File No. 130537

Committee Item No. _____
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 06/20/2013
06/21/2013

Board of Supervisors Meeting **Date:** _____

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Completed by: Victor Young **Date** June 14, 2013
Completed by: Victor Young **Date** _____

[Lease and Management Agreement - Botanical Garden Society - Waiving Fees - Botanical Garden at Strybing Arboretum in Golden Gate Park]

Ordinance approving and authorizing a Lease and Management Agreement between the City and the San Francisco Botanical Garden Society for the San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park, with an initial term of 10 years with two ten-year extension options; waiving the non-resident admission fee in Park Code, Section 12.46(d) for certain persons and entities as set forth in the Lease and Management Agreement; ratifying prior acts in connection with this Ordinance; and making environmental findings.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. **Findings.**

(a) The San Francisco Botanical Garden Generally. The City and County of San Francisco (the "City") owns the San Francisco Botanical Garden (the "Botanical Garden"), formerly known as Strybing Arboretum, a 55-acre garden and associated facilities located in the southeast portion of San Francisco's Golden Gate Park along Martin Luther King Jr. Drive and Lincoln Way, between 9th Avenue and 19th Avenue. The Recreation and Park Commission has jurisdiction over the Botanical Garden and is responsible, through the City's Recreation and Park Department ("RPD"), for its operation and management. The Botanical Garden is a living museum of more than 8,000 different kinds of plants, many rare and endangered and no longer found in their native habitats, and is a treasure for the residents of San Francisco and the Bay Area as well as for visitors from around the world.

(b) The San Francisco Botanical Garden Society. The San Francisco Botanical Garden Society ("SFBGS") is a nonprofit 501(c)(3) corporation devoted to supporting, promoting, and enhancing the use, appreciation and stature of the Botanical Garden. SFBGS has provided crucial support and assistance to the City in the management and operation of the Botanical Garden since 1955, including the construction and donation of the Helen Crocker Russell Library Building; management and operation of the Library and Visitor Orientation Center and Bookstore; funding and developing a special area plan (the "Botanical Garden Master Plan") for the Golden Gate Park Master Plan; providing education and visitors programs, visitor publications, curatorial and plant collections management services, community programming, horticulture education and volunteer programs; planning and managing improvements to the Botanical Garden; paying costs to support the hiring of an eleventh City gardener dedicated solely to the care and maintenance of the Botanical Garden; and fundraising to support the Botanical Garden.

(c) The City and SFBGS's Prior Agreements. On March 1, 2002, the City and SFBGS entered into (i) a Memorandum of Agreement (Strybing Arboretum) (the "Cooperation Agreement"), pursuant to which RPD and SFBGS agreed to cooperatively manage the Botanical Garden, with RPD taking a primary role in managing certain functions and SFBGS taking a primary role in managing other functions, and (ii) a lease (the "Original Lease") pursuant to which SFBGS leased from the City certain office space, library space, horticultural space and book kiosk space within the Botanical Garden. The terms of the Cooperation Agreement and the Original Lease have expired, and the City and SFBGS have continued to operate under the terms of such agreements. In addition, the City and SFBGS entered into a Grant Agreement, dated July 1, 2010 (as amended, the "Grant Agreement"), pursuant to which the City provided a grant to SFBGS for the purpose of funding certain education and

community outreach and the operation and maintenance of the Botanical Garden's non-resident entrance fee collection program. The Grant Agreement expires on June 30, 2013.

(d) Nursery Gift. SFBGS has offered to donate to the City the design and construction of a Nursery Center for Sustainable Gardening within the Botanical Garden for the joint use of the City and SFBGS (the "Nursery Project") as a gift-in-place valued at approximately $14 million if SFBGS completes the Nursery Project. On April 10, 2012, the Board of Supervisors adopted Resolution No. 125-12, in which the Board of Supervisors (a) adopted a Final Mitigated Negative Declaration ("FMND") and a Mitigation Measuring and Reporting Program (the "MMRP") for the Nursery Project, (b) imposed all the mitigation measures set forth in the MMRP as conditions of such approval, and (c) accepted a gift-in-place to the City of the Nursery Project valued at approximately $14 million. Construction of the Nursery Project has not commenced.

(e) Need for Continued Collaboration. The City and SFBGS recognize the need for continued collaboration to meet the challenges and opportunities of creating and sustaining a world-class botanical garden for the 21st century. The City and SFBGS have the shared goal of creating one of the world's outstanding public botanical gardens, representing San Francisco's horticultural heritage as well as diverse collections from around the world, and of increasing levels of private and public financial support and resources to support such goal. Towards that end, the City and SFBGS desire for SFBGS to continue to lease certain office and related space in the Botanical Garden for administrative purposes, to lease and continue to operate the Library, to access and utilize horticultural space in the Botanical Garden, and to utilize space in the buildings within the Botanical Garden for educational seminars, receptions, lectures and other special events. City and SFBGS further desire for SFBGS to provide assistance with the operation and management of the Botanical Garden and with education, fundraising and other activities which will support and enhance the Botanical Garden. The

City and SFBGS desire to provide a clear management structure that facilitates operation and management of the Botanical Garden and SFBGS's efforts to raise funds to help augment City funding for the Botanical Garden.

(f) Lease and Management Agreement. The City and SFBGS have negotiated a Lease and Management Agreement that includes the following:

(1) An initial term of ten years, with two ten-year extension options.

(2) The leased premises shall consist of a portion of the Botanical Garden comprised of the following, as generally depicted on Exhibits B-1 and B-2 of the Lease and Management Agreement:

(i) Approximately 1,207 square feet of office space located in the rooms presently designated as Rooms 1 and 3 of the San Francisco County Fair Building and in the rooms presently designated as Rooms 23, 24, 25 and 30 of the Helen Crocker Russell Library Building (collectively, the "Office Space"). SFBGS shall use the Office Space for office and administrative purposes and community meetings.

(ii) Approximately 84 square feet of space constituting the bookstore and approximately 800 square feet of space outside of the bookstore (the "Visitor Orientation Center and Book Store"). SFBGS shall use the Visitor Orientation Center and Book Store space for providing visitor orientation services and materials to the public and operation of a book and gift store selling materials approved by RPD, including plant sales in the (space outside the Visitor Orientation Center and Book Store.

(iii) Approximately 1378 square feet of space located in the rooms presently designated as Rooms 31, 32, 35, 36, and 37 of the Library Building (the "Library Space"), for operation of the Helen Crocker Russell Library of Horticulture. SFBGS shall use

the Library Space for operation of a horticultural library open to the public during hours approved by RPD and educational seminars and fundraising events at other times.

(iv) Horticultural space comprised of approximately 800 square feet of space in the existing main greenhouse, approximately 800 square feet of space in the main lath house, and approximately 80 square feet of space in the container growing grounds (collectively, the "Horticultural Premises"), subject to adjustment from time to time by the City, in its reasonable discretion. SFBGS shall use the Horticultural Premises for propagation and sales of plants.

(v) Approximately 50 square feet of storage space located in the room presently designated as Room 21 of the County Fair Building, and, subject to shared use by the City, sufficient space in the room presently designated as Room 14 of the County Fair Building for voice and data connections and a server closet (collectively, the "Storage and Utility Space"). SFBGS shall use the Storage and Utility Space for the storage of supplies and equipment incident to its operations.

(vi) Upon the completion of the Nursery Project and acceptance of the improvements by RPD, the nursery (the "Nursery Premises") will be added to the leased premises, with a portion of the Nursery Premises for the exclusive use of SFBGS and a portion of the Nursery Premises available for shared used by SFBGS and RPD, as depicted on Exhibit B-3 to the Lease and Management Agreement. Following completion of the Nursery Project and demolition of the Horticultural Premises, SFBGS shall surrender the Horticultural Premises to the City, and the leased premises shall thereupon be comprised of the Office Space, the Visitor Orientation Center and Book Store, the Library Space, the Storage and Utility Space and the Nursery Premises. SFBGS shall use the Nursery Premises for observation, study, and community programs related to horticulture and natural resources

conservation, the propagation and sales of plants related thereto, and nursery administrative work areas.

(vii) In addition to the foregoing, the leased premises may be used for educational and fundraising seminars, receptions, lectures, plant sales and other special events sponsored by SFBGS. The leased premises shall not be used for any other purpose.

(3) SFBGS shall pay the City a base rent of $100 per year.

(4) Fees paid by non-residents for admission to the Botanical Garden pursuant to Park Code Section 12.46 and Section 6.11 of the Lease and Management Agreement ("Admission Receipts") shall be solely for the benefit of the Botanical Garden and shall be allocated and distributed pursuant to the terms of Article 7 of the Lease and Management Agreement and Exhibit E thereto. SFBGS shall collect Admission Receipts and remit them to the City. Such receipts shall be distributed on a monthly basis by RPD according to the following schedule:

(i) Admission Receipts shall first be used to reimburse SFBGS for its approved "Authorized Collection Expenses" during such period. "Authorized Collection Expenses" means all costs and expenses incurred by SFBGS in connection with its collection of admission receipts, including personnel costs. "Authorized Collection Expenses" shall not include capital expenses, penalties, late charges or interest on any late payments, or taxes or other amounts withheld from wages or salaries which have not actually been paid by SFBGS during the month for which reimbursement is being made.

(ii) Second, following the payment of the Authorized Collection Expenses specified in (i) above, remaining Admissions Receipts shall next be paid to RPD until RPD has received an aggregate amount of $250,000 per Fiscal Year, provided, however, that before the allocation is used for any other Botanical Garden purpose, RPD shall use such allocation

to fund three gardeners who are dedicated solely to the care and maintenance of the Botanical Garden.

(iii) Third, any remaining Admissions Receipts shall next be paid to SFBGS until the remaining approved direct out-of-pocket expenses that were incurred by SFBGS during the first year of the non-resident admissions program ending June 30, 2011, have been reimbursed.

(iv) Fourth, any remaining Admission Receipts shall next be paid to SFBGS until SFBGS has received an aggregate of $250,000 per fiscal year in addition to the reimbursement for Authorized Collection Expenses described in (i) above. SFBGS shall expend such admissions receipts for its costs and expenses for education, community outreach, public programs and other initiatives.

(v) Finally, the balance of Admission Receipts shall be paid into the "Botanical Garden Improvement Fund," which will be maintained by the City and shall not be commingled with other City funds. Any interest accruing on the funds in the Botanical Garden Improvement Fund shall be added to the Botanical Garden Improvement Fund. Expenditures from the Botanical Garden Improvement Fund shall be used by the City only for the payment of costs and expenses for maintenance, renovation and improvement of the Botanical Garden and shall not be used for any other purpose unless the parties otherwise agree in writing. Expenditures from the Botanical Garden Improvement Fund are intended to enhance the Botanical Garden and not to replace traditional sources or levels of City funding.

(5) Under Section 6.11 of the Lease and Management Agreement, SFBGS is not required to reimburse the City for the following nonresidents receiving free admission to the Botanical Garden subject to the Board of Supervisors' approval by ordinance: (i) SFBGS members, (ii) members of other botanical gardens participating with SFBGS in reciprocal member programs, and (iii) school group students, teachers or chaperones. The Botanical

Garden will also be open to the public, including non-residents, without charge one day a month, plus Thanksgiving, Christmas and New Year's Day.

A copy of the proposed Lease and Management Agreement is on file with the Clerk of the Board of Supervisors in File No. 130537__ and is incorporated herein by reference.

(g) Public Benefits. The Board finds that the proposed Lease and Management Agreement will have numerous public benefits, and will lessen the burden on the City in operating and maintaining the Botanical Garden and in providing public programming and education.

(h) Recreation and Park Commission Approval. Pursuant to San Francisco Charter, Article IX, Section 9.118, any lease of real property for a period of ten or more years, including options to renew, requires approval by the Board of Supervisors. On May 16, 2013, by Recreation and Park Commission Resolution No. 1305-11, a copy of which is on file with the Clerk of the Board in File No. 130537, the Recreation and Park Commission recommended that the Board of Supervisors approve the Lease and Management Agreement between the City and SFBGS.

(i) Competitive Bidding Waiver. Pursuant to Chapter 23.33 of the Administrative Code, the Board finds that due to the unique nature of the SFBGS as an organization dedicated solely to supporting and promoting the Botanical Garden, competitive bidding the Lease and Management Agreement is impractical or infeasible. The Board further finds that the Lease and Management Agreement provides consideration in an amount not less than the fair market value of the leased premises because the monetary value of the services and functions that SFBGS will provide under the proposed Lease and Management Agreement exceeds the fair market value of the leased premises. A 2012 appraisal report prepared for the City by Clifford Advisory, LLC., a copy of which is on file with the Clerk of the Board in File

No. 130537, estimated the fair market value ("FMV") of the initial leased premises, not including the new Nursery Premises, as $81,289 annually, and the FMV of the space to be utilized by the SFBGS within the proposed Nursery Premises, if the Nursery Premises are added to the leased premises, as $302,773 annually. The annual value of the services and support to the Botanical Garden to be provided by SFBGS under the Lease and Management Agreement is estimated to be $2,163,000, which far exceeds the FMV for the leased premises even after the Nursery Premises are added to the leased premises, if applicable. SFBGS' support includes employing a professional curatorial staff to assist RPD in plant collection development ($573,504), conducting youth education programming ($210,429), operating the Helen Crocker Russell Botanical Library ($196,412), and volunteer management, docent program, classes and public program ($189,351), and garden improvements ($283,264). Further, if SFBGS completes the Nursery Project, the estimated cost of which is approximately $14 million, then upon completion SFBGS will donate the Nursery Project to the City in accordance with Board of Supervisors Resolution 125-12 dated April 10, 2012.

Section 2. **Environmental Findings.**

This Lease and Management Agreement authorizes the existing, ongoing operation and use of the San Francisco Botanical Garden at Strybing Arboretum by the San Francisco Botanical Garden Society. No change in use is proposed, and this lease would not be considered a project under the California Environmental Quality Act. As noted in Section 1, the previously approved Nursery Project, approved by the Recreation and Park Commission on March 15, 2012 by Resolution No. 1203-008, and by this Board on April 10, 2012 by Resolution No. 125-12, was analyzed in a Final Mitigated Negative Declaration ("FMND"), which was reviewed, considered, and adopted by both the Recreation and Park Commission and this Board. By those same actions, the Recreation and Park Commission and this Board

also adopted the Mitigation Measuring and Reporting Program ("MMRP") for the Nursery Project. Both the FMND and the MMRP are on file with the Clerk of the Board of Supervisors in File No. 120288 and are incorporated herein by reference.

Section 3. **Approval of Lease and Management Agreement and waiver of non-resident entrance fee for specified persons/entities.**

(a) The Board of Supervisors hereby authorizes the General Manager of the Recreation and Park Department or his designee to execute and enter into the Lease and Management Agreement with SFBGS in substantially the form filed with the Clerk of the Board of Supervisors in File No. 130537.

(b) The Board of Supervisors waives the non-resident entrance fee in Park Code Section 12.46(d) for the following non-resident persons and entities as set forth in the Lease and Management Agreement filed with the Clerk of the Board of Supervisors in File No. 130537: 1) school group students, teachers and chaperones, 2) SFBGS members, 3) members of other botanical gardens participating with SFBGS in reciprocal member programs, and 4) the general public, including non-residents, one day per month, and on Thanksgiving, Christmas and New Year's Day.

(c) The Board of Supervisors authorizes the General Manager to enter into additions, amendments, or other modifications to the Lease and Management Agreement (including, without limitation, preparation and attachment of, or charges to, any or all of the exhibits) that the General Manager, in consultation with the City Attorney, determines are in the best interest of the City, do not materially decrease the benefits of the Lease and Management Agreement to the City, do not materially increase the obligations or liabilities of the City, do not authorize the performance of any activities without pursuing all required regulatory and environmental review and approvals, and are necessary or advisable to complete the

transactions which the Lease and Management Agreement contemplate and effectuate the purpose and interest of this Ordinance, such determination to be conclusively evidenced by the execution and delivery by the General Manager of the Lease and Management Agreement and any such additions, amendments, or other modifications to those documents.

Section 4. **Ratification of Prior Acts.**

All actions that City officers and employees have heretofore taken with respect to the subject matter of this Ordinance and not inconsistent herewith are hereby approved, confirmed and ratified.

Section 5. **Effective Date.** This ordinance shall become effective 30 days from the date of passage.

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

By: Francesca Gessner
FRANCESCA GESSNER
Deputy City Attorney
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FILE NO. 130537

LEGISLATIVE DIGEST

[Lease and Management Agreement – San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park]

Ordinance approving and authorizing a Lease and Management Agreement between the City and the San Francisco Botanical Garden Society for the San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park, with an initial term of ten years with two ten-year extension options; waiving the non-resident admission fee in Park Code Section 12.46(d) for certain persons and entities as set forth in the Lease and Management Agreement; ratifying prior acts in connection with this Ordinance; and making environmental findings.

Existing Law

Section 12.46(d) of the Park Code provides that the Recreation and Park Department shall charge non-San Francisco residents an admission fee for entrance to the Botanical Garden.

Amendments to Current Law

Approval of Lease and Management Agreement. The proposed uncodified ordinance would authorize the General Manager of the Recreation and Park Department ("RPD") to enter into and execute a Lease and Management Agreement with the San Francisco Botanical Garden Society ("SFBGS") that includes the following key terms:

1. An initial term of ten years, with two ten-year extension options.
2. The leased premises shall include designated office space in the County Fair Building and the Helen Crocker Russell Library Building, the Visitor Orientation Center and Book Store, a library space, a storage and utility space, and the existing greenhouse. If SFBGS completes its proposed nursery project, the nursery will be added to the leased premises.
3. SFBGS shall pay the City a base rent of $100 per year.
4. SFBGS shall collect fees paid by non-residents for admission to the Botanical Garden and remit them to the City. Receipts from admission fees shall be solely for the benefit of the Botanical Garden and shall be allocated by RPD on a monthly basis to SFBGS and RPD according to the schedule set forth in the Lease and Management Agreement. Any outstanding balance of admission receipts following such allocation shall be paid into the "Botanical Garden Improvement Fund," which will be maintained by the City and shall not be commingled with other City funds.
5. SFBGS shall not be required to reimburse the City for the following non-residents receiving free admission to the Botanical Garden subject to the Board of Supervisors' approval by ordinance: (i) SFBGS members, (ii) members of other botanical gardens

participating with SFBGS in reciprocal member programs, and (iii) school group students, teachers or chaperones. The Botanical Garden will also be open to non-residents without charge one day per month, plus Thanksgiving, Christmas and New Year's Day, subject to the Board of Supervisors' approval by ordinance.

Fee Waiver. The proposed uncodified ordinance would also waive the non-resident admission fee in Section 12.46(d) of the Park Code for the following non-resident persons/entities identified in the Lease and Management Agreement: 1) SFBGS members, 2) members of other botanical gardens participating with SFBGS in reciprocal member programs, and 3) school group students, teachers and chaperones. The Botanical Garden would also be open to non-residents without charge one day per month, plus Thanksgiving, Christmas and New Year's Day. The provision authorizing this fee waiver is also uncodified.

