all Operating Expenses.

[A Mortgagee or New Tenant are not required to maximize revenues or establish rental rates under Article 7.]

Section 4.2 shall not apply.

[A Mortgagee or New Tenant are not required to use good faith efforts to support educational and training programs.]

Section 12.2 shall not apply.

[A Mortgagee or New Tenant are not required to pay Net Revenues to City.]

Section 28.1(a) shall not apply.

[Failure to commence construction in accordance with Schedule of Performance is not an Event of Default]

Section 28.1(b) shall not apply.

[Failure to submit Construction Documents and Budgets is not an Event of Default]

Section 46.1(c) shall not apply.

[A Mortgagee or New Tenant are not required to maintain tax-exempt status.]

EXHIBIT I

SAMPLE FORMS OF FIRST SOURCE HIRING AGREEMENTS

EXHIBIT J

FORM OF MEMORANDUM OF LEASE

EXHIBIT K

PROJECT IMPROVEMENTS DEVELOPMENT REQUIREMENTS

EXHIBIT N

CAM Agreement Requirements

Exhibit N
Common Area Maintenance and Operations Principles

The Parties acknowledge and agree that the success of the Project depends on the ability of Tenant to maintain and operate the SFWPM in a manner that promotes cooperation and coordination of common areas and services between and among the users of the Premises and each of the Separate Parcel Lease Premises. This Lease contemplates the subdivision of the Premises into several separate legal lots, some or all of which may eventually be subject to Separate Parcel Leases, as described in Section 2.9 of this Lease. To ensure that the SFWPM continues to operate as a cohesive whole, even in the event Separate Parcel Leases come to be held by one or more separate entities outside the control of the Tenant, Tenant shall incorporate into any Separate Parcel Lease the following principles for the ongoing maintenance and operation of the Premises:

1. Tenant shall comply and shall cause each of its subtenants to comply with the SFWPM Rules and Regulations, attached hereto as Schedule 1, as the same may be amended from time to time. The Rules & Regulations shall apply to the Premises and each of the Separate Parcel Lease Premises. Such rules shall include but shall not be limited to operating hours, standards for maintenance of the Separate Parcel Lease Premises, and prohibited activities.

2. In connection with the subdivision of the Premises, the Tenant shall record one or more Reciprocal Easement Agreement(s) or similar agreement(s), as approved by the City (the "REA"), that runs with the land and grants rights of ingress and egress between the Premises and each of the Separate Parcel Lease Premises. Such agreement may establish a reasonable zone of exclusive use for each subtenant in the area immediately fronting each building, but shall ensure that adequate common areas within the marshalling yard on the the Premises and each Separate Parcel Lease Premises are open to all users to permit anticipated entry, access, turning motions, and loading operations. The REA may establish additional limitations on the use of the exclusive use areas fronting each building (e.g., prohibition on permanent staging of personal property, prohibition on the erection of structures and fencing, etc.).

3. The REA shall identify the vehicle parking areas, substantially as set forth in the Scope of Development, as common areas.

4. The REA shall grant reciprocal rights allowing for drainage across parcel lines, as necessary or desirable in the discretion of Tenant or Manager, as applicable.

5. The REA shall grant rights in favor of the City and any other utility operator for the continued maintenance and operation of utility facilities on or across the Premises and each Separate Parcel Lease Premises.

6. Each Separate Parcel Lease and all Subleases shall give the SFWPM Manager and its agents the right (but not the obligation) to access the marshalling yard, any other common

areas, and any Separate Parcel Lease Premises containing common facilities (e.g., lighting or security equipment benefitting the common areas) to perform maintenance, repair, replacements, and improvements to such common areas and facilities.

7. If the Separate Parcel Lease contains common area facilities intended to be shared by all users of the SFWPM (e.g., centralized refuse sorting/collection, SFWPM administrative offices, etc.), then the REA shall grant access for the continued use of such space for the intended function.

8. Tenant shall make reasonable accommodations to any adjacent Separate Parcel Tenant to facilitate the construction of the Project, including but not limited to access to common areas on the applicable Separate Parcel Lease Premises for construction activities and staging of equipment and materials.

9. Prior to entering into any Separate Parcel Lease, Tenant (or if Tenant ceases to manage the SFWPM, then Manager) shall prepare a methodology for allocating common area expenses across each Separate Parcel Lease Premises. This methodology shall be updated periodically to reflect changes in the relative building areas on each parcel as the Project is built out in successive phases.

