

1 [Real Property Lease Amendment - BGCA Management, LLC - Bill Graham Civic Auditorium,
2 99 Grove Street - \$25,000 per Month Base Rent]

3 **Resolution authorizing and approving an Amendment to Lease with BGCA**
4 **Management, LLC, a Delaware limited liability company, for Bill Graham Civic**
5 **Auditorium, at 99 Grove Street; increasing monthly base rent to \$25,000; requiring**
6 **tenant to be responsible for all utilities and a minimum of \$10,250,000 in building**
7 **improvements, new participation rent calculation, and other changes as set forth in**
8 **Amendment; with no change to the term length to expire on December 31, 2030, to**
9 **commence upon approval by the Board of Supervisors and Mayor.**

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11 WHEREAS, On July 1, 2010, the Mayor and Board of Supervisors approved Resolution
12 No. 289-10 authorizing a lease of the Bill Graham Civic Auditorium (“Building”) located at 99
13 Grove Street to BGCA Management, LLC (“Tenant”) for a term of approximately 20 years,
14 with two five-year extension options, as a concert and special events venue (“Lease”); a copy
15 of the Lease and Resolution No. 289-10 are located in Board File No. 100649; and

16 WHEREAS, The Lease includes: (i) an expiration date of December 31, 2030, subject
17 to Tenant’s two options to extend, each for an additional five years, at fair market rent; (ii)
18 base rent of \$8,333.33 per month, increased by 2.5% each year subject to a rent abatement
19 period during the construction of Initial Improvements; (iii) participation rent equal to the sum
20 of (A) 50% of net naming rights revenue (from naming the internal arena, not the Building) in
21 excess of \$500,000, (B) \$5 per ticket, increased each year per CPI, for each ticket sold in
22 excess of 337,000 per year, and (C) \$2,500, increase each year per CPI, for each corporate
23 event, subject to renegotiation after Lease Year 10; and, (iv) acceptance of the Building “as is”
24 without representation or warranty; and

1 WHEREAS, Since 2010, Tenant has not received any naming rights revenue and has
2 only sold over 337,000 tickets one year in 2016 to trigger those elements of participation rent;
3 and

4 WHEREAS, The Lease requires Tenant to make certain interior renovations and capital
5 improvements to the Building in three phases (the "Initial Improvements"), as set forth in the
6 Lease and exhibits attached to it, and to spend at least \$10,000,000 on the Initial
7 Improvements; and

8 WHEREAS, The City has granted several extensions for the performance of the
9 required improvements, and as of the date of the Amendment to Lease, Tenant has
10 performed approximately \$564,475 of the agreed upon required capital improvements,
11 together with other repairs and upgrades for a total City approved improvement expenditure of
12 approximately \$1,598,803; and

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

16 WHEREAS, During the time period between 2010 and the present, the City has not
17 used more than 24 City days in any one year period; and

18 WHEREAS, The Lease requires Tenant to pay for all utilities in connection with
19 Tenant's use of the Building, but if Tenant's utility costs exceed \$200,000, as adjusted by CPI,
20 in any Lease year, then Tenant receives a rent credit of 50% of such excess costs; and

21 WHEREAS, As a result of significant utility rate charges since lease negotiations nearly
22 a decade ago, Tenant has received a rent credit for excess utility costs for each year since
23 2011, resulting in a rent credit of over \$500,000 or five years of current base rent; and

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1 WHEREAS, After several years of experience hosting concerts and other events in the
2 Building, Tenant has proposed converting that portion of the Building presently known as Polk
3 Hall into an approximately 1,200 seat club/small concert hall; and

4 WHEREAS, The City Administrator, as Landlord, is willing to allow Tenant to construct
5 the proposed small venue in the Building; and

6 WHEREAS, The Real Estate Division has negotiated an amendment to certain
7 sections of the Lease in substantially the form on file with the Clerk of the Board of
8 Supervisors in File No. 171322, which is hereby declared to be a part of this Resolution as if
9 set forth fully herein (the "Amendment to Lease") to allow the construction of a smaller venue
10 in Polk Hall, increase in rent, change the terms of participation rent, require Tenant to pay all
11 utilities without any rent credit, and require Tenant to make certain improvements in the
12 Building; and