Background Information

The San Francisco Botanical Garden Society ("SFBGS") is a nonprofit 501(c)(3) corporation devoted to supporting, promoting, and enhancing the use, appreciation and stature of the Botanical Garden. SFBGS has provided support and assistance to the City in the management and operation of the Botanical Garden since 1955. In 2002, the City and SFBGS entered into (i) a Cooperation Agreement pursuant to which RPD and SFBGS agreed to cooperatively manage the Botanical Garden, and (ii) a lease pursuant to which SFBGS leased from the City certain office space, library space, horticultural space and book kiosk space within the Botanical Garden. The terms of the Cooperation Agreement and the original lease have expired, and the City and SFBGS have continued to operate under the terms of such agreements. In addition, the City and SFBGS entered into a Grant Agreement, dated July 1, 2010, pursuant to which the City provided a grant to SFBGS for the purpose of funding certain education and community outreach and the operation and maintenance of the Botanical Garden's non-resident entrance fee collection program. The Grant Agreement expires on June 30, 2013.

RPD and SFBGS desire for SFBGS to continue to lease certain office and related space in the Botanical Garden for administrative purposes, to lease and continue to operate the library, to access and utilize horticultural space in the Botanical Garden, and to utilize space in the buildings within the Botanical Garden for educational seminars, receptions, lectures and other special events. City and SFBGS further desire for SFBGS to provide assistance with the operation and management of the Botanical Garden and with education, fundraising and other activities which will support and enhance the Botanical Garden.

The Budget and Legislative Analyst's Report is located in Board of Supervisor's File No. 130535 and at the following website:

http://www.sfbos.org/index.aspx?page=14753

The following documents related to the FYs 2013-2014 and 2014-2015 Budget of the City and County of San Francisco are available in the reference file and online at the following websites:

- **The City and County of San Francisco Proposed Budget and Appropriation Ordinance as of May 31, 2013 (BOS File No. 130535)**

http://www.sfcontroller.org/Modules/ShowDocument.aspx?documentid=4337

- **The City and County of San Francisco Proposed Salary Ordinance as of May 31, 2013 (BOS File No. 130536)**

http://www.sfcontroller.org/Modules/ShowDocument.aspx?documentid=4335

- **Mayor's 2013-2014 and 2014-2015 Proposed Budget (BOS File No. 130536)**

http://www.sfmayor.org/Modules/ShowDocument.aspx?documentID=266

130537

RECREATION AND PARK COMMISSION
City and County of San Francisco
Resolution No. 1305-011

GOLDEN GATE PARK – SAN FRANCISCO BOTANCIAL GARDEN SOCIETY – LEASE AND MANAGEMENT AGREEMENT

RESOLVED, That this Commission does recommend that the Board of Supervisors approve a ten-year Lease and Management Agreement with the San Francisco Botanical Garden Society, with two ten-year options to extend, for the lease of certain portions of the Botanical Gardens and the provision of certain management functions at the Garden.

Adopted by the following vote:

Ayes	7
Noes	0
Absent	0

I hereby certify that the foregoing resolution was adopted at the Recreation and Park Commission meeting held on May 16, 2013.

Dan Wade for Margaret McArthur

Margaret A. McArthur, Commission Liaison

Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

LEASE AND MANAGEMENT AGREEMENT

between

CITY AND COUNTY OF SAN FRANCISCO, Landlord

and

SAN FRANCISCO BOTANICAL GARDEN SOCIETY AT STRYBING ARBORETUM,
a California nonprofit public benefit corporation,
formerly known as Strybing Arboretum Society,
Lessee

For the Lease of Premises and Cooperative Operation and Management of
San Francisco Botanical Garden

located in Golden Gate Park

San Francisco, California

May 1, 2013

CITY AND COUNTY OF SAN FRANCISCO
Edwin M. Lee, Mayor

SAN FRANCISCO RECREATION and PARK COMMISSION
Mark Buell, President
Allan Low, Vice President
Tom Harrison, Commissioner
Gloria Bonilla, Commissioner
Meagan Levitan, Commissioner
Lawrence Martin, Commissioner
Paige Arata, Commissioner

Philip A. Ginsburg, General Manager

RECREATION AND PARK DEPARTMENT
LEASE AND MANAGEMENT AGREEMENT
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RECREATION AND PARK DEPARTMENT

LEASE AND MANAGEMENT AGREEMENT

THIS LEASE AND MANAGEMENT AGREEMENT (this "Lease"), dated for reference purposes only as of May 1, 2013, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Landlord"), acting by and through its Recreation and Park Commission (the "Commission"), and SAN FRANCISCO BOTANICAL GARDEN SOCIETY AT STRYBING ARBORETUM, a California nonprofit public benefit corporation, formerly known as Strybing Arboretum Society ("SFBGS" or "Lessee"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City owns San Francisco Botanical Garden, formerly known as Strybing Arboretum, a 55-acre garden and associated facilities located in the southeast portion of San Francisco's Golden Gate Park along Martin Luther King Jr. Drive and Lincoln Way, between 9th Avenue and 19th Avenue, more particularly defined below as the "Botanical Garden." The Commission has jurisdiction over the Botanical Garden and is responsible, through City's Recreation and Park Department (the "Department"), for its operation and management. The Botanical Garden is a living museum of more than 8,000 different kinds of plants, many rare and endangered and no longer found in their native habitats, and is a treasure for the residents of San Francisco and the Bay Area as well as for visitors from around the world.

B. SFBGS is a nonprofit 501(c)(3) corporation devoted to supporting, promoting, and enhancing the use, appreciation and stature of the Botanical Garden. SFBGS has provided crucial support and assistance to City in the management and operation of the Botanical Garden since 1955, including the construction and donation of the Helen Crocker Russell Library Building; management and operation of the Library and Visitor Orientation Center and Bookstore (each as defined below); funding and developing a special area plan (the "Botanical Garden Master Plan") for the Golden Gate Park Master Plan; providing education and visitors programs, visitor publications, curatorial and plant collections management services, community programming, horticulture education and volunteer programs; planning and managing improvements in the Botanical Garden; paying costs to support the hiring of an eleventh (11th) City gardener dedicated solely to the care and maintenance of the Botanical Garden; and fundraising to support the Botanical Garden.

C. On March 1, 2002, City and SFBGS entered into (i) a Memorandum of Agreement (Strybing Arboretum) (the "Cooperation Agreement"), pursuant to which City and SFBGS agreed to cooperatively manage the Botanical Garden, with the Department taking a primary role in managing certain functions and SFBGS taking a primary role in managing other functions and (ii) that certain Recreation and Park Department Lease (the "Original Lease") pursuant to which SFBGS leased from City certain office space, library space, horticultural space and book kiosk space within the Botanical Garden. The terms of the Cooperation Agreement and the Original Lease have expired, and City and SFBGS have continued to operate under such agreements.

D. In addition to the Original Lease and the Cooperation Agreement, City and SFBGS entered into a Grant Agreement, dated July 1, 2010 (as amended from time to time, the "Grant Agreement"), pursuant to which City provided a grant to SFBGS for the purpose of funding certain education and community outreach and the operation and maintenance of the Botanical Garden's entrance fee collection program, as more particularly described in the Grant

Agreement. Under the most recent amendment, the Grant Agreement will expire on June 30, 2013.

E. SFBGS has proposed constructing a Nursery: Center for Sustainable Gardening within the Botanical Garden for the joint use of City and SFBGS. The proposed project is referred to as the "Nursery Project," the building which is a part of the Nursery Project are referred to as the "Nursery Building," and the Nursery Building and the outdoor space which is a part of the Nursery Project are referred to collectively as the "Nursery." The Nursery Project includes construction of a new 9,830 square-foot nursery facility, demolition of the existing greenhouse building and associated pavement and ancillary structures, widening the existing access road from Martin Luther King Jr. Drive to accommodate emergency vehicles, creation of one ADA-compliant parking space and an emergency vehicle turn-around space adjacent to the Nursery Building, re-routing existing pedestrian walkways that currently traverse the project area and expanded growing grounds. The proposed Nursery Building would consist of a new, LEED-certified targeted nursery structure that includes a greenhouse, shade house, and headhouse (including staff work space), support space, public restrooms, outdoor nursery space, and an outdoor Learning Court. The headhouse portion of the Nursery would be designed so that it could be expanded by up to approximately 1,320 square feet at a later date, as the programmatic needs and funds allow.

F. The proposed Nursery is contemplated by both (a) the Botanical Garden Master Plan (adopted by the Commission in 1995) and (b) the Golden Gate Park Master Plan (adopted by the Commission in 1998) (together, the "Master Plans"). SFBGS provided a gift of architectural services and oversaw, in collaboration with the Department, the development of a conceptual plan (the "Conceptual Plan"), which was approved by the Commission on November 20, 2008. On November 29, 2011, the Planning Department issued a Final Mitigated Negative Declaration (the "FMND") for the Nursery, finding that all environmental impacts associated with the project would be mitigated to less than significant levels through implementation of the mitigation measures set forth in the FMND. In addition, the Planning Department staff reviewed the proposed Nursery Project and concluded that it is, on balance, in conformity with the City's General Plan.

G. SFBGS has offered to donate the design and construction of the Nursery to the City and County of San Francisco as a gift-in-place, subject to certain understandings about the use of the Nursery to be incorporated into a lease agreement before construction of the Nursery begins. These understandings are included in **Article 5** of this Lease. On March 15, 2012, the Commission adopted Commission Resolution No. 1203-08 in which the Commission adopted the FMND, approved the Agreement for Design and Construction of the Nursery and Center for Sustainable Gardening (as amended from time to time, the "Construction Agreement"), and recommended that the Board of Supervisors accept a gift from SFBGS currently valued at approximately Fourteen Million Dollars ($14,000,000). On April 10, 2012, City's Board of Supervisors adopted Resolution No. 125-12, in which the Board of Supervisors (a) adopted the FMND and the Mitigation Measuring and Reporting Program (the "MMRP") referenced therein, (b) imposed all the mitigation measures set forth in the MMRP as conditions of such approval, and (c) accepted a gift-in-place to the City of the Nursery. The Parties understand that the construction of the Nursery Project is subject to SFBGS's success in raising the balance of the necessary funds.

H. City and SFBGS recognize the need for continued collaboration to meet the challenges and opportunities of creating and sustaining world-class botanical gardens for the 21st century. The Parties have the shared goal of creating one of the world's outstanding public botanical gardens, representing San Francisco's horticultural heritage as well as diverse collections from around the world, and of increasing levels of private and public financial support

and resources to support such goal. In connection with SFBGS's ongoing relationship with the Botanical Garden and Department, SFBGS desires to continue to lease certain office and related space in the Botanical Garden for administrative purposes, to lease and continue to operate the Library (as defined below), to access and utilize horticultural space in the Botanical Garden, and to utilize space in the buildings within the Botanical Garden for educational seminars, receptions, lectures and other special events. City and SFBGS further desire for SFBGS to provide assistance with the operation and management of the Botanical Garden and with education, fundraising and other activities which will support and enhance the Botanical Garden, and in connection with such assistance and support, the Parties desire to provide a clear management structure in which both the Department and SFBGS participate and to provide a structure which facilitates SFBGS's efforts to raise private funds to help augment City funding for the Botanical Garden. Upon completion of the Nursery Project, City will deliver certain space within the Nursery to SFBGS for SFBGS's use and occupancy, and SFBGS will surrender certain of the space outside of the Nursery then used and occupied by SFBGS. Accordingly, City and SFBGS desire to enter into a multiphase lease and management agreement, which sets forth the terms of the cooperative management and operations of the Botanical Garden as well as SFBGS's use and lease of certain space, all as more particularly set forth in the terms and conditions of this Lease.

I. This Lease will have numerous public benefits, and will lessen the burden on the City in operating and maintaining the Botanical Garden and in providing public programming and education.

J. All initially capitalized terms used herein are defined in Articles 1 and 2 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. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms set forth in this Lease pertaining to such item. In the event of any conflict between the information in this Article and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	May 1, 2013
Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Lessee:	SAN FRANCISCO BOTANICAL GARDEN SOCIETY AT STRYBING ARBORETUM, a California nonprofit public benefit corporation
Premises; Initial Premises (Section 3.1):	The Initial Premises shall consist of a portion of the Botanical Garden located in Golden Gate Park (as more particularly described in **Exhibit A**) in San Francisco, California, owned by City and under the jurisdiction of the Department, comprised of the following, as generally depicted on **Exhibit B-1** and **Exhibit B-2**: (i) approximately 1,207 square feet of office space located in the rooms presently designated as Rooms 1 and 3 of the San Francisco County Fair Building ("County Fair Building") and

in the rooms presently designated as Rooms 23, 24, 25 and 30 of the Helen Crocker Russell Library Building ("Library Building") (collectively, the "Office Space"), shown generally on **Exhibit B-1** attached hereto;

(ii) approximately 84 square feet of space constituting the bookstore and approximately 800 square feet of space outside of the bookstore (the "Visitor Orientation Center and Book Store"), shown generally on **Exhibit B-1** attached hereto;

(iii) approximately 1378 square feet of space located in the rooms presently designated as Rooms 31, 32, 35, 36, and 37 of the Library Building (the "Library Space"), for operation of the Helen Crocker Russell Library of Horticulture (the "Library"), as generally depicted on **Exhibit B-1** attached hereto;

(iv) horticultural space comprised of approximately 800 square feet of space in the main greenhouse ("Greenhouse"), approximately 800 square feet of space in the main lath house, and approximately 80 square feet of space in the container growing grounds (the "Associated Growing Grounds"), all as generally depicted on **Exhibit B-2** attached hereto (collectively, the "Horticultural Premises"), subject however to adjustment from time to time by City, in its reasonable discretion; and

(v) approximately 50 square feet of storage space located in the room presently designated as Room 21 of the County Fair Building, and, subject to shared use by the City, sufficient space in the room presently designated as Room 14 of the County Fair Building for voice and data connections and a server closet (collectively, the "Storage and Utility Space").

As of the Commencement Date, the Premises consist of the Initial Premises.

Additional Premises (Section 3.1)

Upon mutual agreement of SFBGS and the General Manager upon a plan of renovation of the room presently designated as Room 22 of the County Fair Building, as generally depicted in **Exhibit B-1,** such Room 22 shall be added to the Office Space and the Premises.

Nursery Premises (Section 3.1)

The Nursery Premises shall consist of the areas designated for exclusive use by SFBGS (including the work areas in the headhouse for curatorial and plant collections management staff, storage closets and library and display space in the commons area of the headhouse (the "Commons") and storage closets on the exterior of the Nursery Building) and for shared use by SFBGS with the Department's gardening staff assigned to the Botanical Garden (including the balance of the Commons, the greenhouse (including propagation and quarantine areas), shadehouse, growing grounds, storage room, tool storage and fertilizer room areas and interior bathrooms), all as generally depicted in **Exhibit B-3.** Upon the completion and commencement of full operation of the Nursery, the Nursery Premises shall be added to the Premises under this Lease and, following demolition of the Horticultural Premises, SFBGS shall surrender the Horticultural Premises to City, and the

	"Premises" shall thereupon be comprised of the Office Space, the Visitor Orientation Center and Book Store, the Library Space, the Storage and Utility Space and the Nursery Premises.
Term (Article 4):	Ten (10) years, commencing on the Effective Date (the "Commencement Date") and expiring on the date immediately preceding the tenth (10th) anniversary of the Commencement Date, subject to extension pursuant to **Section 4.2**.
Options to Extend (Section 4.2):	SFBGS shall have the option to extend the term of this Lease for two successive ten (10)-year extension periods, commencing on the date immediately following the expiration of the initial term or the first extension term, as applicable, on the terms and conditions set forth in **Section 4.2**.
Use (Article 5):	SFBGS shall use the Office Space for office and administrative purposes and community meetings; the Library Space for operation of a horticultural library open to the public during hours approved by the Department and educational seminars and fundraising events at other times; the Visitor Orientation Center and Book Store space for providing visitor orientation services and materials to the public and operation of a book and gift store selling approved materials by Department (which use shall include the utilization of space outside the Visitor Orientation Center and Book Store for plant sales); the Horticultural Premises for propagation and sales of plants; the Storage and Utility Space for the storage of supplies and equipment incident to its operations; and, if applicable, the Nursery Premises for observation, study, and community programs related to horticulture and natural resources conservation, the propagation and sales of plants related thereto, and nursery administrative work areas, all in accordance with the provisions of **Article 5**. In addition to and without limiting the foregoing, the Premises may be used for educational and fundraising seminars, receptions, lectures, plant sales and other special events sponsored by SFBGS, as provided in **Sections 5.1 and 5.2.** The Premises shall not be used for any other purpose.
Operation and Management (Article 6)	The Department and SFBGS shall cooperatively manage the Botanical Garden as provided in **Article 6**. Among other matters, SFBGS has primary responsibility for visitor services, admissions collection, garden interpretation, educational programming, community relations, marketing, special events, bookstore management, volunteer program coordination, library operations and coordination of use of the Nursery outside its working hours.
Admission Receipts (Section 7.1)	SFBGS shall collect Admission Receipts (as defined below) from admission to the Botanical Garden, subject to SFBGS's right to reimbursement of its Authorized Collection Costs (as defined below) and the other terms and conditions contained in **Section 7.1** and in **Exhibit E**.
Base Rent (Section 7.2)	SFBGS shall pay Base Rent of $100 per year, payable as provided in **Section 7.2**.

Security Deposit (Section 25):	None
Notice Address of City (Section 27.1):	Recreation and Park Department Property Management McLaren Lodge Annex San Francisco, California 94117 Re: Botanical Garden
with a copy to	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate/Finance Team
Key Contact for City:	_____
Telephone No.:	_____
Address for SFBGS (Section 27.1):	San Francisco Botanical Garden Society at Strybing Arboretum 1199 9th Avenue at Lincoln Way Golden Gate Park San Francisco, California 94122
Key Contact for SFBGS:	Executive Director, San Francisco Botanical Garden Society at Strybing Arboretum
Telephone No.:	(415) 661-1316
Fax No.:	(415) 661-3539

2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

"**Account**" has the meaning given in **Section 7.6** hereof.

"**Additional Charges**" means any and all real and personal property taxes, possessory interest taxes, insurance premiums and other costs, impositions and expenses described in hereof or otherwise payable by SFBGS under this Lease.

"**Adjustment Index**" means the Index which is published most immediately preceding a particular Allocation Adjustment Date.

"**Admission Account**" has the meaning given in **Exhibit E**.

"**Admission Receipts**" has the meaning given in **Exhibit E**.

"**Agents**" means, when used with reference to either Party to this Lease, the officers, directors, employees, agents and contractors of such Party, and their respective heirs, legal representatives, successors and assigns.

"**Allocation Adjustment Date**" has the meaning set forth in **Exhibit E**.

"**Allocation Amount**" has the meaning given in **Exhibit E**.

"**Alterations**" means any alterations, installations or additions to any Improvements or to the Premises, including but not limited to any interior alterations or renovations.

"**Annual Admission Receipts Statement**" has the meaning given in **Section 7.7(b)** hereof.

"**Annual RPD Allocation Cap**" has the meaning given in **Exhibit E**.

"**Annual SFBGS Allocation Cap**" has the meaning given in **Exhibit E**.

"**Assignment**" has the meaning given in **Section 17.1** hereof.

"**Associated Growing Grounds**" has the meaning set forth in the Basic Lease Information.

"**Authorized Collection Expenses**" has the meaning given in **Exhibit E**.

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

"**Base Rent**" means the annual Base Rent specified in the Basic Lease Information and described in **Section 7.2** hereof.

"**Base Index**" has the meaning set forth in **Exhibit E**.