10. The REA shall require each Separate Parcel Tenant to pay its proportionate share of any common area charges and taxes relating to the use and operation of the SFWPM.

11. The REA shall include a waiver of liability and an indemnity for the benefit of the City, together with a covenant not to sue the City, for matters relating to the REA, in a form approved by the City. The parties understand and agree that the City would not permit the creation of the Separate Parcel Leases and the corresponding REA without this release and waiver.

Schedule 1 to Exhibit N

SFWPM Rules and Regulations
(Current as of July 2022)

1. Introduction:
    a. The San Francisco Wholesale Produce Market ("Market") is a vital infrastructure for the food culture of the San Francisco Bay Area. The purpose of these Rules and Regulations ("Rules"), which are incorporated by reference into the lease between Landlord and Tenant as defined below ("Lease") is (i) to maintain a positive and safe experience for customers and merchants of the Market, and (ii) to elicit and ensure cooperation by the tenants/merchants ("Tenant") and the smooth operation of the Market.
    b. All Tenants, sub-tenants, employees, contractors, vendors, customers, individuals and companies operating on the Market must adhere to, and are subject to, all entries contained in these Rules and Regulation.
    c. Landlord reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be desirable for the safety, care and cleanliness of the Premises, the Building and/or the Market and for the preservation of good order therein.

2. Enforcement Mechanisms
    a. Landlord may use any remedy or enforcement mechanism allowed by the Lease or these Rules.
    b. The appropriate police agency may be called by Landlord for any violations of local, state or federal law.
    c. Violations of Market Rules: Landlord will give verbal notice to Tenant of a violation. If the violation is not remedied within 48 hours, a written notice will be issued by Landlord and Tenant will have 48 hours further to remedy such violation, after which Landlord will impose fines pursuant to the following paragraph or declare Tenant in default under the Lease.
    d. Fines: Fines ("Fine") imposed by Landlord on Tenant under this paragraph must be paid by Tenant within 1 calendar week after imposition and are deemed Additional Rent. For a first violation, the Fine will be $250. If the first violation is not corrected or the violation is a succeeding violation to a first violation, the Fine will be $750. Failure to pay the Fine may be deemed by Landlord to be a default under the Lease. Any subsequent violation of the same rule or regulation shall subject Tenant a Fine in the amount of $1500, in addition to any other Fine previously imposed.
    e. Vehicle violations: Vehicles parked, stored or abandoned in violation of the Lease, these Rules and all Applicable Requirements will be given notice then towed at owner's expense.
    f. Sanitation violations: Tenant will be given 24 hours' written notice of any sanitation violations as reasonably determined by Landlord. If Tenant fails to timely cure such violation, Landlord may cure such violation at Tenant's expense which expense shall include, but not be limited to, payment by Tenant to Landlord of reimbursement at the

rate of $30 per hour for labor plus any other costs incurred, such as waste management dump fees, etc, all of which shall be deemed additional rent.

g. Repeated Sanitation Violations: Repeated sanitation violations may be treated by Landlord pursuant to the preceding paragraph or may be subject to fines as set forth above.

h. Merchant alterations: If the Premises or any part of the Market is damaged or altered by Tenant, its employees, hires, guests or customers, Landlord may, at Tenant's expense repair same using the contractor of Landlord's choosing. Such alterations include, but are not limited to, building an enclosed space, e.g., walk-in refrigeration without including fire protection/sprinklers.

i. Appeals Process: Any Tenant issued a Fine for a violation, may petition the Fine in writing within 30days of the violation notice. The appeal will be reviewed and considered via telephone within 30days of receipt of written appeal by a panel composed of two members of the Operations Committee and one member of the San Francisco Market Corporation's Board of Directors. The panel will respond in writing of their decision and the decision will be final. If the violation is overturned, the Fine will be reversed and returned to Tenant within 1 calendar week.

3. Food Safety Documentation
    a. Traceability: Tenants shall identify the source and destination of all products distributed by Tenant in case of outbreak or contamination. Tenant shall keep records including company name, contact information, date and lot number in compliance with the Food Safety Modernization Act and all Applicable Requirements.
    b. Tenant shall provide Landlord a FDA Registration number in accordance with the Bioterrorism Act and all Applicable Requirements.
    c. Tenant shall perform personnel background checks on their employees in accordance with the Bioterrorism Act and all Applicable Requirements.