13 WHEREAS, Under the Amendment to Lease, base rent shall increase to \$25,000 per
14 month from the current \$9,765.59 per month; and

15 WHEREAS, Under the Amendment to Lease, participation rent for naming rights
16 remains the same, City's per ticket revenue has been deleted, and Tenant shall pay to City
17 \$3,500 for each corporate event and other Non-Ticketed Events held in the main auditorium
18 and \$2,500 for each Non-Ticketed Event held solely on or in one or more of the halls (i.e., the
19 new Polk Hall) for which Tenant receives revenue; these amounts to increase yearly in
20 accordance with a CPI adjustment; and

21 WHEREAS, Under the Amendment to Lease, those sections related to the Initial
22 Improvements have been deleted and substituted with Tenant performing at least
23 \$10,250,000 in Building Improvements, within three to ten years, including: (i) \$4,000,000 for
24 Polk Hall Improvements, (ii) at least \$3,500,000 for Main Arena Improvements, (iii) at least
25 \$750,000 for Freight Elevator Work; (iv) at least \$1,000,000 for Polk Street Passenger

1 Elevator Replacement; and (v) at least \$1,000,000 for remaining Elevator Replacement Work;
2 and

3 WHEREAS, Under the Amendment to Lease, City days has been reduced to up to 25
4 days per year; and

5 WHEREAS, Under the Amendment to Lease, Tenant shall pay for all utilities in
6 connection with Tenant's use of the Building without receiving any rent credit; and

7 WHEREAS, Other clauses in the Amendment to Lease update required City provisions;
8 and

9 WHEREAS, The amendments to the certain sections of the Lease shall commence
10 upon approval by the Board of Supervisors and Mayor; now, therefore, be it

11 RESOLVED, That in accordance with the recommendation of the Director of Property
12 and the City Attorney, the Director of Property on behalf of the City, as Landlord, be and is
13 hereby authorized to take all actions necessary to execute the Amendment to Lease at Bill
14 Graham Civic Auditorium, for the remainder of the initial term and the two five year options
15 subject to the enactment of a resolution by the Board of Supervisors and the Mayor, in their
16 respective sole and absolute discretion, approving and authorizing the same; and, be it

17 FURTHER RESOLVED, The monthly base rent for the remainder of the initial twenty
18 year term shall be \$25,000 per month, subject to annual adjustments of 2.5% percent,
19 exclusive of all utilities and services for which Tenant is solely responsible without any rent
20 credit, as set forth in the Amendment to Lease; and, be it

21 FURTHER RESOLVED, The Board of Supervisors approves the Amendment to Lease
22 in substantially the form in the Board's File and authorizes the Director of Property to take all
23 actions, on behalf of City, to enter into any further amendments or modifications (including
24 without limitation, the exhibits) to the Lease that the Director of Property determines, in
25 consultation with the City Attorney, are in the best interests of the City, do not materially

1 increase the obligations or liabilities of the City, and are necessary or advisable to complete
2 the transaction and effectuate the purposes and intent of this resolution and are in compliance
3 with all applicable laws, including City's Charter; and, be it

4 FURTHER RESOLVED, That the Competitive Bidding Procedures would be impractical
5 in light of the existing Lease Agreement between City and Tenant for the Building; and, be it

6 FURTHER RESOLVED, That any action heretofore taken by any City employee or
7 official with respect to the exercise of the Amendment to Lease as set forth herein is hereby
8 approved, confirmed and ratified; and, be it

9 FURTHER RESOLVED, That within thirty (30) days of the Amendment to Lease
10 agreement being fully executed by all parties, the Director of Property shall provide a copy of
11 the Amendment to Lease to the Clerk of the Board to include into the official file.

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1 RECOMMENDED:

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4 John Updike

5 Director of Property

6 Real Estate Division

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9 RECOMMENDED:

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11 Naomi Kelly

12 City Administrator

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