"**Basic Lease Information**" means the information with respect to this Lease summarized in **Article 1** hereof.

"**Botanical Garden**" means San Francisco Botanical Garden at Strybing Arboretum, formerly known as Strybing Arboretum, a 55-acre garden and associated facilities located in the southeast portion of San Francisco's Golden Gate Park along Martin Luther King Jr. Drive and Lincoln Way, between 9th Avenue and 19th Avenue, in San Francisco, California, and any and all improvements now or hereafter located thereon, as such area and improvements may be modified, expanded or revised from time to time.

"**Botanical Garden Improvement Account**" has the meaning given in **Exhibit E**.

"**Botanical Garden Improvement Fund**" has the meaning given in **Exhibit E**.

"**Botanical Garden Master Plan**" has the meaning given in **Recital B**.

"**Building**" or "**Buildings**" means the Library Building, the County Fair Building, and, if applicable, the Nursery Building.

"**Building Systems**" has the meaning given in **Section 10.2** hereof.

"**City**" means the City and County of San Francisco, a municipal corporation.

"**City Commitment**" has the meaning given in **Section 6.8(a)** hereof.

"**Commencement Date**" has the meaning set forth in the Basic Lease Information.

"**Commission**" means the City and County of San Francisco Recreation and Park Commission or its successor.

"**Common Areas**" has the meaning set forth in **Section 3.1** hereof.

"**Commons**" has the meaning given in the Basic Lease Information.

"**Conceptual Plan**" has the meaning given in **Recital F**.

"**Construction Agreement**" has the meaning given in **Recital G.**

"**Cooperation Agreement**" has the meaning given in **Recital C**.

"**County Fair Building**" has the meaning given in the Basic Lease Information.

"**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor or (ii) the date on which SFBGS is dispossessed.

"**Department**" means City's Recreation and Park Department.

"**Department Facilities**" means any and all real property located in the Botanical Garden, including any improvements located thereon, owned by the City, except the Premises and any Common Areas to which SFBGS has a non-exclusive right of access pursuant to this Lease.

"**Department's Primary Responsibility**" has the meaning given in **Section 6.1(a)** hereof.

"**Education and Community Outreach Expenditures**" has the meaning given in **Exhibit E**.

"**Effective Date**" means the later of (i) the date on which the Parties have executed and delivered this Lease or (ii) the date on which each of the following have occurred: (a) thirty (30) days after Commission approval, and (b) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

"**Encumber**" means create any Encumbrance; "**Encumbrance**" means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

"**Encumbrancer**" means a mortgagee, beneficiary of a deed of trust or other holder of an Encumbrance.

"**Environmental Laws**" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

"**Event of Default**" means any one of the events of default described in **Section 19.1** hereof.

"**Executive Director**" has the meaning given in **Section 6.1(c)** hereof.

"**Existing Premises**" has the meaning set forth in the Basic Lease Information hereof.

"**Expiration Date**" has the meaning set forth in **Section 4.1(a)** hereof.

"**Extension Deadline**" has the meaning given in **Section 4.2(a)** hereof.

"**Extension Options**" has the meaning given in **Section 4.2(a)** hereof.

"**Extension Term**" has the meaning given in **Section 4.2(a)** hereof.

"**Fiscal Year**" shall mean the City's accounting year of July 1st through June 30th.

"**FMV**" has the meaning given in **Section 6.8(d)** hereof.

"**FMND**" has the meaning given in **Recital F**.

"**Garden Director**" has the meaning given in **Section 6.1(c)** hereof.

"**General Manager**" means the General Manager of the Recreation and Park Department.

"**Grant Agreement**" has the meaning set forth in **Recital D**.

"**Greenhouse**" has the meaning set forth in the Basic Lease Information. For the avoidance of doubt, the capitalized term "Greenhouse" refers to a portion of the Horticultural Premises, not to a portion of the Nursery Premises.

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

"**Hazardous Material Claims**" means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against City, the Department, 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 Materials 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.

"**Horticultural Premises**" has the meaning set forth in the Basic Lease Information.

"**Horticultural Premises Deletion Date**" has the meaning given in **Section 4.1(c)** hereof.

"**Improvements**" means any and all buildings, structures, fixtures and other improvements constructed, installed or placed on the Premises by or on behalf of SFBGS pursuant to this Lease, including, without limitation, any trailers, mobile homes, permanent tent facilities, signs, billboards or other advertising materials, roads, trails, driveways, parking areas, curbs, walks, fences, walls, stairs, poles, plantings and landscaping. For avoidance of doubt, improvements does not include other improvements made by or on behalf of SFBGS that are in the Botanical Garden but not part of the Premises.

"**Indemnified Parties**" means City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Department, and all of its and their respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.

"**Indemnify**" means indemnify, protect, defend and hold harmless forever.

"**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 changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

"**Investigation**" when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under or about the Premises, any Improvements or any portion thereof or which have been, are being, or threaten to be Released into the environment. Investigation shall include, without limitation, preparation of site history reports and sampling and analysis of environmental conditions in, on, under or about the Premises or any Improvements.

"**Invitees**" when used with respect to SFBGS means the clients, customers, invitees, guests, members and licensees, assignees and sublessees of SFBGS, including participants of formal advertised programs provided by SFBGS on the Premises, and participants of special events held or hosted by SFBGS (whether the Botanical Garden is open or closed to the public), excluding however, participants of public tours of the Botanical Garden that SFBGS conducts in public areas during hours that the Botanical Garden is open to the public and any employee of the Department while such employee is on duty. In no event shall "Invitees" include persons visiting the Botanical Garden generally.

"**Landlord**" means the City and County of San Francisco.

"**Law**" means any law, statute, ordinance, resolution, regulation, proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

"**Learning Court**" has the meaning given in **Section 5.2** hereof.

"**Lease**" means this Lease as it may be amended in accordance with its terms.

"**Lessee**" or "**SFBGS**" means the Party identified as the Lessee in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term SFBGS or Lessee shall also refer to the successors and assigns of SFBGS's interests under this Lease, provided that the rights and obligations of SFBGS's successors and assigns shall be limited to only those rights and obligations that this Lease permits to be transferred and that have been transferred in accordance with this Lease.

"**Library**" has the meaning set forth in the Basic Lease Information.

"**Library Building**" has the meaning set forth in the Basic Lease Information.

"**Library Collection**" has the meaning given in **Section 6.8(a)** hereof.

"**Library Space**" has the meaning set forth in the Basic Lease Information.

"**Losses**" means any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs.

"**Master Plans**" has the meaning set forth in **Recital F**.

"**MMRP**" has the meaning set forth in **Recital F**.

"**Monthly Admission Receipts Statement**" has the meaning set forth in **Section 7.4** hereof.

"**Notice of Proposed Transfer**" has the meaning given in **Section 17.2** hereof.

"**Nursery**" has the meaning set forth in **Recital E**.

"**Nursery Building**" has the meaning set forth in **Recital E**.

"**Nursery Premises**" has the meaning set forth in the Basic Lease Information.

"**Nursery Premises Commencement Date"** has the meaning given in **Section 4.1**.

"**Nursery Project**" has the meaning set forth in **Recital E**.

"**Office Space**" has the meaning set forth in the Basic Lease Information.

"**Official Records**" means the official records of the county(ies) in which the Premises are located.

"**Original Lease**" has the meaning set forth in **Recital C**.

"**Party**" means City or SFBGS; "**Parties**" means both City and SFBGS.

"**Permitted Uses**" has the meaning given in **Section 5.1** hereof.

"**Premises**" has the meaning given in **Section 3.1** hereof. The Premises shall include any existing or permitted Improvements, together with any additions, modifications or other Alterations thereto permitted hereunder. Notwithstanding anything to the contrary in this Lease, the Premises

do not include Department Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises.

"**Purchase Price**" has the meaning given in **Section 6.8(d)** hereof.

"**Referee**" has the meaning given in **Section 6.8(d)** hereof.

"**Release**" when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

"**Remediation**" when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material which have been, are being, or threaten to be Released into the environment. Remediate 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.

"**Reminder Notice**" has the meaning given in **Section 4.2(a)** hereof.

"**Rent**" means the Base Rent, together with any and all Additional Charges, whether or not any such amounts are specifically characterized as rent.

"**Rules and Regulations**" has the meaning given in **Section 3.3** hereof.

"**Sale Notice**" has the meaning given in **Section 6.8(a)** hereof.

"**SFBGS's Board Chair**" has the meaning given in **Section 6.2** hereof.

"**SFBGS's Personal Property**" means the personal property of SFBGS described in **Section 9.3** hereof.

"**Special Events**" has the meaning given in **Section 5.1** hereof.

"**Storage and Utility Space**" has the meaning set forth in the Basic Lease Information.

"**Sublease**" has the meaning given in **Section 17.1** hereof.

"**Sunshine Ordinance**" has the meaning given in **Section 6.7(e)** hereof.

"**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

"**Term**" means the term of this Lease as determined under **Section 4.1** hereof.

"**Transfer**" means any Assignment or Sublease.

"**Transferee**" means any recognized assignee of any part of SFBGS's leasehold interest hereunder or any recognized sublessee of any portion of the Premises, pursuant to a Transfer that complies with **Article 17** hereof.

"**Unmatured Event of Default**" means any default by SFBGS under this Lease that, with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder.

"**Visitor Orientation Center and Bookstore**" has the meaning given in the Basic Lease Information.

3. PREMISES

3.1. Leased Premises.

(a) Premises; General Statement of Limitation. "Premises" shall mean the real property and improvements from time to time leased to SFBGS pursuant to the terms of this Lease. The "Premises" shall initially mean the Initial Premises. Any acreage or square footage 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. Subject to the terms, covenants and conditions of this Lease, City leases the Premises to SFBGS and SFBGS leases the Premises from City.

(b) Initial Premises; Acceptance of Initial Premises. "Initial Premises" has the meaning set forth in the Basic Lease Information. SFBGS acknowledges that SFBGS is presently in possession of the Initial Premises. The term of this Lease shall commence with respect to the Initial Premises as provided in **Section 4.1** below.

(c) Nursery Premises. "Nursery Premises" has the meaning set forth in the Basic Lease Information. The Nursery Premises shall be added to the Premises under this Lease in accordance with the provisions of **Section 4.1** below. Upon commencement of the Term with respect to the Nursery Premises, "Premises", as used in this Lease, shall refer to the Office Space, the Visitor Orientation Center and Book Store, the Library Space, the Storage and Utility Space and the Nursery Premises, and, solely until surrender thereof pursuant to **Section 4.1** below, the Horticultural Premises.

(d) Horticultural Premises Deleted from Premises Upon Surrender. Upon SFBGS's surrender of the Horticultural Premises pursuant to **Section 4.1** below, the Premises shall no longer include the Horticulture Premises.

(e) Common Areas. Subject to the Rules and Regulations (as defined below), SFBGS shall have the non-exclusive right to use, together with City and any other tenants of the Buildings, the lobbies, corridors, restrooms, elevators, stairways and other public areas of the Buildings and the exterior public portions of the Botanical Garden, and the non-exclusive right to use, together with City, certain areas of the Greenhouse and Associated Growing Grounds as may be designated by City from time to time, (collectively, the "Common Area" or "Common Areas"), and the non-exclusive right of access to and from the Premises by the main entrances to the Buildings and through the exterior portions of the Botanical Garden required for such access. City shall have the right, in City's sole discretion and from time to time, (i) to make changes to the Common Area, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscape areas, and walkways, (ii) to close temporarily any of the Common Areas for maintenance or safety purposes, so long as reasonable access to the Premises remains available, (iii) to install, use, maintain, repair, alter, relocate or replace any Common Area, and (iv) to do and perform such other acts and make such other changes in, to or with respect to the Common Areas and the Botanical Garden as City may, in its sole discretion, deem to be appropriate or prudent, provided, in each instance, that such changes, closures, repairs and alterations do not materially and unnecessarily interfere with, or adversely affect, SFBGS' use of the Premises. In connection with any temporary closure, repair, alteration or changes to the

Common Areas made by City, City agrees to use its reasonable efforts to minimize disruption to SFBGS's use and occupancy of the Premises. SFBGS agrees that City shall have no liability to SFBGS for disruption of SFBGS's operations caused by any changes made by City in accordance with this **Section 3.1(e).** Nothing in this Lease is intended to grant SFBGS any right whatsoever to possess, use or operate the Department Facilities, or any portion thereof.

(f) **Additional Premises**. If SFBGS desires to lease part or all of that portion of the County Fair Building known as Room 22, as generally depicted on **Exhibit B-1**, SFBGS shall provide City with written notice of such desire, together with proposed plans for the renovation of such Room 22 and a written description of SFBGS's proposed use of Room 22. If the General Manager, in his or her sole discretion, approves SFBGS's proposal, such Room 22 shall be added to the Office Space and the Premises as of a date designated by the General Manager, on all the terms and conditions of this Lease except as otherwise conditioned by the General Manager in writing. The Parties shall memorialize the addition of Room 22 to the Premises in writing.

(g) City shall reasonably cooperate with SFBGS in furnishing secure space for SFBGS's telephone, server and data support.

3.2. **Rights Reserved to City.** Notwithstanding anything to the contrary in this Lease, City reserves and retains all of the following rights relating to the Premises at all times:

(a) Any and all water and water rights, including, but not limited to (i) any and all surface water and surface water rights, including, without limitation, riparian rights and appropriative water rights to surface streams and the underflow of streams, and (ii) any and all groundwater and subterranean water rights, including, without limitation, the right to export percolating groundwater for use by City or its water customers;

(b) Any and all timber and timber rights, including, without limitation, all standing trees and downed timber;

(c) 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 in such manner as not to damage the surface of the Premises or to interfere with the permitted use thereof by SFBGS, without SFBGS's prior written consent;

(d) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any Department Facilities;

(e) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, conditioned upon the grantee's assumption of liability to SFBGS for damage to its property that SFBGS may sustain hereunder as a result of the grantee's use of such easement or right of way;

(f) Without limiting the generality of **Section 3.2(e)** above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises for the installation, operation, maintenance, repair and removal of (i) equipment for furnishing cellular telephone, radio or other telecommunications services, including, without limitation, antennas, radio, devices, cables and other equipment associated with a telecommunications cell site, and (ii) commercial billboards, signs and/or advertising kiosks,

provided that any such easement or right-of-way shall not materially interfere with SFBGS's use of the Premises hereunder, and provided further that the grant of any such easement or right-of-way shall be conditioned upon the grantee's assumption of liability to SFBGS for damage to its property that SFBGS may sustain hereunder as a result of the grantee's use of such easement or right of way;

(g) All rights of access provided for in **Article 21** below; and

(h) Except as otherwise provided for in this Lease, the right to rent, control, change, amend, modify, temporarily close, repair, maintain, alter, replace or relocate all or any portion of the Botanical Garden or the Buildings (excluding the Premises), including, without limitation, the Common Area, and the right to do and perform such other acts and make such other changes in, to or with respect to such areas as City may, in its sole discretion, deem to be appropriate or prudent.

3.3. Subject to Public and Municipal Uses and Rules. SFBGS acknowledges that the property of which the Premises are a part constitutes a portion of City's public park system, which City holds for public and municipal use. SFBGS's rights under this Lease shall be subject and subordinate to City's use of the Premises for such purposes. However, so long as there is no Event of Default or Unmatured Event of Default on the part of SFBGS outstanding hereunder and subject to the terms and conditions of this Lease, City shall avoid interfering with SFBGS's quiet use and enjoyment of the Premises. SFBGS shall comply with the Department's rules and regulations relating to its park property, as the same may change from time to time (the "Rules and Regulations"). A copy of the current Rules and Regulations can be downloaded from the web address provided in the attached **Exhibit D**.

3.4. As Is Condition of Premises.

(a) Inspection of Premises. SFBGS represents and warrants that SFBGS has conducted a thorough and diligent inspection and investigation, either independently or through Agents of SFBGS's own choosing, of the Initial Premises and the suitability of the Initial Premises for SFBGS's intended use. SFBGS is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Initial Premises are suitable for its operations and intended uses. SFBGS presently occupies the Initial Premises.

(b) As Is; Disclaimer of Representations. SFBGS 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 (other than City's express obligations under this Lease), 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. SFBGS acknowledges and agrees that neither City, the Department, nor any of their 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, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for SFBGS's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for SFBGS's use and permitted under this Lease, 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, except, in all cases, the express representations and warranties and covenants of City under this Lease.

3.5. Adjustment of Premises. The General Manager shall have the authority, in the General Manager's sole and complete discretion, to increase the Premises by not more than five percent (5%).

4. TERM

4.1. Term of Lease; Commencement Date and Expiration Date.

(a) Commencement Date and Expiration Date. The Initial Premises are leased for a term commencing on the Commencement Date, subject to this Lease becoming effective pursuant to **Section 4.3** below. The Term of this Lease shall end with respect to the entire Premises then subject to this Lease on the expiration date specified in the Basic Lease Information, unless sooner terminated pursuant to the provisions of this Lease or extended pursuant to **Section 4.2** below. The date on which the Term terminates pursuant hereto is referred to as the "Expiration Date." The period commencing on the Commencement Date and ending on the Expiration Date is referred to herein as the "Term."

(b) Nursery Premises. Notwithstanding the foregoing, the term of this Lease shall commence with respect to the Nursery Premises (or portion thereof, in the case of a Partial Acceptance Letter) on the date of the Acceptance Letter (or Partial Acceptance Letter) or deemed acceptance of the Nursery Improvements, as provided in the Construction Agreement (the "Nursery Premises Commencement Date"). Prior to the Nursery Premises Commencement Date, SFBGS's use of the Nursery Premises shall be governed by the terms and conditions of the Construction Agreement.

(c) Surrender of Horticultural Premises. Promptly after completion of the demolition of the Horticultural Premises, SFBGS shall surrender the Horticultural Premises to City. The date on which SFBGS surrenders the Horticultural Premises to City is referred to as the "Horticultural Premises Deletion Date." The term of this Lease shall expire with respect to the Horticultural Premises on the Horticultural Premises Deletion Date; provided, however, that SFBGS shall remain liable for all of SFBGS's obligations under this Lease as to events or omissions occurring with regard to the Horticultural Premises prior to the Horticultural Premises Deletion Date and SFBGS's indemnification obligations set forth in this Lease with regard to such events or omissions that survive the expiration or termination of this Lease shall survive the Horticultural Premises Deletion Date. The Horticultural Premises Deletion Date shall be confirmed by the Parties in writing following the occurrence thereof.

4.2. Options to Extend.

(a) Extension Option. City grants to SFBGS two successive options (the "Extension Options"), each to extend the Term of this Lease for an additional ten (10) year period (each, an "Extension Term") commencing upon the date immediately following the expiration of the initial term or the first Extension Term, as applicable, upon the following terms and conditions. In order to exercise an Extension Option, SFBGS must give written notice to City thereof not more than four (4) years and not less than one hundred eighty (180) days prior to the expiration of the Term to be extended (the "Extension Deadline"). Any such exercise notice by SFBGS shall be irrevocable by SFBGS. If SFBGS exercises an Extension Option, then the lease for the applicable Extension Term shall be upon all of the terms, covenants and conditions of this Lease.