4. Food Safety Operational Rules
    a. Tenant shall not leave or store any food products on the ground level marshalling yard and other non-covered areas of the loading docks to guard against possible spoilage, contamination or tampering.
    b. Where there are perforated boxes and bags, no product shall be in contact with the warehouse or dock floor or ground surface.
    c. Tenant shall maintain the Premises in a clean and sanitary condition as reasonably determined by Landlord including, but not limited to, food storage areas, floors and walls and the storage of food products.
    d. All refrigeration temperatures must be maintained in compliance with Food Safety standards per product type kept in each refrigeration unit.
    e. Tenant shall participate in a pest control program as reasonably approved or dictated by Landlord. Tenant shall otherwise maintain the Premises free from rodents, insects and other pests.
    f. Pets are limited to the mezzanine office areas and may not be kept in the warehouse or any food storage areas.

g. Tenant shall maintain clean and stocked restrooms for its employees.
h. Tenant and its employees shall comply with all Applicable Requirements including, but not limited to, the washing of hands prior to food handling or packaging and the posting signage to that effect.
i. Tenant must maintain all warehouse light fixtures with lamps with plastic covers or coating to prevent shattered glass and gasses from getting into food products.
j. Smoking is permitted only on the street level marshalling yard and parking areas.

5. Sanitation & Waste Management
    a. Tenant shall comply with all Applicable Requirements regarding sanitation and waste management.
    b. Tenant shall participate in the multi-waste streams programs through the designated City and County of San Francisco waste management company:
        - Blue/recycling: clean cardboard, rigid plastic, office paper.
        - Green/compost: produce, soiled cardboard, wax cardboard, wood scrap.
        - Black/landfill: landfill trash.
    c. Tenant shall make available for pickup by Landlord, as reasonably determined by Landlord, recycled and re-use items not currently handled through the City's waste management company. These items include: plastic film, onion netting, plastic pallet straps, black plastic cornerboards, styrofoam grape boxes and IFCO collapsible crates.
    d. All recycling materials must be placed in the waste management company container and not given to, or set aside for, independent recyclers.
    e. Waste management company containers must be kept locked when not in use.
    f. All waste must be put inside the authorized waste management containers and waste must not be left inside the stall or outside the Premises.
    g. Produce and other compostables that are intended for the waste stream must be put in authorized enclosed container by end of each business day and not be stored in or on the Premises.
    h. Tenant shall leave the dock, ground level rear dock, and marshalling yard immediately in front of the Premises in neat and broom swept condition at the end of each business day.
    i. Tenant shall periodically, as reasonably determined by Landlord, clean out trench drains to remove materials that may prevent proper drainage and Tenant shall regularly clean trench drains to prevent food safety concerns, all as set forth in Paragraph 7.1 of the Lease.
    j. Hazardous Materials, such as batteries, paint, oil & fluorescent light bulbs shall not be placed in the waste management company containers and shall be disposed of by Tenant through an authorized hazardous waste vendor.
    k. Tenant shall properly and immediately clean up any spills or leaks of Hazardous Materials such as oil, paint, engine fluids, etc., including, but not limited to, the use of absorbent sand or other materials as dictated by Landlord. In the event of any such spill Tenant shall immediately contact Landlord or security for assistance.

6. Public Docks

a. Public docks, unless otherwise specifically set forth in writing by Landlord, are for use by customers of Tenants only.
b. Anyone regularly using the public docks must receive prior written permission from Landlord to do so and must provide to Landlord proof of insurance in type and amount acceptable to Landlord.
c. Customers using the public docks may not receive product directly from suppliers, growers or transportation companies. All product must be purchased or sourced directly from tenants of the Market.
d. The public docks are not to be used to receive product for crossdocking, drop shipments or any product delivered to the Market intended for pick up by a customer not purchasing that product from the Merchant.
e. Customers of the Market must not make direct sales, or any component of sales, to their customers on the public docks or anywhere else on the Market.
f. The public docks are not to be used for short or long term storage.

7. Traffic & Parking
   a. Tenant shall comply with all Applicable Requirements including, but not limited to, truck idling, speeding and traffic direction, while on Market grounds and surrounding public city streets and throughways. Tenant shall cause its employees, invitees and customers to comply with all Applicable Requirements.
   b. Tenant shall operate and shall cause its invitees to operate all vehicles driving on the Market in a safe and slow manner and as Landlord may prescribe from time to time.
   c. Tenant shall not place or maintain on the Premises or the Common Area any storage trailers, storage vehicles or other similar containers whose primary purpose is storage.
   d. Tenant shall maintain all dock and loading positions so that they are open and available as needed for delivery trucks, customer vehicles and Tenant truck fleets for loading and unloading. Tenant and its employees shall not park personal vehicles in any way that blocks access to the docks or loading positions of the Premises during Market hours.
   e. Tenant shall not park nor allow any of its employees, invitees or customers to park any vehicle in the Common Area which blocks the dock or loading area of any other tenant of the Market or in any portion of the Common Area in which parking is prohibited by Landlord.
   f. Provided Tenant is in compliance with all Applicable Requirements and does not interfere with operation of its business or any other business in the Market, Tenant may perform minor truck and business vehicle maintenance within the Market grounds as Landlord may allow from time to time.
   g. Employee or personal vehicle maintenance of any kind is prohibited.
   h. No vehicles of any type may be stored on the Premises or on the Market. Notwithstanding the foregoing, all trucks or vehicles serving Tenant's business in the Premises shall not remain on the Market for more than 72 consecutive hours. No employee personal vehicles shall remain on the Market for more than 24 consecutive hours.

i. In the parking areas designated by Landlord beneath the 280 bridge trucks shall only be parked in those spaces marked by yellow lines and automobiles in those spaces marked by white lines.
j. Any vehicle which violates these Rules or any Applicable Requirement may be towed from the Market and stored off-site at Tenant's or the owner's expense without further notice from Landlord.

8. Fees
   a. Landlord may, in its sole discretion, collect dock loading fees from trucking companies serving the Market through their drivers ("Truck Fees").
   b. If a trucking company serving Tenant refuses to pay the Truck Fee, Tenant shall pay the Truck Fee as additional rent to Landlord.
   c. Landlord may, in its sole discretion, institute a parking fee structure for any or all parking on the Market.
   d. The most current dock loading, Truck Fees and parking fee schedules will be available in Landlord's office.

9. Sales
   a. Tenant shall conduct all sales in accordance with all Applicable Requirements including, but not limited to, those of the FDA.
   b. All produce and other food sold and distributed must be handled and stored in conformance with local, state, and federal Food Safety Standards.
   c. Tenant shall not receive product, or allow on the Premises, crossdocking and/or drop shipments or similar type transactions. All deliveries to the Market shall only be for tenants of the Market.
   d. Tenant shall not promote or advertise on the Market except as specifically allowed by Landlord or allow any other companies to sell, promote or advertise on the Market.
   e. Tenant shall not conduct sales, promotions, advertise or corral customers outside of Premises.

10. Receiving
   a. Each Tenant must make at least one loading position available for receiving its product.
   b. Any delivery vehicle occupying a loading position, must have product for the business that it is parked in front of.
   c. Tenant delivery trucks must not be directed to a neighboring Tenant dock.
   d. All independent Registered Produce Unloading contractors must comply with these Rules and Regulations and with all Applicable Requirements and will be responsible for all product they handle.
   e. To minimize unsecured or missing product, tenants are encouraged to have an employee present during receiving hours.
   f. In no event will Landlord be responsible for missing or damaged product.

11. Dock Access
   a. Tenant may not use any dock space for sales, receiving, loading, staging or temporary storage of product that is not within their leased space without prior approval from the

Landlord. This prohibition includes street-level marshalling yards, adjacent front dock space, public docks and vacated space.

b. Tenant shall maintain at all times a clear path large enough to accommodate the width of one pallet for through traffic, customer movement or movement of product across the front loading dock area.
c. The front dock lip shall be kept open for loading and unloading and shall not be used for storage or displays.