(b) Restrictions on Exercise. SFBGS's right to exercise each Extension Option is personal to, and may be exercised only by, SFBGS and such of its permitted assignees as qualify under Section 501(c)(3) of the Internal Revenue Code and include in its mission the

mission of SFBGS. No other permitted assignee or subtenant, or any unpermitted assignee or subtenant, shall have any right to exercise any Extension Option granted herein. Further, if any Event of Default by SFBGS is outstanding hereunder at the time of SFBGS's delivery of an Extension Option exercise notice and such Event of Default continues at the end of a thirty (30) day cure period following written notice of such Event of Default from City to SFBGS, then City may elect by notice to SFBGS to reject SFBGS's exercise of the Extension Option, whereupon the purported exercise of the Extension Option shall be null and void, but without prejudice to any later re-exercise pursuant to **Section 4.2(a).** If this Lease shall terminate for any reason, then immediately upon such termination all Extension Options shall simultaneously terminate and become null and void.

4.3. Effective Date; Termination of Cooperation Agreement. This Lease shall become effective on the Effective Date, as defined in **Article 2**. For avoidance of doubt, City and SFBGS shall cease operating under the Original Lease and Cooperation Agreement as of the Effective Date.

5. USE; COVENANTS TO PROTECT PREMISES AND DEPARTMENT FACILITIES

5.1. SFBGS's Permitted Use; Special Events. SFBGS shall continuously use the Premises and Improvements for the uses specified in the Basic Lease Information and this Lease (collectively the "Permitted Uses"), and for no other purpose. If SFBGS desires to engage in any use of the Premises other than Permitted Uses, SFBGS shall request the approval of the General Manager, which may be withheld in the General Manager's reasonable discretion. SFBGS acknowledges and agrees that SFBGS shall have no right to use or rent other areas of the Buildings or other portions of the Botanical Garden for activities, such as educational seminars, receptions and lectures, that would constitute Special Events under the Department's permitting and reservations guidelines, as they may be amended from time to time (collectively, "Special Events") (a) without the prior written consent of the Department in accordance with the Department's permitting and reservations guidelines, as they may be amended from time to time, or (b) unless otherwise provided in this Lease (including **Sections 6.7(a) and (d)** below).

The following conditions and restrictions shall apply to Special Events:

(i) Reservation and use of additional space in the County Fair Building will be permitted in accordance with official Department processes. All reservation fees will be waived. Hourly fees for non-fee programs shall also be waived, such programs including, without limitation, the following: community events such as SFBGS's Lunar New Year celebration; classes and lectures offered to the public without charge; SFBGS's annual plant sale (including use of the Gallery for seven (7) days, the Auditorium for four (4) days and the entire County Fair Building for two (2) days); volunteer appreciation events; docent enrichment and training programs; staff meetings; and meetings of SFBGS's Board of Trustees and other volunteer meetings. SFBGS will be charged the Garden Club rate (as set forth in San Francisco Park Code Section 12.46) for programs where a fee is charged. Room cancellations submitted before thirty (30) days of reservation will receive a full refund. Room cancellations received within thirty (30) days of reservation will be assessed a fifty percent (50%) cancellation penalty fee. Reservations may not be transferred to other users and must be exclusively for programs or activities sponsored or co-sponsored by SFBGS.

(ii) SFBGS will coordinate with the San Francisco Park Patrol and, as required, the San Francisco Police Department to develop appropriate security plans for Special Events.

(iii) The number of persons attending the Special Events shall not exceed the number allowed by the permit.

(iv) Special Events shall comply with such other guidelines as City may establish from time to time.

5.2. Use of Nursery. The Parties anticipate that upon completion, the Nursery will replace the existing nursery and will become the hub of the Botanical Garden's plant propagation and plant collections management. The Nursery will be used jointly by SFBGS and the Department to support activities similar to those conducted in the existing nursery. In order to better support those activities, the Nursery also will include work space for SFBGS's nursery staff, including curatorial and plant collections management staff, and for the Department's gardening staff assigned to the Botanical Garden, as well as restrooms with a shower and emergency eyewash station, storage areas, and space for meetings related to nursery and gardening operations and for horticultural reference materials provided by SFBGS. During the Nursery's working hours, the public will be able to visit the Nursery's outdoor learning court (the "Learning Court"), where there will be interpretive displays about the Nursery's design and operations. The Nursery's open design will allow visitors to walk the perimeter of the Learning Court and observe first-hand the plant propagation and other work going on inside. In addition, public restrooms will be accessible from the Learning Court. Given the Nursery's location near the Children's Garden, the Learning Court also will provide a place for school groups to gather. Storage closets on the exterior of the building will provide a secure location for storing backpacks and educational supplies. In order to prevent disruption of Nursery operations and protect the growing grounds surrounding the Nursery and the plant propagation conducted inside, other uses of the Nursery – for events and community programs – will be limited and closely supervised. City and SFBGS further agree as follows: (a) all uses of the Nursery will be to further the mission and purpose of the Botanical Garden, including cultivating support for the Botanical Garden and the bond between people and plants and (b) the Nursery shall not be available for rental to third parties.

5.3. Appropriate Operations. SFBGS will use the Premises in accordance with the Permitted Uses except as otherwise permitted by this Lease or by the General Manager. Without limiting the provisions of Section 18 of this Lease, if SFBGS breaches the immediately preceding sentence and such breach is not cured within thirty (30) calendar days of receiving written notice of such breach from City, or, if the deficiency cannot be corrected within such 30-day period, SFBGS does not submit, no later than the end of such 30-day period, a reasonable written proposal, subject to approval by the Department at the Department's reasonable discretion, such failure to cure or submit shall constitute an Event of Default.

5.4. Covenants Regarding Use. As a material inducement to City to enter into this Lease, SFBGS covenants with City as follows:

(i) No Unlawful Uses or Nuisances. SFBGS shall not use or occupy any of the Premises or any Improvements, or permit the use or occupancy thereof, in any unlawful manner or for any illegal purpose, or permit to be carried on any offensive, immoral, noisy or hazardous use or any use in violation of the conditions of any certificate of occupancy. SFBGS shall take all reasonable precautions to avoid any nuisances or hazards relating to its activities on or about the Premises or any Improvements permitted hereunder.

(ii) Covenant Against Waste. SFBGS shall not cause or permit any waste, damage or injury to the Premises.

(iii) Covenant regarding Damage to Premises, Common Areas and Department Facilities. At all times during the Term of this Lease, SFBGS shall protect the Premises from any damage, injury or disturbance, provided, however, that nothing in this

paragraph shall relieve City of its maintenance and repair obligations in this Lease. If SFBGS or any of its Agents or Invitees damages, injures or disturbs any of the Premises, the Common Areas or the Department Facilities, or any portion thereof, SFBGS shall immediately notify City of that occurrence. Without limiting any of its other rights hereunder, City may immediately take all actions it deems proper to repair such Common Areas or Department Facilities at SFBGS's sole expense (but only to the extent City is not otherwise obligated to make such repairs under this Lease), and, following notice and a reasonable opportunity to cure (except in the event of an emergency in which case no notice or cure period is required), City may take all actions it deems proper to repair the Premises at SFBGS's sole expense (but only to the extent City is not otherwise obligated to make such repairs under this Lease). SFBGS shall promptly, upon City's request, remove or alter to City's satisfaction and at SFBGS's sole cost, any Improvements, Alterations or SFBGS's Personal Property placed on the Premises by or on behalf of SFBGS as necessary to avoid interference with City's use of the Premises for municipal purposes; provided, such removal shall be at City's sole cost if the applicable Improvements or Alterations were approved by City in writing pursuant to the terms of this Lease or were existing as of the Commencement Date. City may adopt from time to time such rules and regulations with regard to SFBGS's facilities and operations hereunder as City may determine are necessary or appropriate to safeguard the Common Areas and Department Facilities and City's interests in the Premises. SFBGS shall comply with all such rules and regulations upon receipt of a copy thereof.

(iv) Covenant Against Dumping; Waste Disposal. SFBGS shall not cause or permit the dumping or other disposal on, under or about the Premises of landfill, refuse, Hazardous Material or other materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment. Organic wastes from the Premises shall be composted on-site to the extent reasonably possible. SFBGS shall use its best efforts to reduce the amount of trash and waste generated from the Premises, to acquire products for use on the Premises which reuse or recycle packaging, and to recycle all materials used on the Premises to the extent reasonably possible.

(v) Covenant to Protect Trees or Other Native Vegetation. SFBGS shall not engage in or permit the cutting, removal, or destruction of trees or any other native vegetation on the Premises, without the prior written approval of the General Manager.

(vi) No Tree Planting. SFBGS shall not plant any trees on the Premises, nor shall SFBGS plant any other vegetation on the Premises without the prior written approval of the General Manager.

(vii) Covenant Against Hunting. SFBGS shall not engage in or permit any hunting or, trapping on or about the Premises, except for hunting or trapping for the purpose of controlling predators or problem animals by the appropriate use of selective control techniques approved in advance by the General Manager in writing, provided such hunting and trapping is done in strict accordance with all applicable Laws. Whenever possible, all measures used for such control shall be limited in their application to the specific problem animals. SFBGS shall not use poison bait, cyanide guns, traps or other similar non-selective control techniques. In no event may SFBGS use any prophylactic predator control measures. The restrictions of this Section applicable to the identification and control of predators and problem animals shall not apply to commensal rodents.

(viii) Pesticides Prohibition. SFBGS shall comply with the provisions of Section 39.9 of Chapter 39 of the San Francisco Administrative 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 SFBGS to submit to the Department an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that SFBGS may need to apply to the Premises during the terms of this Lease, (b) describes the steps SFBGS 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 SFBGS's primary IPM contact person with the City. In addition, SFBGS shall comply with the requirements of Sections 39.4(a) and 39.4(b) of the Pesticide Ordinance as of January 1, 1999 and January 1, 2000, respectively.

(ix) Weed Control. SFBGS shall not introduce any noxious weeds on or about the Premises. SFBGS shall control noxious weeds on or about the Premises, provided that SFBGS may use chemical herbicides only if such use complies with the requirements of **Section 5.4(viii)** above.

(x) Covenant Against Burning. SFBGS shall not burn any weeds, debris or other substances on or about the Premises.

(xi) Sewerage System. SFBGS shall not permit any sewage or fouled waste water to be disposed of on the Premises, except as provided for and as customary per the sewage system on the Premises.

(xii) Soil Erosion. SFBGS shall not cause any material erosion of soil on or around the Premises. SFBGS shall not engage in any activity that causes a material change, disturbance, fill, alteration or impairment to the topography of the Premises by placing on it any soil, dredging, spoils, landfill, or other material, nor shall SFBGS engage in any activity that would change, disturb, alter or impair the significant relatively natural ecological features and values of the Premises, without the prior written approval of the General Manager.

(xiii) Operating Covenants. SFBGS shall use the Premises for the permitted use specified in the Basic Lease Information and in this Lease and shall not allow the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. SFBGS shall conduct its operations on the Premises in a professional manner.

(xiv) Recycling and Resource Conservation. The City of San Francisco has set ambitious recycling and composting goals for City Departments including 75% landfill diversion by 2010 and maximum participation in the City's municipal composting program at all City Department locations where there is food service. In addition, the City has recently passed the Food Service Waste Reduction Ordinance (see Section 26.40) which, in part, "Prohibits the use of polystyrene foam dispensable food service ware and requires the use of recyclable or compostable food service ware by restaurants, retail food vendors, City Departments and the City's contractors and lessees." City contractors and lessees may not use Disposable Food Service Ware that contains Polystyrene Foam in City Facilities while performing under a City contract or lease. City contractors and lessees using any Disposable Food Service Ware shall use suitable Biodegradable/Compostable or Recyclable Disposable Food Service Ware in City Facilities and while performing under a City contract or lease unless there is no suitable Affordable Biodegradable/Compostable or recyclable product available as determined by the City Administrator in accordance with Subsection 1604(a). SFBGS shall develop a program to work toward a zero waste goal, including the implementation of a composting system for food waste, packaging and 100% biodegradable supplies whenever practical. SFBGS shall submit a recycling and composting plan at Commencement of Lease, and provide an annual report on each anniversary date of this Lease outlining its progress toward meeting the recycling and composting goals described above and its success toward a zero waste goal.

(xv) Americans with Disabilities Act. SFBGS acknowledges that the Americans with Disabilities Act (the "**ADA**") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. SFBGS further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting the provisions of **Section 9.1** and **Article 13** below, SFBGS warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or

activities pursuant to this Lease. City shall bear all responsibility and cost for mandated physical changes to the Premises resulting from disability access laws.

6. COOPERATIVE OPERATIONS AND MANAGEMENT

6.1. General; Primary Responsibilities. The Department and SFBGS shall cooperatively manage the Botanical Garden as provided in this **Article 6**.

(a) The Department, in collaboration with SFBGS, shall take the primary role in managing the following aspects of the Botanical Garden operations: strategic and master site planning, plant collections development, plant collections documentation, signage, and improvements, renovations and maintenance of the Botanical Garden, the Buildings and other Premises, as more fully-described in **Article 10** (collectively, "Department's Primary Responsibilities").

(b) SFBGS, in collaboration with the Department, shall take the primary role in managing the following aspects of the Botanical Garden operations: visitor services, admissions collection, garden interpretation, educational programming, community relations, marketing, special events, bookstore management, volunteer program coordination, library operations, and coordination of use of the Nursery Building outside the Nursery's working hours in accordance with **Section 5.2** above (collectively, "SFBGS's Primary Responsibilities").

(c) The Department shall remain responsible for managing its own activities related to the Department's Primary Responsibilities, but shall consult with SFBGS's executive director (the "Executive Director") in the management of such activities in the event that the Department's activities may have a material impact on SFBGS's activities. In addition, SFBGS shall remain responsible for managing its own activities related to SFBGS's Primary Responsibilities, including without limitation book and plant sales, fundraising, and membership, but shall consult with the City's Garden Director or such other City employee designated by the General Manager from time to time in accordance with the provisions of **Section 6.3** below (the "Garden Director") in the management of such activities in the event that SFBGS's activities may have a material impact on the Department's activities.

(d) The Parties acknowledge that in order to meet their shared goal of creating one of the world's outstanding public botanical gardens, as provided in **Recital H** of this Lease, the Department relies on SFBGS to provide funding, outside expertise and staff support relating to certain of the Department's Primary Responsibilities, including strategic and master site planning, plant collections development, plant collections documentation and signage. SFBGS's activities in support of the Department's Primary Responsibilities are conducted under the oversight and guidance of the Department. All decisions regarding the level of funding, outside expertise and staff support SFBGS is able to provide pursuant to this **Section 6.1(d)** are within the sole discretion of SFBGS. Subject to the foregoing, the Parties further agree:

(i) SFBGS currently funds and staffs the curation, planning, management and documentation of the Botanical Garden's plant collections, including signage. With respect to the Department's Primary Responsibilities, curatorial and plant collections management staff employed by SFBGS work with City staff under the leadership and guidance of the Garden Director in consultation with the Executive Director, and, because SFBGS's curatorial and plant collections management staff also have responsibilities in support of SFBGS's Primary Responsibilities, the Garden Director and Executive Director will consult as needed on their work priorities. All staff employed by SFBGS are supervised by the Executive Director in accordance with SFBGS employee policies.

(ii) Pursuant to **Section 6.1(a)** above, improvements to the Botanical Garden are within the Department's Primary Responsibilities. From time to time, SFBGS designs, supervises and funds Botanical Garden improvements. All such activities by SFBGS are subject to Department oversight and approval.

(iii) Pursuant to **Section 6.1(a)** above, maintenance of the Botanical Garden is within the Department's Primary Responsibilities. Since 2003, SFBGS has reimbursed costs to support the hiring of an eleventh (11th) City gardener dedicated solely to care and maintenance of the Botanical Garden. SFBGS's voluntary contribution is made only when City has allocated, funded and filled ten (10) gardener positions dedicated solely to care and maintenance of the Botanical Garden, and only if SFBGS's contribution will not replace traditional sources or levels of City funding for the Botanical Garden. Increases in the costs voluntarily paid by SFBGS are capped at three (3) percent per year with reference to a baseline amount established in 2003. It is acknowledged that this contribution has been provided on a voluntary, non-binding basis, and is not a condition of this Lease.

6.2. Participation on SFBGS's Board. The Garden Director shall serve as a member of SFBGS's Board of Trustees, and the General Manager may designate one (1) other person to serve as a member of SFBGS's Board of Trustees, provided the Garden Director and the designee (if any) may not vote and such designee may not be the General Manager or a current Commission member. The Garden Director and the designee (if any) may participate in such of SFBGS's committees, as may be assigned by the chairperson of SFBGS's Board of Trustees ("SFBGS's Board Chair").

6.3. Garden Director Vacancy/Executive Director Vacancy. In the event that there is a vacancy in the position of the Garden Director, the General Manager, in the General Manager's discretion, will establish a search committee to nominate a Garden Director candidate to the General Manager, and the General Manager will appoint at least two members to such search committee. SFBGS's Board Chair will appoint one additional member of such search committee for every two members appointed by the General Manager, and such additional member(s) appointed by SFBGS's Board Chair shall include the Executive Director. The final selection of the Garden Director shall be made by the General Manager. All other Department staff for the Botanical Garden will be appointed through ordinary City procedures. The parties acknowledge and agree that all employment and discharge decisions and procedures shall be subject to all applicable Laws, including without limitation, any approvals by the Civil Service Commission, if applicable. In the event that there is a vacancy in the position of SFBGS's Executive Director, SFBGS, in SFBGS's discretion, will establish a search committee to nominate an Executive Director and the Garden Director shall be invited to serve on such search committee. The final selection of the Executive Director shall be made by SFBGS's Board of Trustees.

6.4. Resolution of Disagreements. The Garden Director will consult with and carefully consider the views of the Executive Director in his or her management and operational decisions relating to the Department's Primary Responsibilities. The Executive Director will consult with and carefully consider the views of the Garden Director in his or her management and operational decisions relating to SFBGS's Primary Responsibilities. If the Garden Director and the Executive Director are unable to reach agreement on an issue relating to the Department's Primary Responsibilities or SFBGS's Primary Responsibilities, the General Manager will consult SFBGS's Board Chair, the Executive Director and the Garden Director, and the General Manager will decide the issue. If SFBGS's Board Chair does not agree with the outcome of such decision, the parties will cooperate with each other to submit the dispute to an independent mediator who is compliant with applicable contracting requirements of the City (to be selected by unanimous consent of the parties, which shall only be withheld on the basis of good faith concerns about the independence, adequacy of expertise, or compliance with City contracting requirements of the

proposed mediator, and to be hired and paid for by SFBGS) who shall have ten (10) business days after the matter is fully submitted to him or her to propose a non-binding settlement of the dispute. Each party agrees to participate in good faith in the mediation and to bear its own costs; provided, however, SFBGS shall pay all other costs of the mediation. If any party refuses, in its sole discretion, to accept the proposed resolution of the mediator, it shall give prompt written notice of such refusal to the other party, and the dispute shall be submitted to the Commission. Final decision making authority on all matters relating to operation and management of the Botanical Garden shall rest with the Commission.

6.5. Department Intellectual Property and Goodwill. The Parties recognize the goodwill associated with the Department, Golden Gate Park, the Botanical Garden, and SFBGS. SFBGS and the Department agree not to take any action detrimental to such goodwill, and SFBGS agrees not to take any action which may confuse the public as to the ownership of the Botanical Garden. In effecting this provision, and in order to delineate and protect each Party's intellectual property rights, the Parties agree as follows:

(a) Trademark/Copyright. SFBGS agrees not to infringe upon any trademark or copyright now or hereafter owned by City or the Department. The Department agrees not to infringe upon any trademark or copyright now or hereafter owned by SFBGS. Any such infringement by SFBGS shall be treated as an Event of Default under this Lease.