12. Safety

a. All individuals working on the Market must conduct themselves in a safe, legal and professional manner and comply with all Applicable Requirements.
b. In addition to all Applicable Requirements, Tenant specifically shall comply with, and is subject to, CAL OSHA and San Francisco Fire Department standards, regulations and inspections.
c. Fireworks and open flames are strictly prohibited.
d. Charcoal and propane grills are permitted only on the street-level marshalling yard and with Landlord's prior approval.
e. Tenant will be responsible for the behavior of its employees concerning intoxication, workplace violence, foul or abusive language, sexual harassment, operation of machinery, equipment or vehicles, etc.
f. Tenant shall maintain and keep up-to-date all state and federal certifications, licenses, operational and training standards regarding the operation of lift trucks, forklifts, pallet jacks and other materials handling equipment.
g. Tenant shall provide to Landlord unfettered access to sprinkler risers and fire connections or other fire safety equipment in the Premises and keep the area(s) surrounding such systems or equipment free from storage, product and debris by 48 inches per SFFD regulation.
h. If Tenant uses or stores propane, compressed gases, fuel and other flammable, explosive or otherwise hazardous materials Tenant shall utilize and/or store such items in accordance with all Applicable Requirements including, but not limited to CAL OSHA and San Francisco Fire Department regulations and standards.
i. All electrical equipment used by Tenants shall be U.L. approved. Nothing shall be done or permitted in Tenant's Premises, and nothing shall be brought into or kept in the Premises which would impair or interfere with any of the Building services or the proper and economic heating, cooling, cleaning or other servicing of the building or the Premises.
j. The water closets, urinals, waste lines, vents or flues of the Building shall not be used for any purpose other than those for which they were constructed, and no rubbish, acids, vapors, newspapers or other such substances of any kind shall be thrown into them. The expense caused by any breakage, stoppage or damage resulting from a violation of this rule by any Tenant, its employees, visitors, guests or licensees, shall be paid by Tenant.
k. Tenants shall not do, or permit anything to be done in the Premises or bring or keep anything therein which will in anyway obstruct or interfere with the rights of other Tenants, or do, or permit anything to be done in the Premises which shall, in the

judgment of the Landlord or its manager, in any way injure or annoy them, or conflict with the laws relating to fire, or with the regulations of the fire department or with any insurance policy upon the Building or any part thereof or any contents there in or conflict with any of the rules and ordinances of the public Building or health authorities.

13. Dock & Warehouse Use
    a. Tenant may receive, store and sell product only in compliance with the Permitted Use in the Lease.
    b. Tenant shall not allow outside companies to use any portion of the Premises for drop shipments or crossdocking.
    c. Tenant shall not allow its customers or any third party to receive direct shipments at the Premises or the Market.
    d. Tenant shall not allow its customers or any third party to conduct sales at the Premises or the Market.
    e. Tenant shall not distribute any written material or place advertising outside of the Premises.
    f. Tenant shall place no signs on the outside of the Premises or signs within the Premises which are visible from outside the Premises without the prior written consent of Landlord which consent may be withheld by Landlord in its sole and absolute discretion. Landlord shall have the right to remove any such unapproved item without notice and at Tenant's expense.
    g. Tenant shall provide Landlord at all times emergency access to the Premises.
    h. Tenant shall not allow noises or other sounds to emanate from the Premises which would disturb other occupants or customers of the Market.
    i. Gambling is prohibited in the Premises and in all areas of the Market grounds.
    j. Tenant shall not display any suggestive, offensive and sexually charged images in the Premises.
    k. Tenant shall not use, keep, or permit to be used or to be kept, any foul or noxious gas or substance in the Premises, or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise, odors and/or vibrations, or interfere in any way with other tenants or those having business at the Market.

14. Alterations & Construction
    a. Tenant may not add to or alter the Building's structure, tap into the plumbing or electrical systems, build or remove refrigeration, build or remove free standing sales boxes, or install or remove racking without the prior approval from the Landlord.
    b. Any proposed alteration affecting the concrete flooring will be performed by Landlord and the cost will be billed back to the Tenant.
    c. For any proposed alterations on refrigeration, plumbing, electrical or fire sprinkler systems, Landlord will provide Tenant with several Market-preferred contractors to bid on the project. If Tenant desires to have the project bid on by another contractor, they shall select a qualified licensed contractor that has performed similar work in a similar market environment.

d. Any personnel or contractors doing improvement, maintenance, or repair work on any portion of the Building must first meet with the Landlord and submit full formal drawings, plans, sketches or renderings depicting the location of where the work is being performed, contractors scope of work and/or proposal; contractors and any subcontractors contact information; schedule of work; and certificate(s) of insurance for all contractors and subcontractors per the Lease requirements for approval.
e. Building permits may be required subject to scope of work. It is the responsibility of the licensed contractor and/or architect performing the work to comply with all local and state codes to determine and obtain any and all permits required. It is the responsibility of the Tenant to inform the contractor(s) of these responsibilities. A copy of the permit(s) must be provided to the Market office for review and consideration prior to work commencing.
f. Plans submittal shall be prepared, stamped and signed by the licensed professional responsible for the design, either an engineer or architect licensed by the State of California. The submittal should demonstrate the necessary details for the construction of the work and address how the complete installation will meet San Francisco Code (Building, Mechanical, Electrical, and Fire Code) requirements including but not limited to; disabled access within the space, egress, fire life safety (fire sprinkler and alarm), structure engineering of all relevant components, Title 24 Energy Compliance, relevant Health code provisions, and other relevant code requirements.
g. Any new enclosed area (walk in refrigeration, restroom, sales office, etc.) must have appropriate automatic sprinkler systems built into the ceiling per SFFD regulation.
h. All of the requirements under this Section 14 are in addition to and not in lieu of the requirements of Paragraph 7.3 and Second Addendum of the Lease and any Tenant Construction Rules in effect.