(b) Right of Review. The Department shall have the right to review and approve in advance materials used for merchandising and certain of SFBGS's publications and membership or general mailings, including without limitation informational and educational brochures, newsletters, solicitations, and fundraising campaign materials. All print and web-based publications by SFBGS and the Department also shall make clear that the Botanical Garden is owned by the City and cooperatively managed with SFBGS, through use of approved logos, letterhead, or by other approved means. The Department may establish guidelines and procedures relating to approval of such materials and shall not unreasonably withhold or delay his or her approval of such materials. If any such material is not commented upon or approved by the Department within seven (7) business days after receipt by the Department, then such material shall be deemed approved.

(c) Third Party Infringement. Each Party hereto shall have the right to take whatever action it deems necessary to protect the intellectual property to which it has exclusive ownership. With regard to any jointly owned intellectual property, the Department shall have the sole right to take any action with regard to such property, provided that after the payment of any and all costs or expenses incurred by the City or the Department in connection with such claim, SFBGS and the Department shall share equally in the remainder of any such recovery or compensation that may be awarded.

6.6. Volunteer Releases. SFBGS shall obtain a duly authorized written release and waiver in substantially the form attached hereto as **Exhibit C**, as the same may be amended from time to time by City in its sole discretion, from each volunteer who performs any interpretation, gardening or other work in or about the Botanical Garden and shall provide copies of all executed releases to the Garden Director.

6.7. Supplemental Funding and Distribution of Revenue.

(a) Supplemental Funding by SFBGS. SFBGS shall use its reasonable efforts to raise private funds for the Botanical Garden for the purposes of (i) providing funds to supplement City appropriations for the Botanical Garden including, but not limited to, renovation and installation of gardens, maintenance of existing gardens, acquisition of special plant collections, procurement of special equipment and satisfaction of other capital improvement

projects in accordance with the Botanical Garden Master Plan (or as may be mutually agreed upon through joint planning of SFBGS and the Department), and (ii) otherwise providing funds to enhance City funding for educational programs, other particular programs, ancillary mission-related activities, operations and services of the Botanical Garden. Such fundraising is intended to enhance the Botanical Garden and not to replace traditional sources or levels of City funding. As part of its fundraising responsibilities, SFBGS shall be allowed free use of exterior Botanical Garden areas and the Buildings for fundraising and membership benefit events, subject to prior approval of scheduling and other arrangements by the Garden Director, and subject to the terms and conditions applicable to Special Events under **Section 5.1** above.

(b) Disposition of Contributed Revenues. Any gifts, donations, sponsorships, tributes, philanthropic aid or the like that are intended to benefit the Botanical Garden and that are paid directly to the City or the Department shall be the City's or the Department's, as the case may be, alone and for the benefit of the Botanical Garden. Any membership (including corporate membership) fees and any gifts, donations, sponsorships, tributes, philanthropic aid or the like and that are paid directly to SFBGS shall be SFBGS's alone and for the benefit of the Botanical Garden.

(c) Disposition of Admissions Receipts. All receipts generated from admissions to the Botanical Garden shall be solely for the benefit of the Botanical Garden. The disposition of such receipts from admissions shall be subject to the terms set forth in **Article 7** and in **Exhibit E** attached hereto.

(d) Disposition of Other Garden Revenues. It is the intent of the City, the Department and SFBGS to expand their relationship to enhance other sources of revenues for the benefit of the Botanical Garden, which sources may include, for example, third-party rentals, stationary food and beverage outlets and expanded service concessions (e.g., birthday parties). All such receipts generated in the Botanical Garden shall be for the benefit of the Botanical Garden. The generation and disposition of such receipts shall be subject to the terms established from time to time upon by mutual agreement of the Department and SFBGS, subject to such additional approvals as may be required.

(e) Notice to Department of Terms of Gifts. SFBGS shall not accept any proposed gifts which could impose financial or other obligations or liabilities on the City or the property, programs or activities under the Commission's jurisdiction, including the Botanical Garden, without previously obtaining all required City approvals. SFBGS shall provide the City with reasonable advance written notice of the terms and conditions of any such gift, and prior to City's acceptance of any such gift, SFBGS shall obtain the approval of the General Manager, the Commission, and the Board of Supervisors if required. With respect to disclosure of gift and donor information, SFBGS agrees to comply with all applicable laws, including any applicable provision of Chapter 67 of the San Francisco Administrative Code (the "Sunshine Ordinance").

(f) Acceptance of Gifts. The General Manager shall be authorized to accept and expend gifts from SFBGS in accordance with the Commission's policy on accepting gifts, for Botanical Garden-related purposes throughout the term of this Lease and to agree to reasonable terms and conditions imposed with respect to such gifts, except where such conditions involve the expenditure of City funds or the incidence of City obligations that are inconsistent with the City Charter.

(g) Fiscal and Budgetary Provisions. All the terms of this **Article 6** shall be subject to the City Charter's fiscal and budgetary provisions.

(h) Funding to the Botanical Garden. For so long as SFBGS leases space pursuant to this Lease, SFBGS may make material gifts of funds or assets only to the Botanical Garden and not to any other botanical garden or park.

(i) Public Commitment. The Department shall use its reasonable efforts to achieve the level of public funding required to provide the personnel, supplies and physical infrastructure necessary to meet the maintenance standards established by the Department for the Botanical Garden and to meet their shared goal of creating one of the world's outstanding public botanical gardens, as reflected in **Recital H.**

6.8. Library Collection; Right of First Offer.

(a) Library Collection. SFBGS's use and operation of the Library or portions thereof shall include the display, storage, preservation and protection of that certain collection of books, records, prints, periodicals, photographs, graphics, and other art and archival materials currently located in the Library, and any data or information related thereto, as the same may be supplemented from time to time (collectively, the "Library Collection") and made available to the public. The parties acknowledge and agree that as of the Effective Date, (i) the City owns the special collection of architectural, landscape architectural and engineering plans, surveys, specifications and drawings currently stored or located in the Rare Book Room of the Library, and such materials and documents specifically are excluded from the Library Collection, and (ii) SFBGS owns the Library Collection. In an effort to preserve and protect the Library Collection, the Parties agree to cooperate in good faith to design, install and construct in the future a mutually acceptable improved fire protection system and related improvements for the Library. Any such improvements shall be deemed to be Alterations by SFBGS, and shall be completed in accordance with plans and specifications acceptable to and approved by City in its sole and absolute discretion and otherwise in accordance with the terms and conditions set forth in this Lease related to Alterations.

(b) Right of First Offer. If at any time during the term of this Agreement SFBGS intends to offer for sale to third parties or to accept an offer of a third party to purchase any portion or item of the Library Collection which SFBGS owns having in each instance a value of greater than One Thousand Dollars ($1,000.00) per item, SFBGS shall first give written notice to City of its intention to sell any such portion or item of the Library Collection (the "Sale Notice"). The Sale Notice shall constitute an offer to sell any such portion of the Library Collection to City at the Purchase Price (as defined below) and otherwise in accordance with the terms of the Sale Notice. City shall have thirty (30) days after receipt of the Sale Notice to accept such offer, by delivery of written notice to SFBGS (the "City Commitment"), subject however to all applicable fiscal provisions of the City's Charter, any applicable Laws, and to the determination of a Purchase Price (as defined below) acceptable to City in its reasonable discretion which has been approved by City in accordance with applicable Laws. In the event that City fails to provide to SFBGS the City Commitment within such thirty (30) day time period, City shall be deemed to have rejected the offer evidenced by the Sale Notice.

(c) Closing. In the event that City exercises its right of first offer, the Parties shall promptly execute any and all documents deemed reasonably necessary by City to evidence and consummate the sale of the applicable portion of the Library Collection. The closing date shall be thirty (30) days after the date of the City's receipt of all final approvals by the City as required under applicable Law; provided, however, that in the event the City fails to receive such final approvals, City shall be entitled to terminate the City Commitment and shall have no further liability or obligation under the City Commitment. The Purchase Price shall be paid in full at closing in cash, or as otherwise agreed between the parties. SFBGS shall represent and warrant to City that SFBGS has full legal title to the portion of the Library Collection being

transferred, and shall transfer such portion of the Library Collection to City free from any and all liens or encumbrances and otherwise completed in accordance with the terms and condition of any transfer documents entered into by the parties.

(d) Purchase Price. The Purchase Price ("Purchase Price") shall be equal to the fair market value ("FMV") of the portion of the Library Collection. For purposes of this Agreement, FMV means the fairest price estimated in terms of money which SFBGS could obtain if the applicable portion of the Library Collection were sold in bulk in the open market, allowing a reasonable time to find a purchaser who purchases with knowledge of the uses for which the Library Collection portion in its then condition is adapted and for which it is capable of being used, and taking into account the completeness of any collection within the Library Collection portion and the rarity and condition of any component of the applicable portion of the Library Collection. The FMV shall be determined as follows: upon delivery of the City Commitment to SFBGS, the parties shall endeavor to agree on the FMV, and, if they are unable to do so on or before the thirtieth (30th) day after SFBGS's receipt of the City Commitment, then the parties, or their respective designees or agents, shall each simultaneously exchange with each other a sealed envelope with a written determination of the FMV at 12 p.m. on the ninetieth (90th) day after the expiration of that thirty (30)-day period. If both valuations are timely submitted and they differ by less than five percent (5%) of the lower of the two, the average of the two valuations shall be the FMV and shall be final and binding on the Parties. If the two valuations are not timely submitted, or if the two valuations differ by more than five percent (5%) of the lower of the two, the Parties shall select a neutral evaluator, acceptable to the City in its reasonable discretion (including compliance with any applicable City contracting requirements) (the "Referee") within twenty (20) days thereafter. If the two valuations are not timely submitted, then the Referee shall make a FMV determination of the applicable portion of the Library Collection within ninety (90) days after being selected as Referee. The Parties shall deliver copies of both valuations (to the extent available) to the Referee, and within five (5) business days after the later of the Referee's receipt of such valuation, or if applicable, the Referee's FMV determination, the Referee shall select the valuation which he or she believes most accurately represents the FMV. The selected valuation shall be the FMV and shall be final and binding upon the Parties, subject however to any necessary approvals by the City. The Referee appointed pursuant to this Section shall have not less than ten (10) years' experience evaluating the fair market value of assets comparable to the Library Collection portion. The cost of the Referee shall be borne equally by the Parties.

6.9. Operation of Botanical Garden; Days and Hours of Operation. SFBGS shall actively operate the Botanical Garden and use its reasonable efforts to further the operations thereof and to serve the public. The hours of operation shall be as follows:

Year Round
Open daily at 9:00am
Spring & Summer
2nd Sunday in March through September: Last entry at 6:00pm
(closed at 7:00pm)
Fall & Winter
October through early November: Last entry at 5:00pm
1st Sunday in November through January: Last entry at 4:00pm
February through early March: Last entry at 5:00pm
(closed one hour after last entry)

The hours of operation are approved, and may be amended, by the Commission and may not be altered in any manner without prior written approval from the Commission or from such person, if any, to whom the Commission has delegated authority to approve changes in the hours of operation.

6.10. Rates and Charges. The rates and charges for goods sold and services offered by SFBGS at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. The Department reserves the right to review and approve the increases in rates and charges for rentals and food and beverage items.

6.11. Fees for Admission.

(a) Fees for admission to the Botanical Garden are as stated in the San Francisco Park Code, as it may be amended from time to time by action of City's Board of Supervisors in its sole discretion. As of the Commencement Date, nonresidents of San Francisco are required to pay an admission fee as follows:

$7.00 for Adults
$5.00 for Youth ages 12-17 and Seniors age 65 and over
$2.00 for Children ages 5-11
No charge for Children ages 4 and under
$15.00 for Families (2 adults and all children ages under 17 residing in the same household)

San Francisco residents are expected to provide proof of residence.

(b) SFBGS shall not be required to reimburse City for nonresidents receiving free admission (i) as a benefit provided to SFBGS members in recognition of their financial support of the Botanical Garden, (ii) as members of other botanical gardens participating with SFBGS in reciprocal member programs, and (iii) as a school group student, teacher or chaperone.

(c) As of the Commencement Date, the Botanical Garden will be open without charge one day a month, plus Thanksgiving, Christmas and New Year. Such free admission days may be amended from time to time by action of City's Board of Supervisors in its sole discretion.

7. ADMISSION RECEIPTS AND RENT

7.1. Admission Receipts. All receipts from admission to the Botanical Garden shall be solely for the benefit of the Botanical Garden. The disposition, allocation and terms of the Admission Receipts shall be subject to the terms set forth in this **Article 7** and **Exhibit E.** It is understood and agreed by the Parties that the charging of admissions to the Botanical Garden, the rate of such admissions and the terms of such allocation are subject to amendment by action of City's Board of Supervisors, in its sole discretion at any time and in the event of such an amendment, this **Article 7** and **Exhibit E** shall be revised to the extent required to reflect such amendment.

7.2. Base Rent. SFBGS shall pay to City during the Term of this Lease, beginning on the first anniversary of the Commencement Date and in arrears, the Base Rent specified in the Basic Lease Information. Base Rent shall be payable on or before the tenth (10th) day after each anniversary of the Commencement Date, without prior demand and without any deduction, setoff or counterclaim whatsoever, except as otherwise provided in this Lease.

7.3. Payment; Generally. Rent and Admission Receipts shall be paid in lawful money of the United States, at Revenue Unit, Recreation and Park Department, McLaren Lodge Annex, 501 Stanyan Street, San Francisco, California 94117, or such other place as City may designate in writing. If SFBGS pays by check and such check is not honored, then City may require SFBGS to make all future payments in cash or by cashier's check. City reserves the right to direct SFBGS, upon thirty (30) days written notice, to deposit all payments required under this Lease from SFBGS's account into the City designated revenue account by bank or wire transfer.

7.4. Monthly Admission Receipts Statements; Authorized Collection Expenses; Determination of Allocation of Admission Receipts. On or before the twentieth (20th) day of each full calendar month of the Term and the calendar month immediately following the expiration or termination of the Lease, SFBGS shall pay to City the Admission Receipts collected by SFBGS for the last preceding calendar month in accordance with the payment provisions of **Section 7.3** above. Simultaneously with such payment, SFBGS shall deliver to City a statement (the "Monthly Admission Receipts Statement") certified as correct by an officer of SFBGS and otherwise in form satisfactory to City, reporting Admission Receipts during the last preceding calendar month, SFBGS's Authorized Collection Expenses for such month and the allocation of such Admission Receipts in accordance with **Exhibit E**. Pursuant to **Exhibit E,** City shall pay SFBGS its Authorized Collection Expenses and any other amounts due SFBGS pursuant to the allocation provisions of **Exhibit E** on or before the thirtieth (30th) day following City's receipt of the Monthly Admission Receipts Statement.

7.5. Cash Register Requirements.

(a) SFBGS shall install on the Premises at least one cash register. SFBGS shall use cash registers which segregate sales by categories and shall have separate function keys with non-resettable daily sequential transaction numbers and non-resettable daily cumulative sales totals. Such cash register(s) used on the Premises shall be of a type approved by General Manager in writing and shall register every transaction made in, on, about or from the Premises, including every type of Admission Receipts, and the tape or digital record of each such cash register shall be accessible to and subject to inspection by the General Manager or his/her agent, provided that such inspection shall be conducted in a manner reasonable designed to minimize interference with the conduct of SFBGS's operations at the Premises, and City shall not perform such inspection unless a manager of SFBGS's operations is present. SFBGS shall make a manager available to City for such inspection during business hours upon request (which may be oral) by City.

(b) Mechanical cash register(s) must have a non-resettable cumulative total, a detail audit tape, a transaction number with a four-digit capacity, an indicator readily visible to customers as the amount rung, and a seven-digit capacity or grater, as determined by the General Manager based on the type of business, with a four-digit overrun counter. If computerized cash registers or other similar electronic devices are used, that system must accurately record all sales on the Premises and be no more subject to tampering than mechanical cash register(s).

(c) Each sale or other transaction on the Premises must be recorded at the time of each sale or other transaction, in the presence of the customer, and SFBGS shall present a receipt from such sale or other transaction to the customer. Each customer must be issued a receipt or sales slip for each transaction, which transaction must be recorded either on serially numbered sales slips or cash register types. All cash receipts must include SFBGS's identification thereon. Each cash register (including computerized cash registers or other similar electronic devices) shall be serviced by an established contractor approved by General Manager. At General Manager's request, SFBGS must furnish to City a statement from an established contractor that the transaction number, the cumulative total and the overrun counter have been sealed in a manner approved by General Manager.

(d) Upon the installation or removal of any cash register (including computerized cash registers or other similar electronic devices) used on the Premises, SFBGS must immediately furnish to General Manager notice in writing stating make, model number, serial number and cumulative total reading and overrun counter reading of the cash register(s) (including computerized cash registers or other similar electronic devices). Any repair contractor

employed to repair or replace any cash register (including computerized cash registers or other similar electronic devices if used) on the Premises is hereby authorized and directed to disclose and furnish to City or its auditors any information obtained by the contractor in the course of making such repair or replacement pertaining to such cash register (including computerized cash registers or other similar electronic devices if used). City shall have the right during business hours to examine the totals of the cash register(s) (including computerized cash registers other similar electronic devices if used) used on the Premises and to inspect for compliance with this section.

7.6. Accounts. SFBGS shall establish, fund and maintain the bank accounts required to fulfill its obligations under this Lease (collectively, the "Accounts") with one or more depository institutions reasonably acceptable to City and approved by City in writing. The following depository institutions will be deemed approved hereunder: (i) any institution approved by the Controller for deposit by City of City funds; (ii) any institution in which SFBGS's deposits will be afforded full FDIC deposit insurance coverage for the entire balance in the accounts held in such institution. Lessee shall respect any limit on the size of the funds held in any Accounts(s) as shall be established from time to time by the Controller for City funds with the goal of ensuring that SFBGS is afforded full FDIC deposit insurance coverage for the deposit in such Account(s). Any interest accruing on the funds in any Account shall be added to such Account. Funds from Admission Receipts shall not be commingled with other funds. SFBGS shall cause each person who as authority to withdraw or transfer funds from any Account to be bonded or otherwise insured. The Admission Account (as defined in Paragraph 2 of **Exhibit E**) shall be subject to a mutually-agreed control agreement pursuant to which City will be granted a perfected security interest therein, and SFBGS shall execute, deliver, file and refile, at SFBGS's expense, any instruments, financing statements, continuation statements, or other security agreements that may be required from time to time to perfect such security interest. 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 Admissions Account.

7.7. Reporting; Books and Records; Audits

(a) Monthly Admission Report. SFBGS shall provide the Monthly Admission Receipts Statement described in **Section 7.4** above.

(b) Annual Admission Reports. On or before the date which is ninety (90) days following the close of each Fiscal Year during the Term and ninety (90) days following the end of the Term, SFBGS shall deliver to City a statement (the "Annual Admission Receipts Statement"), certified as correct by an officer of SFBGS and otherwise in form satisfactory to City. The Annual Admission Receipts Statement shall set forth (i) the Admission Receipts for the Fiscal Year just concluded broken down by category, if applicable, (ii) the Authorized Collection Costs incurred by SFBGS for such Fiscal Year, and (iii) distributions made and amounts received in accordance with the provisions of **Exhibit E** for such Fiscal Year, broken down by category. The Annual Admission Receipts Statement shall also include an itemized statement for such year, certified as correct by an officer of SFBGS, showing Admission Receipts received or retained by SFBGS, and Education and Community Outreach Expenditures paid from such Admission Receipts. Pursuant to **Exhibit E,** City or SFBGS, as the case may be, shall make any true-up payment required by **Exhibit E** within thirty (30) days of City's receipt of such Annual Admission Receipts Statement.

(c) Books and Records. SFBGS agrees to keep accurate books and records of SFBGS's operations at the Botanical Garden according to generally accepted accounting principles. For purposes herein "books and records" shall include, but not be limited to, daily sales journals, cash register tapes, pre-numbered receipts, guest checks, sales tickets, monthly

sales summaries summarizing daily sales, general ledgers, income statements, sales tax returns, income tax returns and any other bookkeeping documents SFBGS utilizes in its operations. SFBGS shall not co-mingle personal funds with operational funds.

(d) Audit. SFBGS agrees to make its books and records available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of SFBGS's statements provided hereunder. 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; except that, 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 an audit reveals that SFBGS has understated Admission Receipts or overstated Authorized Collection Costs, SFBGS shall pay City, promptly upon demand, the difference between the amount SFBGS has paid and the amount it should have paid to City. If SFBGS understates its Admission Receipts by five percent (5%) or more, the cost of the audit shall be borne by SFBGS. If SFBGS understates its Admission Receipts by five percent (5%) or more with knowledge of such understatement or by reason of gross negligence, then, in addition to paying for the cost of the audit, SFBGS shall pay City twice the amount of the shortfall and a second such understatement made with knowledge of or by reason of gross negligence within seven (7) years after the prior understatement made with knowledge of or by reason of gross negligence shall be an Event of Default. If an audit reveals that SFBGS has overstated Admission Receipts or understated Authorized Collection Costs, City shall repay SFBGS, promptly upon demand, the difference between the amount SFBGS has paid and the amount it should have paid to City.

(e) Patrons Audit. SFBGS shall participate in the City's Patrons Audit program whereby signs provided by the City will be clearly posted at each point of sale, stating that receipts are to be given for each admission or purchase, and that if a receipt is not given, the patron shall be allowed some form of compensation as mutually agreed upon by the City and SFBGS.

7.8. Late Charge. If SFBGS fails to pay any Rent or Admission Receipts payable to the Department by the date the same is due and payable and the aggregate overdue amount owed by SFBGS exceeds aggregate overdue amounts, if any, owed by City to SFBGS under this Lease, such excess amount will be subject to a late payment charge equal to three percent (3%) of the amount due. The late payment charge has been agreed upon by City and SFBGS, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by SFBGS, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay and SFBGS shall promptly pay such charge to City, together with such unpaid amount.

7.9. Default Interest. If any Rent or Admission Receipts payable to the Department is not paid on the applicable due date and the aggregate overdue amount owed by SFBGS exceeds aggregate overdue amounts, if any, owed by City to SFBGS under this Lease, such excess amount shall bear interest from the due date until paid at the prime rate of interest, not to exceed ten percent (10%) per year, published from time to time by The Wall Street Journal. However, interest shall not be payable on late charges incurred by SFBGS nor on any amounts on which late charges are paid by SFBGS to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by.

7.10. Net Lease. This Lease is a "net lease." Accordingly, SFBGS shall pay to City all Rent (including the Base Rent, Additional Charges and any other payments hereunder) free of any charges, assessments or deductions of any kind, without prior demand and without abatement, counterclaim or setoff. Under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to make any payment of any kind whatsoever with respect to SFBGS's use or occupancy of the Premises and any permitted Improvements or this Lease, except as may otherwise be expressly set forth herein. Without limiting the foregoing, except as may be specifically and expressly provided otherwise in this Lease, SFBGS 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 its estate or interests in the non-structural portions of 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 non-structural portions of the Premises, any permitted Improvements, or any portion thereof. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve SFBGS from its liability to pay all of the sums required by any of the provisions of this Lease, or shall otherwise relieve SFBGS from any of its obligations under this Lease, or shall give SFBGS any right to terminate this Lease in whole or in part. SFBGS 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.

8. TAXES, ASSESSMENTS AND OTHER EXPENSES

8.1. Taxes and Assessments, Licenses, Permit Fees and Liens.

(a) Payment Responsibility. SFBGS shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against SFBGS's rights with respect to the Premises, any Improvements, SFBGS's Personal Property, the leasehold estate or any subleasehold estate, or SFBGS's use of the Premises or any Improvements. SFBGS shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency, subject to SFBGS's right to contest the validity of such charge pursuant to **Section 8.1(c)**. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which City receives the tax bill directly from the taxing authority, SFBGS shall reimburse City for payment of such sums immediately upon demand.

(b) Taxability of Possessory Interest. Without limiting the foregoing, SFBGS recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that SFBGS may be subject to the payment of property taxes levied on such interest.

(c) No Liens. SFBGS shall not allow or suffer a lien for any taxes payable by SFBGS hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same. SFBGS may have a reasonable opportunity to contest the validity of any such taxes provided SFBGS, before commencement of any proceeding or contest, furnishes to City a surety bond issued by a surety company qualified to do business in California and acceptable to City's Controller. The amount of such bond shall be equal to one hundred twenty five percent (125%) of the amount of taxes in dispute and shall be in such form as approved by the City Attorney of City. The bond shall insure payment of any judgment that may be rendered should SFBGS be unsuccessful in any such contest. SFBGS shall Indemnify City, the other Indemnified Parties, and the Premises from and against any Losses

arising out of any proceeding or contest provided for hereunder. The foregoing Indemnity shall not be limited by the amount of the bond.

(d) Reporting Requirement. SFBGS agrees to provide such information as City may request to enable City to comply with any tax reporting requirements applicable to this Lease.

8.2. Other Expenses. Except as otherwise provided in this Lease, including, without limitation, **Articles 10 and 11**, SFBGS shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Improvements permitted thereon.

8.3. Evidence of Payment. SFBGS shall, upon City's request, furnish to City within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to City, evidencing payment thereof.

9. ALTERATIONS AND IMPROVEMENTS

9.1. Construction of Alterations and Improvements. Except as provided herein or by the Construction Agreement, SFBGS shall not construct, install or otherwise place any Improvements or make or permit any Alterations in, to or about the Premises, without the General Manager's prior written consent in each instance, which the General Manager may give or withhold in the General Manager's sole and absolute discretion. Subject to the General Manager's consent as provided above, any permitted Improvements or Alterations shall be done at SFBGS's sole expense (i) in strict accordance with designs, plans and specifications approved in advance by the General Manger in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the General Manager, (iii) in a good and professional manner, (iv) in strict compliance with all Laws (including, without limitation, all health, disabled access and building codes and ordinances), and (v) subject to all other conditions that the General Manager or the Commission may reasonably impose, including, without limitation, provision of such completion security as is acceptable to City. In no event shall the construction or installation of any such Improvements or the making of any Alterations impair the use or operation of Common Areas or Department Facilities (if any), or any portion thereof, or the Department's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Improvements or make any permitted Alterations, SFBGS, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to City. No material change from the plans and specifications approved by City may be made without City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. City and its Agents shall have the right to inspect the course of such construction at all times. Upon completion of such Improvements or Alterations, SFBGS shall furnish City with a complete set of final as-built plans and specifications. SFBGS shall require from each contractor and subcontractor performing any work on or about the Premises a policy of commercial general liability insurance, with such limits as may reasonably be required by City from time to time, but in any event not less than One Million Dollars ($1,000,000) combined single limit. Such insurance shall also be in compliance with the requirements set forth in **Section 20.2** below. With respect to any Alterations which would be visible from the exterior of the Premises, SFBGS, shall obtain the prior written approval of City's Arts Commission to the extent the Arts Commission has jurisdiction over the design of such proposed alterations under City's Charter Section 5.103.

9.2. Ownership of Improvements. Except with respect to the Library Improvements, which shall be donated to City upon completion as provided herein, Improvements or Alterations

constructed on or affixed to the Premises by or on behalf of SFBGS above shall be and remain SFBGS's property during the Term. Upon the Expiration Date or any earlier termination hereof, SFBGS shall, upon City's request, remove all such Improvements and Alterations from the Premises in accordance with the provisions of **Section 23.1** hereof, unless City, at its sole option and without limiting any of the provisions of **Section 9.1** above, specifies at the time of City's approval of any such Improvements or Alterations or thereafter that such Alterations or Improvements may remain on the Premises following the expiration or termination of this Lease.

9.3. SFBGS's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of SFBGS that can be removed without structural or other material damage to the Premises (all of which are herein called "SFBGS's Personal Property") shall be and remain the property of SFBGS and may be removed by it subject to the provisions of **Section 23.1** hereof.

9.4. Notice to Proceed with Improvements. SFBGS agrees that the alterations, improvements and repairs to be made by SFBGS pursuant to the terms and conditions of this Lease shall not commence until this Lease has been approved by the Board of Supervisors of the City and County of San Francisco and SFBGS obtains from City written approval to proceed.

10. REPAIRS AND MAINTENANCE

10.1. SFBGS Responsible for Maintenance and Repair.

Except as provided in **Section 10.2** below, and except for any damage, excluding normal wear and tear, caused by any act or omission of City, its Agents or Invitees:

(a) City shall not under any circumstances be responsible for the performance of any Alterations or Improvements to the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises), nor shall City be liable for any portion of the cost thereof.

(b) SFBGS shall maintain the Premises and any existing and permitted Improvements at all times in clean, safe, attractive and sanitary condition and in good order and repair, to City's reasonable satisfaction. If any portion of the Premises or any of City's property located on or about the Premises is damaged by any of the activities conducted by SFBGS or its Agents or Invitees hereunder, SFBGS shall immediately, at its sole cost, repair any and all such damage and restore the Premises or City's property to its previous condition.

(c) SFBGS shall keep all fixtures and equipment on the Premises clean, neat, safe, sanitary and in good order at all times. SFBGS shall remove all waste, trash, rubbish, papers, cartons and refuse from the Premises, pick up trash and debris in the immediate vicinity of the Premises and dispose of trash in containers provided by SFBGS that are large enough to adequately serve the needs of the facility. SFBGS shall provide a dumpster and shall keep it in clean and orderly condition.

(d) Food Service and Seating Areas. During the hours the Botanical Garden is open to the public, SFBGS shall keep any food service and seating areas and any furniture free of dishes, utensils, debris and spills and in a neat, clean, orderly and attractive condition at all times and shall, as necessary, provide and empty garbage receptacles serving such area. The tables and chairs in any seating areas shall be configured so that there are walkways and sufficient area for pedestrian ingress and egress on either side of the tables and to minimize any potential tripping or other hazards.

(e) Public Restrooms. City shall be responsible for the regular cleaning of the public restrooms located in the Botanical Garden. The restrooms shall be open to the public at all times the Botanical Garden is open to the public. The restrooms shall be kept clean, neat, orderly and functioning properly at all times. SFBGS, at its own expense, shall provide all necessary items for the restrooms located on the Premises including, but limited to, toilet tissue, paper towels, seat covers and hand soap. SFBGS shall provide, at its sole expense, all cleaning materials and supplies necessary to maintain the public restrooms located in the Premises in the condition as described above. Such restrooms shall be thoroughly cleaned daily and inspected for supplies and neatness a minimum of two (2) times during each day the Premises are open to the public.

10.2. City's Maintenance and Repair Obligations. Notwithstanding **Section 10.1** and subject to the limitations set forth below, City shall repair, maintain and replace, if necessary, all structural elements of the Premises, including, without limitation, the structural portions and exterior walls of the Buildings, including the heating, ventilation, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Buildings except fire protection systems in the Library Building with respect to which City shall have no maintenance or repair obligation (collectively, the "Buildings Systems"), the Greenhouse and Lath House and the Common Areas located in the Botanical Garden in accordance with current maintenance standards; provided, however, City makes no representation or warranty of any kind regarding the physical condition or quality, nature or adequacy of any utilities or Buildings Systems serving the Premises, including without limitation, any fire, safety or security systems; and provided further, however, that SFBGS shall reimburse City for any damage, excluding normal wear and tear, caused by any act or omission of SFBGS, its Agents or Invitees. For the purpose of making any such repairs, City may use structures in the Premises where reasonably required by the character of the work to be performed, provided that City will use reasonable efforts to minimize any interference with SFBGS's operations. SFBGS waives any claim for damages for any injury or inconvenience to or interference with SFBGS's operations, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned thereby. Notwithstanding anything to the contrary contained in this Lease, SFBGS acknowledges and agrees that City shall not be responsible for any fire safety protection systems for any portion of the Library Building. City shall be responsible for the structural integrity of each Building's roof and its structural members. SFBGS shall provide City with prompt written notice of any required repair or maintenance item. City shall maintain, repair and keep in good condition any property adjoining the Botanical Garden under the jurisdiction of the Commission, including gardening and landscaping services.

10.3. No Right to Repair and Deduct. SFBGS expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit SFBGS to make repairs or replacements at City's expense, or to terminate this Lease because of City's failure to keep the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof in good order, condition or repair, or to abate or reduce any of SFBGS's obligations hereunder on account of the Premises or any adjoining property (including, without limitation, access roads, utilities and other infrastructure serving the Premises) or any part thereof being in need of repair or replacement. Without limiting the foregoing, SFBGS expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of SFBGS to terminate this Lease and with respect to any obligations of City for tenantability of the Premises and any right of SFBGS to make repairs or replacements and deduct the cost thereof from Rent.

11. UTILITIES

11.1. Utilities and Services. City shall provide to the Premises basic utility services, including electricity, heating, ventilation, service hookups to the exterior walls of the Buildings (including telephone, internet and burglar alarm) for the operation of SFBGS's offices, natural gas, water and refuse disposal on the same basis as the other Botanical Garden facilities and pursuant to current standards observed by City in providing such services (the "Standard Utilities and Services"), subject however to energy conservation efforts which may be established or implemented by the City from time to time, and subject further to the terms and conditions contained herein. SFBGS shall be responsible for furnishing, at no cost to the City, the janitorial service (pursuant to specifications approved by the General Manager) and telephone, internet and burglar alarm service for the Premises and any other utilities or services other than or in excess of the Standard Utilities and Services that SFBGS may need for its use of the Premises. If SFBGS desires any upgrades to water, gas or electricity services in connection with SFBGS's operations at the Premises, such upgrades shall be subject to City's prior written consent, and shall be made at SFBGS's sole cost and expense.

11.2. Interruption of Services. City's obligation to provide utilities and services for the Premises are subject to applicable Laws (including the rules or actions of the public utility company furnishing the utility or service), and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. In the event of an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of SFBGS, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of operations by SFBGS. SFBGS hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Law permitting the termination of this Lease due to such interruption, failure or inability.

11.3. Water and Energy Conservation; Mandatory or Voluntary Restrictions. In the event any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or the Premises or any part thereof, relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or in the event City is required or elects to make alterations to any part of the Improvements on the Premises in order to comply with such mandatory or voluntary controls or guidelines, such compliance and the making of such alterations shall in no event entitle SFBGS to any damages, relieve SFBGS of the obligation to pay the full Base Rent and Additional Charges reserved hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of SFBGS. City shall have the right at any time to install a water meter in the Premises or otherwise to measure the amount of water consumed on the Premises, and the cost of such meter or other corrective measures and the installation and maintenance thereof shall be paid for by SFBGS.

11.4. Antennae. No antennae or telecommunication dish may be installed on the Premises without the advance written approval of City. No such antennae or telecommunications dishes shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City. SFBGS agrees, at the request of City, to permit City to install, at City's sole cost, transmission equipment for City's emergency or 800 MHz City wide radio system communications facilities (or its successor) at a location on top of the Improvements acceptable to SFBGS.

12. LIENS

SFBGS shall keep the Premises and all of City's property free from any liens arising out of any work performed, material furnished or obligations incurred by or for SFBGS. In the event SFBGS does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have in addition to all other remedies provided herein and by Law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to City by SFBGS upon demand. City shall have the right at all times to post and keep posted on the Premises any notices permitted or required by Law or that City deems proper for its protection and protection of the Premises and City's property, from mechanics' and materialmen's liens. SFBGS shall give City at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises. Notwithstanding the foregoing, SFBGS shall have the right, upon posting of an adequate bond or other security acceptable to City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless SFBGS has failed to do so within ten (10) days after final determination of the validity thereof. SFBGS shall Indemnify City, the other Indemnified Parties and the Premises against any and all Losses arising out of any such contest.

13. COMPLIANCE WITH LAWS

13.1. Compliance with Laws. SFBGS shall promptly, at its sole expense, maintain the Premises, any Improvements permitted hereunder and SFBGS's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Lease below), and all present and future life safety, fire sprinkler, seismic retrofit and other building code requirements. Notwithstanding anything to the contrary contained in this Lease, (a) SFBGS shall not be required to make any structural Alterations, repairs or improvements in order to comply with such Laws unless such Alterations, repairs or improvements shall be occasioned, in whole or in part, directly or indirectly, by the Improvements or any other Alterations made by SFBGS after the Commencement Date of this Lease, SFBGS's use of the Premises, or any act or omission of SFBGS, its Agents or Invitees; and (ii) SFBGS shall not be required to make any structural Alterations in order to comply with such Laws to the extent such are in connection with any noncompliance with any such Laws as of the Commencement Date. Any Alteration made by or on behalf of SFBGS pursuant to the provisions of this Section shall comply with the provisions of **Section 10.1** above. The Parties acknowledge and agree that SFBGS's obligation to comply with all laws as provided herein is a material part of the bargained-for consideration under this Lease. Subject to the provisions of **Article 11**, SFBGS's obligation under this Section shall include, without limitation, the responsibility of SFBGS to make substantial or structural repairs and alterations to the Premises (including any 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 SFBGS or City, the degree to which the curative action may interfere with SFBGS's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular Law involved, and whether the Law involved is related to SFBGS's particular use of the Premises. Subject to **Section 27.36**, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall relieve SFBGS from its obligations hereunder, or shall give SFBGS any right to terminate this Lease in whole or in part or to otherwise seek redress against

City. SFBGS 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, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

13.2. Regulatory Approvals

(a) Responsible Party. SFBGS understands and agrees that SFBGS's use of the Premises may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. SFBGS shall be solely responsible for obtaining any and all such regulatory approvals. SFBGS shall not seek any regulatory approval without first obtaining the written consent of the General Manager. SFBGS shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of SFBGS's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by SFBGS, and City shall have no liability, monetary or otherwise, for any such fines or penalties. SFBGS shall Indemnify City and the other Indemnified Parties against all Losses arising in connection with SFBGS's failure to obtain or comply with the terms and conditions of any regulatory approval.

(b) City Acting as Owner of Real Property. SFBGS further understands and agrees that City, acting by and through the Commission, is entering into this Lease in its capacity as a property owner with a proprietary interest in the Premises and not as a regulatory agency with police powers. Nothing in this Lease shall limit in any way SFBGS's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. By entering into this Lease, City is in no way modifying or limiting SFBGS's obligation to cause the Premises or any permitted Improvements to be used and occupied in accordance with all applicable Laws, as provided further above.