EXHIBIT O

APPRAISAL INSTRUCTIONS

EXHIBIT O-1

APPRAISAL INSTRUCTIONS (NEW CONSTRUCTION PARCEL)

EXHIBIT O-1

Form of Joint Appraisal Instructions
Separate Parcel for New Construction

1. Introduction

These Appraisal Instructions (these "**Instructions**") constitute a part of that certain Amended and Restated Ground Lease Agreement (the **"Lease")** dated as of [_____], 2022, by and between the City and County of San Francisco (the "**City**") and the San Francisco Market Corporation (the "**Tenant**"). The City and Tenant are referred to from time to time in this Agreement individually as a "**Party**" and collectively the "**Parties**"). All capitalized terms used herein but not otherwise defined herein will have the meaning ascribed to such terms in the Lease.

These Instructions will govern preparation and delivery of each appraisal report (each, an "**Appraisal**") setting forth the fair market value of the Subject Property (as defined below) for purposes of determining the Monthly Rent (as defined in the Separate Parcel Lease) for the Subject Property under a proposed Separate Parcel Lease, as described in Section 2.9 of the Lease.

These Instructions will constitute the scope of work and sole instructions to be utilized by the appraiser preparing an Appraisal (the "**Appraiser**").

2. Subject Property

The parcel that is the subject of these instructions is identified as [_____] as more particularly described in Attachment 1 attached hereto (the "**Subject Property**").

3. Appraisal Standards

The Appraisal will include the Appraiser's final opinion of the value for the Subject Property and resulting Base Rent stated as specific dollar figures.

4. Appraisal Purpose and Report Requirements

(a) Purpose. The appraisal assignment is to appraise the value of the fee simple interest in the Subject Property (the "**Fee Value**") and to determine the resulting Base Rent that may be payable pursuant to the terms of the Separate Parcel Lease.

(b) Appraisal and Report Requirements

(i) General Principles. Each Appraisal will be prepared in accordance with the following requirements:

(1) The Appraiser shall state as a single amount *(i.e.*, not a range of values) his or her final opinion of the Fee Value**.**

(2) Comparable market data of income-producing properties ("comparable") shall be presented in individual write-up sheets and include the following data. Focus should be placed on recently developed projects. Comparable data for relevant land transactions shall also be included.

a. Physical address and legal description (if possible)

b. Parties to the transaction

c. Date of transaction

d. Sales price and/or ground lease payments

e. Financing terms and conditions (if known)

f. Property rights conveyed

g. Description of improvements, including utilities available

h. Size and shape of property

i. Current use

j. Entitlement status, zoning and proposed zoning change (if applicable)

k. Capitalization rate

l. Gross income derived from the property

m. Operating expenses of the property, including property taxes and any property tax exemptions (if applicable)

n. Verification of the transaction data (including names and contact information of with whom the transaction was verified/confirmed and date verified)

o. Time period between substantial completion and stabilization

p. Project cost and duration, including entitlement cost if applicable

(c) Special Instructions

(i) The Parties agree and hereby instruct Appraiser to rely primarily on a "Residual Value Calculation" methodology in estimating the Fee Value of the Subject Property and on application of a "Land Rental Rate of Return" to the estimated Fee Value in determining the Base Rent, but also considering comparable transactions, as more specifically set forth below.

(ii) The Parties have agreed upon the Project Pro Forma Assumptions set forth in Attachment 2 (the "**Project Assumptions**"). Appraiser shall use assumptions from the "must use" column to calculate the residual value. The assumptions in the "for consideration" column are provided as a reference for consideration or use by the Appraiser.

(iii) The Appraiser shall evaluate the residual value considering comparable projects, comparable land transactions, and other relevant factors. If following such process, the Appraiser determines that the residual value does not completely reflect the Fee Value, the Appraiser may increase or decrease its determination of Fee Value and the resulting Base Rent based on such evaluation process.

5. Appraisal Procedures

The following sets forth the procedures for the preparation of each Appraisal; these procedures may be modified or waived by mutual agreement of the Parties, each agreeing to such modification or waiver in its sole discretion.