13.3. Compliance with City's Risk Management Requirements. SFBGS shall not do anything, or permit anything to be done, in or about the Premises or any Improvements permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect City from any potential premises liability. SFBGS shall faithfully observe, at its expense, any and all reasonable requirements of City's Risk Manager with respect thereto and with the requirements of any policies of public liability, fire or other policies of insurance at any time in force with respect to the Premises and any Improvements as required hereunder.

13.4. Reports. SFBGS shall submit a report and provide such documentation to City as City may from time to time request regarding SFBGS's operations and evidencing compliance thereof with this Lease and all Laws.

14. FINANCING; ENCUMBRANCES; SUBORDINATION

14.1. Encumbrance of City's Fee Interest. The following provisions shall apply notwithstanding anything to the contrary contained in this Lease.

(a) Encumbrance by City. To the extent permitted by applicable Law, City may at any time sell or otherwise transfer or encumber its fee estate in any portion of the Premises provided that (i) any such sale or Encumbrance shall be subject and subordinate to all of the terms of this Lease and the leasehold estate created hereby, (ii) the right of possession of SFBGS to the Premises shall not be affected or disturbed by any such sale or Encumbrance, or by

the exercise of any rights or remedies by any purchaser or Encumbrancer arising out of any instrument reflecting such sale or Encumbrance so long as no Event of Default or Unmatured Event of Default is outstanding hereunder.

(b) Encumbrance By SFBGS. SFBGS shall not under any circumstances whatsoever Encumber in any manner City's estate in the Premises or any adjoining property, or City's interest under this Lease, or any portion thereof.

14.2. Leasehold Encumbrances. Without limiting **Article 18** hereof, SFBGS shall not Encumber this Lease or SFBGS's interest in this Lease, or assign or pledge assignment of the same as security for any debt, without first obtaining the written consent of City, which City may give or withhold in its sole discretion.

15. DAMAGE OR DESTRUCTION

15.1. Damage or Destruction to the Improvements. If the Premises or the Improvements are damaged by fire or other casualty, then City shall repair the same (subject to the provisions of **Section 15.2** below) provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and provided further that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Lease shall remain in full force and effect except that SFBGS shall be entitled to a proportionate reduction of Base Rent and Additional Charges during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with SFBGS's use or occupancy of the Premises (except to the extent that the damage or destruction was caused by the negligence or intentional misconduct of SFBGS or its Agents). City shall use good faith efforts to notify SFBGS within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on SFBGS. If City determines that such repairs cannot be made within the Repair Period, City shall have the option to notify SFBGS of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisors' appropriation of all necessary funds, in which event this Lease shall continue in full force and effect and the Base Rent and Additional Charges shall be reduced as provided herein; or (b) City's election to terminate this Lease or to terminate this Lease with respect to the damaged Premises only as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent and Additional Charges shall be reduced as provided above, and SFBGS shall pay such reduced Base Rent and Additional Charges up to the date of termination. If at any time during the last twelve (12) months of the Term of this Lease, the Premises or the Improvements are damaged or destroyed, then either City or SFBGS may terminate this Lease by giving written notice to the other party of its election to do so within thirty (30) days after the date of the occurrence of such damage; provided, however, SFBGS may terminate only if such damage or destruction substantially impairs its use of the Premises for the uses permitted hereunder. The effective date of termination shall be specified in the notice of termination, which date shall not be more than thirty (30) days from the date of the notice.

15.2. SFBGS's Obligations. Notwithstanding anything to the contrary in this Lease, City shall have no obligation to repair the Premises or the Improvements in the event the damage or destruction is attributable to any act or omission of SFBGS or its Agents. In no event shall City be required to repair any damage to SFBGS's Personal Property or any Improvements or Alterations installed or made on the Premises by or at the expense of SFBGS. With respect to any damage to or destruction by fire or any other casualty attributable to any act or omission of SFBGS or its Agents affecting any Alterations or Improvements permitted hereunder made by or

on behalf of SFBGS during the Term hereof, if and when City repairs the Premises pursuant to **Section 15.1** above, SFBGS shall, at its sole cost, restore, repair, replace or rebuild such Alterations or Improvements to the condition such Alterations or Improvements were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of **Section 10.1** above, unless this Lease is terminated as provided in **Section 15.1** above. If this Lease is terminated as provided in **Section 15.1** above, then at City's written request SFBGS shall promptly, at its sole cost, demolish such damaged Alterations and damaged Improvements or Alterations that were installed or made on the Premises by or at the expense of SFBGS and remove them (including all debris) from the Premises in compliance with the provisions of **Section 23.1** below.

15.3. Waiver. The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Improvements, and City and SFBGS each hereby waives and releases any right to terminate this Lease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

16. EMINENT DOMAIN

16.1. General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the Parties hereunder shall be determined pursuant to this Section. City and SFBGS intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

16.2. Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

16.3. Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety under either of the following circumstances: (i) if all of the following exist: (A) the partial Taking renders the remaining portion of the Premises untenantable or unsuitable for continued use by SFBGS, (B) the condition rendering the Premises untenantable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition, and (C) SFBGS elects to terminate; or (ii) if City elects to terminate, except that this Lease shall not terminate if SFBGS agrees to, and does, pay full Rent and Additional Charges, without abatement, and otherwise agrees to, and does, fully perform all of its obligations hereunder.

(b) City shall have the right to terminate this Lease in the event of a partial Taking of a substantial portion of any of City's adjoining real property, even if the Taking does not directly affect the Premises.

(c) Either Party electing to terminate under the provisions of this **Article 16** shall do so by giving written notice to the other Party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth day after such written notice is given or the Date of Taking.

16.4. Rent; Award. Upon termination of this Lease pursuant to an election under **Section 16.3** above, then: (i) SFBGS's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in **Section 16.5** below for any period during which this Lease continues in effect after the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and SFBGS shall have no claim against City for the value of any unexpired term of this Lease, provided that SFBGS may make a separate claim for compensation, and SFBGS shall receive any Award made specifically to SFBGS, for SFBGS's relocation expenses or the interruption of or damage to SFBGS's operations or damage to SFBGS's Personal Property.

16.5. Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under **Section 16.3** above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (i) Base Rent shall be reduced by an amount that is in the same ratio to the Base Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (ii) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). SFBGS shall have no claim against City for the value of any unexpired Term of this Lease, provided that SFBGS may make a separate claim for compensation. SFBGS shall retain any Award made specifically to SFBGS for SFBGS's relocation expenses or the interruption of or damage to SFBGS's operations or damage to SFBGS's Personal Property.

16.6. Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and SFBGS shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, SFBGS shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by SFBGS for the period of the Taking, and City shall be entitled to receive the balance of any Award.

17. ASSIGNMENT AND SUBLETTING

17.1. Restriction on Assignment and Subletting. SFBGS shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in SFBGS), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder (collectively, "Assignment"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), without the General Manager's prior written consent in each instance, which the General Manager may withhold in the General Manager's sole and absolute discretion to the extent any assignment, or any sublease exceeding 20% of the Premises, is involved and may otherwise withhold in the General Manager's reasonable discretion. Any Assignment or Sublease, without the General Manager's prior consent, shall be voidable at the option of the City in its sole and absolute discretion; and, to the extent any assignment, or any sublease exceeding 20% of the Premises, is involved, the General Manager shall have the right to terminate immediately this Lease by sending written notice to SFBGS.

17.2. Notice of Proposed Transfer. If SFBGS desires to enter into an Assignment or a Sublease, then it shall give written notice (a "Notice of Proposed Transfer") to City of its

intention to do so. The Notice of Proposed Transfer shall identify the proposed transferee and state the terms and conditions under which SFBGS is willing to enter into such proposed Assignment or Sublease, including a copy of the proposed Assignment or Sublease agreement. SFBGS shall provide City with current financial statements for the proposed transferee prepared by an independent certified public accountant and such additional information regarding the proposed transfer as the Department may reasonably request.

17.3. Required Terms and Conditions. Any Sublease or concession agreement approved hereunder shall be on such terms and conditions and on such form as shall have been approved by the General Manager. Revenue from any Sublease or concession agreement shall be payable to City, except as otherwise expressly approved by the General Manager, and shall be subject to the terms of **Section 6.7(d)** above.

17.4. Effect of Transfer. No Sublease or Assignment by SFBGS shall relieve SFBGS, or any guarantor, of any obligation to be performed by SFBGS under this Lease. Any Sublease or Assignment without the General Manager's prior consent shall constitute a material Event of Default by SFBGS under this Lease. The acceptance of any Rent or other payments by City from a proposed Transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any Transferee, or a waiver by City of any failure of SFBGS or other transferor to comply with this Section.

17.5. Indemnity for Relocation Benefits. Without limiting **Section 17.4**, SFBGS shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. SFBGS shall Indemnify City and the other Indemnified Parties for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

18. DEFAULT; REMEDIES

18.1. Events of Default. Any of the following shall constitute an event of default ("Event of Default") by SFBGS hereunder:

(a) Rent. Any failure to pay any Rent or other sums as and when due, provided SFBGS shall have a period of five (5) business days from the date of written notice of such failure from City within which to cure any default in the payment of Rent or other sums; provided, however, that City shall not be required to provide such notice regarding SFBGS's failure to make such payments when due more than twice during any calendar year, and any such failure by SFBGS after SFBGS has received two such notices in any calendar year from City shall constitute a default by SFBGS hereunder without any requirement on the part of City to give SFBGS notice of such failure or an opportunity to cure except as may be required by Section 1161 of the California Code of Civil Procedure;

(b) Vacation or Abandonment. Any vacation or abandonment of the Premises as a whole for more than fourteen (14) consecutive days;

(c) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of SFBGS, or an assignment by SFBGS for the benefit of creditors, or any action taken or suffered by SFBGS under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted, if any such receiver, assignment or action is not released, discharged, dismissed or vacated within sixty (60) days;

(d) Insurance. Any failure to maintain any insurance required to be maintained by SFBGS under this Lease; provided SFBGS shall have a period of three (3) business days from the date of written notice of such failure from City within which to cure any such default; or

(e) Abandonment of Nursery Construction. If all of the following have occurred:

(i) SFBGS commences construction of the Nursery Project,

(ii) a stoppage of construction of the Nursery Project (other than a stoppage beyond the reasonable control of SFBGS) continues for more than one hundred twenty (120) days,

(iii) following a period of at least sixty (60) days for consultation between City and SFBGS to arrive at a mutually-agreed solution that will allow the Nursery Project to move forward or the situation to be otherwise resolved to City's reasonable satisfaction, SFBGS either (x) materially fails to perform any such agreement reached or (y) fails to identify a reasonable solution, and City gives SFBGS written notice of such failure,

(iv) SFBGS fails, within thirty (30) days after such notice, to commence taking reasonable steps to either cure such stoppage or restore the property to a condition suitable for public use, or SFBGS fails thereafter to diligently pursue such steps and, in each case, no other solution can be found, and

(v) City is not willing to waive the Event of Default otherwise arising from this **Section 18.1(e).**

(f) Those matters described as Events of Default in **Sections 5.3, 6.5(a), 7.7(d), 17.4,** and **27.23.**

(g) Covenants, Conditions and Representations. Any failure to perform or comply with any other covenant, condition or representation made under this Lease, provided SFBGS shall have a period of fifteen (15) days from the date of written notice from City of such failure within which to cure such default under this Lease, or, if such default is not capable of cure within such 15-day period, SFBGS shall have a reasonable period to complete such cure if SFBGS promptly undertakes action to cure such default within such 15-day period and thereafter diligently prosecutes the same to completion and SFBGS uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from City; provided, however, that upon the occurrence within a 12-month period during the Term of two (2) defaults of the same obligation, City shall not be required to provide any notice regarding SFBGS's failure to perform such obligation, and any subsequent failure by SFBGS after SFBGS has received two such notices shall constitute a default by SFBGS hereunder without any requirement on the part of City to give SFBGS notice of such failure or an opportunity to cure.

18.2. Remedies. Upon the occurrence of an Event of Default by SFBGS, City shall have the following rights and remedies in addition to all other rights and remedies available to City at Law or in equity:

(a) Terminate Lease and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate SFBGS's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Base Rent and

Additional Charges for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that SFBGS proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. City's efforts to mitigate the damages caused by SFBGS's breach of this Lease shall not waive City's rights to recover damages upon termination.

(b) Continue Lease and Enforce Rights. The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows City to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as City does not terminate SFBGS's right to possession, if SFBGS has the right to sublet or assign, subject only to reasonable limitations. For purposes hereof, none of the following shall constitute a termination of SFBGS's right of possession: acts of maintenance or preservation; efforts to relet the Premises or the appointment of a receiver upon City's initiative to protect its interest under this Lease; or withholding consent to an Assignment or Sublease, or terminating an Assignment or Sublease, if the withholding or termination does not violate the rights of SFBGS specified in subdivision (b) of California Civil Code Section 1951.4. If City exercises its remedy under California Civil Code Section 1951.4, City may from time to time sublet the Premises or any part thereof for such term or terms (which may extend beyond the Term) and at such rent and upon such other terms as City in its sole discretion may deem advisable, with the right to make alterations and repairs to the Premises. Upon each such subletting, SFBGS shall be immediately liable for payment to City of, in addition to Base Rent and Additional Charges due hereunder, the cost of such subletting and such alterations and repairs incurred by City and the amount, if any, by which the Base Rent and Additional Charges owing hereunder for the period of such subletting (to the extent such period does not exceed the Term) exceeds the amount to be paid as Base Rent and Additional Charges for the Premises for such period pursuant to such subletting. No action taken by City pursuant to this **Section 18.2(b)** shall be deemed a waiver of any default by SFBGS and, notwithstanding any such subletting without termination, City may at any time thereafter elect to terminate this Lease for such previous default.

(c) Appointment of Receiver. The right to have a receiver appointed for SFBGS upon application by City to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to City pursuant to this Lease.

18.3. City's Right to Cure SFBGS's Defaults. If SFBGS defaults in the performance of any of its obligations under this Lease, then City may at any time thereafter with three (3) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for SFBGS's account and at SFBGS's expense. SFBGS shall pay to City, as Additional Rent, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. SFBGS's obligations under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that SFBGS is obligated to perform under any provision of this Lease, and City's cure or attempted cure of SFBGS's Event of Default shall not constitute a waiver of SFBGS's Event of Default or any rights or remedies of City on account of such Event of Default.

18.4. City's Defaults, Claims. Subject to the waivers set forth in **Section 19.1(a)** below with respect to injury, accident or death of any person or damage to any property not resulting from negligence or willful misconduct of City or its Agents and in **Section 19.1(b)** below with respect to consequential or incidental damages, SFBGS shall be entitled to enforce this Lease, make claims for the reimbursement of damage caused by negligence or intentional misconduct of City or its Agents and pursue all other causes of action otherwise available, as

provided in Sections 905 and following of the California Government Code, and otherwise in the manner available under applicable law.

19. WAIVER OF CLAIMS; INDEMNIFICATION

19.1. Waiver of Claims. SFBGS covenants and agrees that City shall not be responsible for or liable to SFBGS for, and, to the fullest extent allowed by Law, SFBGS hereby waives all rights against City and its Agents and releases City and its Agents from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises or any other City property, from any cause whatsoever. Nothing herein shall relieve City from liability caused by the negligence or willful misconduct of City or its Agents, provided that City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) SFBGS expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of City for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to the Improvements or SFBGS's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of City or its Agents, and SFBGS expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of SFBGS or other waivers contained in this Lease and as a material part of the consideration for this Lease, SFBGS fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential and incidental damages (including without limitation, lost profits), and covenants not to sue for such damages, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, arising out of this Lease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by SFBGS pursuant to this Lease regardless of the cause, and whether or not due to the negligence or gross negligence of City or its Agents.

(b) In connection with the foregoing releases, SFBGS acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

SFBGS acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. SFBGS realizes and acknowledges that it has agreed upon this Lease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Lease.

19.2. SFBGS's Indemnity. SFBGS, on behalf of itself and its successors and assigns, shall Indemnify City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any accident, injury to or death of a person, including, without limitation, Agents and Invitees of SFBGS, or loss of or damage to property (including, without limitation, the Common Areas or

the Department Facilities) howsoever or by whomsoever caused, occurring in, on or about the Premises in connection with SFBGS's activities; (b) any default by SFBGS in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on SFBGS's part; (c) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by SFBGS, its Agents or Invitees or any person or entity claiming through or under any of them, of the Premises or any Improvements; (d) the condition of the Premises or any Improvements constructed by or on behalf of SFBGS, or SFBGS's failure to properly repair or maintain any Improvements on the Premises to the extent required under this Lease; (e) any construction or other work undertaken by SFBGS on or about the Premises or any Improvements whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of SFBGS, its Agents or Invitees in, on or about the Premises or any Improvements; all regardless of the active or passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties, except (in each case) (i) to the extent that such Indemnity is void or otherwise unenforceable under applicable Law in effect on or validly retroactive to the date of this Lease or (ii) to the extent such Losses are caused by the negligence or intentional wrongful acts or omissions of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Loss. SFBGS specifically acknowledges and agrees that it has an immediate and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to SFBGS by City and continues at all times thereafter. SFBGS's obligations under this Section shall survive the expiration or sooner termination of the Lease.

20. INSURANCE

20.1. SFBGS's Insurance. SFBGS, at no cost to the City, shall procure and keep in effect at all times during the Term insurance as follows:

(i) Commercial general liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Two Hundred Fifty Thousand Dollars ($250,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU). If the operation of SFBGS's business includes food sales, such coverage shall include Food Products Liability Insurance with limits not less than One Million Dollars ($1,000,000) each occurrence. If the operation of SFBGS's business includes the sale of alcoholic beverages, such coverage shall include legal liquor liability coverage with limits not less than One Million Dollars ($1,000,000) each occurrence.

(ii) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars ($1,000,000) each accident.

(iii) Business automobile liability insurance with limits not less than One Million Dollars ($1,000,000) each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, as applicable, if SFBGS uses automobiles in connection with its use of the Premises.

(iv) Business Interruption Insurance insuring that the Rent will be paid to City for a period of at least one (1) year if SFBGS is unable to operate its business at the Premises. Such insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To

calculate Rent during any such interruption of business, the Rent for the 12-month period immediately preceding the incident causing the business interruption shall be used.

(v) Such other risks in such amounts as City's Risk Manager may from time to time reasonably require.

20.2. General Requirements. All insurance provided for under this Lease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by City.

(a) Should any of the required insurance be provided under a claims-made form, SFBGS shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Lease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Lease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

Name SFBGS as the insured and the City and County of San Francisco, its officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

All policies shall be endorsed to provide thirty (30) days' advance written notice to City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for City set forth in the Basic Lease Information.

(d) Each insurance policy required hereunder shall be issued by an insurance company licensed in the State of California and with a general policyholders' rating of "A-" or better and a financial size ranking of "Class VIII" or higher in the most recent edition of Best's Insurance Guide.

20.3. Proof of Insurance. SFBGS shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and SFBGS shall provide City with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event SFBGS shall fail to procure such insurance, or to deliver such policies or certificates, City may, at its option, procure the same for the account of SFBGS, and the cost thereof shall be paid to City within five (5) days after delivery to SFBGS of bills therefor.

20.4. Review of Insurance Requirements. SFBGS and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by SFBGS with respect to risks comparable to those associated with the Premises, then, at City's option, SFBGS shall increase at its sole cost the amounts or coverages carried by SFBGS to conform to such general commercial practice.