(a) Contracting Parties

The Appraiser will be engaged jointly by the Parties and will be provided with points of contact for each to assist in completing the assignment. For questions regarding the appraisal and subject documents, please contact both of the following:

City Contact:

Name, Address, Phone #, Email address

Tenant Contact:

Name, Address, Phone #, Email address

(b) Pre-Work Conference

At the request of the Parties, the Appraiser will attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Subject Property and will include a review of the Project Assumptions.

(c) Inspection

Inspection of the Subject Property is to be coordinated with the Parties, who will both have the option of having representatives attend the inspection with the Appraiser.

(d) Draft Report

The Appraiser will submit to the Parties an initial draft appraisal report (the **"Draft Report"),** consisting of an unprotected PDF copy of such report, within the period specified within the fully executed contract for appraisal services. The Appraiser shall maintain a well-documented workfile, available on request for review by the Parties,

containing supporting documents, meeting and interview notes, and other materials relied upon but not included in the Draft Report or Appraisal.

(e) Review and Comment Period

Following receipt of the Draft Report, the Parties will review such Draft Report and, within 21 calendar days thereafter, provide any comments or feedback to the Appraiser.

(f) Final Appraisal

Following receipt of any comments, the Appraiser will, within a reasonable time (not to exceed 15 calendar days without the Parties' written consent), revise the Draft Report as appropriate after considering any such comments or feedback and deliver to the Parties a final Appraisal, by emailing an unprotected PDF copy of such report and delivering by overnight delivery service two (2) signed hard copies of the final Appraisal.

6. Confidentiality.

The Parties and the Appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these instructions, the Parties may disclose confidential information, which has been approved and authorized by Parties for release, to the Appraiser.

The Appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Appraiser may disclose such confidential information on a "need to know" basis to the Appraiser's employees and subcontractors. As a condition precedent to any such disclosure, each and all such employees and subcontractors will have executed a written confidentiality agreement with the Parties, which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, the Fee Value and Base Rent determinations included therein, and the supporting documentation, also constitute confidential information, and the Appraiser will keep such determination and documentation strictly confidential.

7. ATTACHMENTS AND SCHEDULES

The following Attachments attached to these Joint Appraisal Instructions are incorporated herein by this reference:

ATTACHMENTS

Attachment 1: Subject Property

Attachment 2: Project Assumptions

ATTACHMENT 1

SUBJECT PROPERTY

ATTACHMENT 2

PROJECT ASSUMPTIONS

[see separate excel document for proposed assumption template]

EXHIBIT O-2

APPRAISAL INSTRUCTIONS (EXISTING BUILDING(S) PARCEL)

EXHIBIT O-2

Form of Joint Appraisal Instructions for Separate Parcel with Existing Building(s)

1. Introduction

These Appraisal Instructions (these "**Instructions**") constitute a part of that certain Amended and Restated Ground Lease Agreement (the **"Lease")** dated as of [_____], 2022, by and between the City and County of San Francisco (the "**City**") and the San Francisco Market Corporation (the "**Tenant**"). The City and Tenant are referred to from time to time in this Agreement individually as a "**Party**" and collectively the "**Parties**"). All capitalized terms used herein but not otherwise defined herein will have the meaning ascribed to such terms in the Lease.

These Instructions will govern preparation and delivery of each appraisal report (each, an "**Appraisal**") setting forth the fair market value of the Subject Property (as defined below) for purposes of determining the Monthly Rent for the Subject Property under a proposed Separate Parcel Lease, as described in Section 2.9 of the Lease.

These Instructions will constitute the scope of work and sole instructions to be utilized by the appraiser preparing an Appraisal (the "**Appraiser**").

2. Subject Property

The parcel and improvements thereon that are the subject of these instructions is identified as [_____] as more particularly described in Attachment 1 attached hereto (the "**Subject Property**"). The Subject Property contains existing improvements that the Tenant intends to pledge as security in connection with a Financing. If the Subject Property is later developed with a new building in furtherance of the Project, then, prior to closing construction financing for the new construction, the Property must be re-appraised and the Monthly Rent re-calculated in accordance with the appraisal instructions set forth in Exhibit O-1.

3. Appraisal Standards

The Appraisal will include the Appraiser's final opinion of the Monthly Rent for the Subject Property as specific dollar figures.

4. Appraisal Purpose and Report Requirements

(a) Purpose. The appraisal assignment is to determine the Monthly Rent that may be payable pursuant to the terms of the Separate Parcel Lease.

(b) Appraisal and Report Requirements

(i) General Principles. Each Appraisal will be prepared in accordance with the following requirements:

(1) The Appraiser shall state as a single amount *(i.e.*, not a range of values) his or her final determination of the Monthly Rent**.**

(2) Comparable market data of income-producing properties ("comparable") shall be presented in individual write-up sheets and include the following data. Focus should be placed on recently leased comparable properties.

a. Physical address and legal description (if possible)

b. Parties to the transaction

c. Date of transaction

d. Description of improvements, including utilities available

e. Size and shape of property

f. Current use

g. Gross income derived from the property; including current rental rates and lease structures.

h. Operating expenses of the property, including property taxes and any property tax exemptions (if applicable)

i. Verification of the transaction data (including names and contact information of with whom the transaction was verified/confirmed and date verified)

(c) Special Instructions

(i) The Parties agree and hereby instruct Appraiser to determine the Monthly Rent amount based on the estimated positive difference, if any, of: i) the projected [monthly] net operating income generated by the Subject Property based on rental rates charged, expense recoveries received, and operating expenses incurred by market comparables; over ii) the projected [monthly] net operating income generated by the Subject Property based on rental rates charged, expense recoveries received, and operating expenses incurred by the Tenant, provided, however, that the projected net operating income based on market comparables will be adjusted to reflect any use restrictions included in the Separate Parcel Lease for the Subject Property. Additionally, the operating expenses incurred by market comparables should reflect estimated possessory interest taxes that would be payable based on ownership of the leasehold interest in the Subject Property pursuant to the Separate Parcel Lease by a market participant, which may include, but may not be limited to, the Tenant.

5. Appraisal Procedures

The following sets forth the procedures for the preparation of each Appraisal; these procedures may be modified or waived by mutual agreement of the Parties, each agreeing to such modification or waiver in its sole discretion.

(a) Contracting Parties

The Appraiser will be engaged jointly by the Parties and will be provided with points of contact for each to assist in completing the assignment. For questions regarding the appraisal and subject documents, please contact both of the following:

City Contact:

Name, Address, Phone #, Email address

Tenant Contact:

Name, Address, Phone #, Email address

(b) Pre-Work Conference

At the request of the Parties, the Appraiser will attend a pre-work conference for discussion and understanding of these Instructions, including a timing update. The pre-work conference may be held in conjunction with an inspection of the Subject Property.

(c) Inspection

Inspection of the Subject Property is to be coordinated with the Parties, who will both have the option of having representatives attend the inspection with the Appraiser.

(d) Draft Report

The Appraiser will submit to the Parties an initial draft appraisal report (the **"Draft Report"),** consisting of an unprotected PDF copy of such report, within the period specified within the fully executed contract for appraisal services. The Appraiser shall maintain a well-documented workfile, available on request for review by the Parties, containing supporting documents, meeting and interview notes, and other materials relied upon but not included in the Draft Report or Appraisal.

(e) Review and Comment Period

Following receipt of the Draft Report, the Parties will review such Draft Report and, within 21 calendar days thereafter, provide any comments or feedback to the Appraiser.

(f) Final Appraisal

Following receipt of any comments, the Appraiser will, within a reasonable time (not to exceed 15 calendar days without the Parties' written consent), revise the Draft Report as

appropriate after considering any such comments or feedback and deliver to the Parties a final Appraisal, by emailing an unprotected PDF copy of such report and delivering by overnight delivery service two (2) signed hard copies of the final Appraisal.

6. Confidentiality.

The Parties and the Appraiser acknowledge and agree that, in the course of preparing an Appraisal pursuant to these instructions, the Parties may disclose confidential information, which has been approved and authorized by Parties for release, to the Appraiser.

The Appraiser agrees not to disclose such confidential information to any third party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that the Appraiser may disclose such confidential information on a "need to know" basis to the Appraiser's employees and subcontractors. As a condition precedent to any such disclosure, each and all such employees and subcontractors will have executed a written confidentiality agreement with the Parties, which obligates such employees and subcontractors to maintain the confidentiality of such confidential information.

Each Appraisal, and the Monthly Rent determinations included therein, and the supporting documentation, also constitute confidential information, and the Appraiser will keep such determination and documentation strictly confidential.

7. ATTACHMENTS AND SCHEDULES

The following Attachments attached to these Joint Appraisal Instructions are incorporated herein by this reference:

ATTACHMENTS

Attachment 1: Subject Property

ATTACHMENT 1

SUBJECT PROPERTY