20.5. No Limitation on Indemnities. SFBGS's compliance with the provisions of this Section shall in no way relieve or decrease SFBGS's indemnification obligations under **Sections 19.2** and **24.2** hereof, or any of SFBGS's other obligations or liabilities under this Lease.

20.6. Lapse of Insurance. Notwithstanding anything to the contrary in this Lease, City may elect, in City's sole and absolute discretion, to terminate this Lease upon the lapse of any required insurance coverage by written notice to SFBGS.

20.7. SFBGS's Personal Property and Alterations and Improvements. SFBGS shall be responsible, at its expense, for separately insuring SFBGS's Personal Property, Alterations, and Improvements made by or on behalf of SFBGS.

20.8. City's Self Insurance. SFBGS acknowledges that City self-insures against casualty, property damage and public liability risks and agrees City shall not be required to carry any third party insurance with respect to the Premises or otherwise.

20.9. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, City and SFBGS each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises or other City property and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, other City property or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises or other City property carried by SFBGS does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, SFBGS shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against City or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

21. ACCESS BY CITY

21.1. Access to Premises by City.

(a) General Access. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than forty-eight (48) hours oral or written notice to SFBGS (except in the event of an emergency) for any of the following purposes:

To determine whether the Premises are in good condition and to inspect the Premises (including, without limitation, soil borings or other Hazardous Material Investigations);

To determine whether SFBGS is in compliance with its obligations hereunder and to cure or attempt to cure any such default in accordance with the provisions of **Section 18.3** hereof;

To serve, post or keep posted any notices required or allowed under any of the provisions of this Lease;

To do any maintenance or repairs to the Premises that City has the right or the obligation, if any, to perform hereunder; and

To show it to any prospective purchasers, brokers, encumbrancers or public officials, or, during the last year of the Term of this Lease, exhibiting the Premises to prospective tenants or other occupants, and to post any "for sale" or "for lease" or "coming soon" signs in connection therewith.

(b) Emergency Access. In the event of any emergency, as determined by City, City may, at its sole option and without notice, enter the Premises and alter or remove SFBGS's Personal Property on or about the Premises. City shall have the right to use any and all means City considers appropriate to gain access to any portion of the Premises in an emergency. In such case, City shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of SFBGS from the Premises or any portion thereof.

(c) No Liability. City shall not be liable in any manner, and SFBGS hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of City's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of City or its Agents and not contributed to by the acts, omissions or negligence of SFBGS, its Agents or Invitees.

(d) No Abatement. SFBGS shall not be entitled to any abatement in Rent if City exercises any rights reserved in this Section.

(e) Minimize Disruption. City shall use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to SFBGS's use hereunder.

21.2. Department Facilities and Utility Installations. Without limiting **Section 21.1** above, City shall have the right at all times, to enter upon the Premises upon forty eight (48) hours advance written or oral notice (except in cases of emergency as determined by City), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Department Facilities, if any, or any public park or utility facilities. City shall bear the expense of any such activities, unless the need is occasioned by the acts, omissions or negligence of SFBGS, its Agents or Invitees. City shall not be responsible for any temporary loss or disruption of SFBGS's use of the Premises occasioned by any such facility installations or other activities.

21.3. Roadways. City and its Agents shall have the right to enter upon and pass through and across the Premises on any existing or future roadways and as City desires.

21.4. Rights of Public. SFBGS shall keep the Premises open to the public at all times consistent with the uses permitted hereunder, subject to the Rules and Regulations or as otherwise provided in this Lease or approved by the General Manager in writing. Notwithstanding the foregoing, SFBGS may exclude from public access SFBGS's office space and certain horticultural or academic, employee working areas.

22. ESTOPPEL CERTIFICATES

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The General Manager shall be authorized to execute, acknowledge and deliver any such certificates of the City.

23. SURRENDER

23.1. Surrender of the Premises. Upon the Expiration Date or any earlier termination of this Lease pursuant hereto, SFBGS shall surrender to City the Premises, in good condition, order and repair (except any damages, excluding normal wear and tear, caused by any act or omission of City or its Agents), free from debris and hazards created by SFBGS or its Agents or Invitees, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under SFBGS. On or before the Expiration Date or any earlier termination hereof, or later upon City's request, SFBGS shall, at its sole cost, remove any and all of SFBGS's Personal Property from the Premises and demolish and remove any and all Improvements and Alterations from the Premises requested by City to be removed (except for any Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 9.2** above). In addition, SFBGS shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Improvements or Alterations. In connection therewith, SFBGS shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. SFBGS's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of SFBGS's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at City's option, be deemed abandoned and in such case City may dispose of such property in accordance with Section 1980 *et seq.* of the California Civil Code or in any other manner allowed by Law. If SFBGS fails to surrender the Premises to City on the Expiration Date or earlier termination of the Term as required by this Section, SFBGS shall Indemnify City against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding lessee resulting from SFBGS's failure to surrender the Premises.

23.2. Automatic Reversion. Upon the Expiration Date or earlier termination of this Lease, the Premises shall automatically, and without further act or conveyance on the part of SFBGS or City, become the property of City, free and clear of all liens and Encumbrances and without payment therefor by City and shall be surrendered to City upon such date. Upon or at any time after the date of termination of this Lease, if requested by City, SFBGS shall promptly deliver to City, without charge, a quitclaim deed to the Premises suitable for recordation and any other instrument reasonably requested by City to evidence or otherwise effect the termination of SFBGS's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises or any permitted Improvements or Alterations that City agrees are to remain part of the Premises pursuant to the provisions of **Section 9.2** above.

24. HAZARDOUS MATERIALS

24.1. No Hazardous Materials. SFBGS covenants and agrees that neither SFBGS nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or any Improvements or transported to or from the Premises or any Improvements; provided that SFBGS may store and use such substances in the Premises in such limited amounts as are customarily used for general office purposes (such as copy toner and supplies) so long as such storage and usage permitted hereunder shall be at all times in full compliance with applicable Environmental Laws. SFBGS shall immediately notify City if and when SFBGS learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Premises or any Improvements. City may from time to time request SFBGS to provide adequate information for City to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and SFBGS shall promptly provide all such information. Without limiting **Article 21** hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to SFBGS (except in the event of an emergency).

24.2. SFBGS's Environmental Indemnity. If SFBGS breaches any of its obligations contained in **Section 24.1** above, or, if any act or omission or negligence of SFBGS or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Premises (including any Improvements thereon) or any other City property, without limiting SFBGS's general Indemnity contained in **Section 20.2** above, SFBGS, on behalf of itself and its successors and assigns, shall Indemnify City and the Indemnified Parties, and each of them, from and against all Hazardous Materials Claims arising during or after the Term of this Lease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Premises or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other City property. Without limiting the foregoing, if SFBGS or any of SFBGS's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or causes the Release of any Hazardous Materials in, on, under or about any other City property, SFBGS shall, immediately, at no expense to City, take any and all appropriate actions to return the Premises or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. SFBGS shall provide City with written notice of and afford City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

25. SECURITY DEPOSIT

SFBGS shall not be obligated to pay any security deposit in connection with entry into this Lease.

26. HOLDING OVER

Any holding over after the expiration of the Term with the express consent of City shall be construed to automatically extend the Term of this Lease on a month-to-month basis at a monthly Base Rent equal to one hundred ten percent (110%) of the amount set forth in **Section 7.2** hereof, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any holding over without City's consent shall constitute a default by SFBGS and entitle City to exercise any or all of its remedies as

provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Lease. Any holding over after the expiration of the Term without the City's consent shall be at a monthly rental rate equal to one hundred fifty percent (150%) of the rate in effect at the end of the Term of this Lease.

27. GENERAL PROVISIONS

27.1. Notices. Except as otherwise expressly provided in this Lease, any notice given hereunder shall be effective only if in writing and given by delivering the notice in person, or by sending it first-class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) SFBGS (i) at SFBGS's address set forth in the Basic Lease Information, if sent prior to SFBGS's taking possession of the Premises, or (ii) at the Premises if sent on or subsequent to SFBGS's taking possession of the Premises, or (iii) at any place where SFBGS or any Agent of SFBGS may be found if sent subsequent to SFBGS's vacating, abandoning or surrendering the Premises; or (b) City at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or SFBGS may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first-class or certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this **Section 27.1** and applicable Laws, shall be deemed receipt of such notice. For convenience of the Parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

27.2. No Implied Waiver. No failure by City to insist upon the strict performance of any obligation of SFBGS under this Lease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Base Rent or Additional Charges during the continuance of any such breach, or possession of the Premises prior to the expiration of the Term by any Agent of City, shall constitute a waiver of such breach or of City's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Lease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of City given in any instance under the terms of this Lease shall not relieve SFBGS of any obligation to secure the consent of City in any other or future instance under the terms of this Lease.

27.3. Amendments. Neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto. Whenever this Lease requires or permits the giving by City of its consent or approval, the General Manager of the Department shall be authorized to provide such approval, except as otherwise provided by this Lease or by applicable law, including the Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and SFBGS, and City's agreement may be made upon the sole approval of the General Manager of the

Department provided such amendment or modification does not (i) decrease the amount of rental income payable by SFBGS to City, (ii) materially increase City's liabilities or financial obligations under this Lease, (iii) materially increase the size of the Premises, (iv) change the Term of this Lease, or (v) materially change the permitted uses of the Premises. Any proposed amendment which falls into the above specified categories shall require the approval of the Commission, and, if required under the City's Charter or Administrative Code, the Mayor, and the Board of Supervisors.

27.4. Status; Authority. SFBGS represents and warrants as follows, as of the date hereof and as of the Commencement Date. SFBGS is a nonprofit corporation duly organized and validly existing under the Laws of the State of California. SFBGS has all requisite power and authority to own its property and conduct its business as presently conducted. SFBGS has made all filings and is in good standing in the State of California. SFBGS 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. The execution and delivery of this Lease and the agreements contemplated hereby by SFBGS have been duly and validly authorized by all necessary action. This Lease will be a legal, valid and binding obligation of SFBGS, enforceable against SFBGS in accordance with its terms.

27.5. Joint and Several Obligations. The word "Lessee" as used herein shall include the plural as well as the singular. If there is more than one Lessee, the obligations and liabilities under this Lease imposed on the Lessees shall be joint and several.

27.6. Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and 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. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of City is required to be obtained by SFBGS hereunder, City may give or withhold such consent in its sole and absolute discretion. All such consents may be made by the General Manager acting alone, unless stated to the contrary herein.

27.7. Successors and Assigns. Subject to the provisions of **Article 17** hereof relating to Assignment and Subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of City and SFBGS and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any sale, assignment or transfer by City named herein (or by any subsequent landlord) of its interest in the Premises as owner or lessee, including any transfer by operation of Law, City (or any subsequent landlord) shall be relieved from all subsequent obligations and liabilities arising under this Lease subsequent to such sale, assignment or transfer.

27.8. Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with

the lease contemplated herein except as identified in the Basic Lease Information, whose commission, if any is due, shall be paid pursuant to a separate written agreement between such broker and the party through which such broker contracted. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

27.9. Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the fullest extent permitted by Law.

27.10. Governing Law. This Lease shall be subject to, and construed and enforced in accordance with, the Laws of the State of California and the City's Charter and Administrative Code.

27.11. Entire Agreement. This instrument (including the exhibits hereto, which are made a part of this Lease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements with respect to the subject matter herein. The Parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Lease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease. SFBGS hereby acknowledges that neither City nor City's Agents have made any representations or warranties with respect to the Premises or this Lease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by SFBGS by implication or otherwise unless expressly set forth herein.

27.12. Attorneys' Fees. In the event that either City or SFBGS fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, 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 in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of 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 Office of the City Attorney.

27.13. Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

27.14. Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

27.15. Survival of Indemnities. Termination of this Lease shall not affect the right of either party to enforce any and all indemnities, waivers and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. SFBGS specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, SFBGS has an immediate

and independent obligation to defend City and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to SFBGS by City and continues at all times thereafter.

27.16. Relationship of Parties. City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in SFBGS's business, or joint venturer or member in any joint enterprise with SFBGS. Neither party shall act as the agent of the other party in any respect hereunder, and neither party shall have any authority to commit or bind the other party without such party's consent as provided herein. This Lease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Lease by City does not constitute authorization or approval by City of any activity conducted by SFBGS on, in or relating to the Premises.

27.17. Transfer by City. If City sells or otherwise transfers the Premises, City shall be released from its obligations hereunder arising on or after the date of such sale or transfer and SFBGS shall look solely to the successor-in-interest to City. Upon a sale of the Premises by City, SFBGS shall attorn to the purchaser or transferee, such attornment to be effective and self-operative without the execution of any further instruments on the part of the parties to this Lease. This Lease shall not be deemed to constitute any commitment by City, or create any priority or right in favor of SFBGS, with regard to any future sale or other disposition of the Premises, or any portion thereof.

27.18. Recording. SFBGS agrees that it shall not record this Lease in the Official Records.

27.19. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other Agent of City shall be personally liable to SFBGS, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to SFBGS, its successors and assigns, or for any obligation of City under this Lease or otherwise.

27.20. Wages and Working Conditions. With respect to the construction of any Improvements or Alterations, any employee performing services for SFBGS shall be paid not less than the highest prevailing rate of wages, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in the City and County of San Francisco. SFBGS shall require any contractor to provide, and shall deliver to City every calendar month during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any Improvements or Alterations on the Premises.

27.21. Prevailing Wages for Theatrical Workers. Pursuant to San Francisco Administrative Code Section 21.25-3, unless excepted, Contracts, Leases, Franchises, Permits, and Agreements awarded, let, issued or granted by the City and County of San Francisco for the use of property owned by the City and County of San Francisco shall require any Employee engaged in theatrical or technical services related to the presentation of a Show to be paid not less than the Prevailing Rate of Wages. Employees engaged in theatrical and technical services include, without limitation, those engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. Capitalized terms in this Section that are not defined in this Lease shall have the meanings provided in Administrative Code Section 21.25-3. SFBGS agrees to comply with and be fully bound by, and to require its Subcontractors to comply with and be fully bound by, the provisions of Administrative Code Section 21.25-3, including, without limitation, the payment of any penalties for noncompliance

and other remedies available to the City. The provisions of Administrative Code Section 21.25-3 are hereby incorporated by reference and made a part of this Lease. SFBGS shall cooperate fully with the Labor Standards Enforcement Officer and any other City official or employee, or any of their respective agents, in the administration and enforcement of the requirements of Administrative Code Section 21.25-3, including, without limitation, any investigation of noncompliance by SFBGS or its Subcontractors. SFBGS agrees that the City may inspect and/or audit any workplace or job site involved in or related to the performance of this Lease, including, without limitation, interviewing SFBGS's and any Subcontractor's employees and having immediate access to employee time sheets, payroll records, and paychecks for inspection. SFBGS may obtain a copy of the current Prevailing Rate of Wages from City by contacting its Office of Labor Standards Enforcement. SFBGS acknowledges that the City's Board of Supervisors may amend such Prevailing Rate of Wages and agrees that SFBGS and any Subcontractors shall be bound by and shall fully comply with any such amendments by the Board of Supervisors.

27.22. Intellectual Property; Music Broadcasting Rights. SFBGS shall be solely responsible for obtaining any necessary clearances or permissions for the use of intellectual property on the Premises, including, but not limited to musical or other performance rights. (Note to SFBGS: To obtain the appropriate music performance license, you may contact the BMI Licensing Executive toll free at 1-877-264-2137 Monday – Friday, 9-5 p.m. (Central Time) and the American Society of Composers, Authors and Publishers ("ASCAP") at 1-800-505-4052 Monday – Friday, 9-5 p.m. (Eastern Time).)

27.23. Supervision of Minors.

(a) Records Request. If any person applies for employment or for a volunteer position with SFBGS, or any sublessee or subcontractor, in which such applicant would have supervisory or disciplinary power over a minor or any person under such applicant's care, then SFBGS, and any sublessee or subcontractors providing services at the Premises, shall request from the California Department of Justice records of all convictions or any arrest pending adjudication of such applicant involving the offenses listed in Welfare and Institution Code Section 15660(a), in accordance with the procedures established in California Penal Code Section 11105.3.

(b) Restriction on Hires for Recreational Sites. If SFBGS, or any sublessee or subcontractor, is providing services under this Lease at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site, SFBGS shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position to provide supervisory or disciplinary power over a minor or any person under his or her care if that person has been convicted of any offense listed in Welfare and Institution Code Section 15660(a).

(c) Notice Required for Sites Other Than Recreational Sites. If SFBGS, or any of its sublessees or subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code Section 11105.3(c), then SFBGS shall comply, and cause its sublessees and subcontractors to comply, with Penal Code Section 11105.3(c) and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. SFBGS shall provide, or cause its sublessees or subcontractors to provide, City with a copy of any such notice at the same time that it provides notice to any parent or guardian, to the extent permitted by law.

(d) General Requirements. SFBGS shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this Section of

the Lease as a condition of its contract with the subcontractor. SFBGS acknowledges and agrees that failure by SFBGS or any of its subcontractors to comply with any provision of this Section of this Lease shall constitute an Event of Default.. SFBGS further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Lease, partially or in its entirety, to recover from SFBGS any amounts paid under this Lease, and to withhold any future payments to SFBGS. The remedies provided in this Section shall not limit any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

27.24. Employee Signature Authorization Ordinance. City has enacted an ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50 (the "Ordinance"), which may apply to employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees. The Parties do not intend that this Lease constitutes a hotel or restaurant project. To the extent that a hotel or restaurant project is requested by SFBGS and approved in writing by City, the terms of the Ordinance will be expressly incorporated herein by reference, and, to the extent SFBGS or its successors or assigns employ more than fifty (50) employees in the Premises in connection with such request and approval, SFBGS hereby agrees as a material condition of this Lease to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent SFBGS's restaurant or hotel employees, if and as required by the Ordinance, and to otherwise fully comply with the requirements of the Ordinance.

27.25. Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, SFBGS 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, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with SFBGS, in any of SFBGS'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 SFBGS.

(b) Subleases and Other Subcontracts. SFBGS shall include in all Subleases and other subcontracts for the performance of SFBGS's obligations under this Lease by third parties on SFBGS's behalf a non-discrimination clause applicable to such Sublessee or other subcontractor in substantially the form of subsection (a) above. In addition, SFBGS 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 sublessees and other subcontractors to comply with such provisions. SFBGS's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits. SFBGS does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or 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, as well as any benefits other than the benefits specified above, 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, SFBGS shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (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. SFBGS 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, SFBGS 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 SFBGS and/or deducted from any payments due SFBGS.

27.26. No Relocation Assistance; Waiver of Claims. SFBGS acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and SFBGS fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action (including, without limitation, consequential and incidental damages) against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any Laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*), except as otherwise specifically provided in this Lease with respect to a Taking.

27.27. 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. SFBGS acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

27.28. Conflicts of Interest. Through its execution of this Lease, SFBGS acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq*. and Section 1090 *et seq*. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of such provisions, and agrees that if SFBGS becomes aware of any such fact during the term of this Lease SFBGS shall immediately notify City.

27.29. Tropical Hardwood and Virgin Redwood Ban. SFBGS shall not permit the use of any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in or on the Premises or otherwise in the performance of this Lease. 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. In the event SFBGS fails to comply in good faith with any of the provisions of Section 12I of the San Francisco Administrative Code, SFBGS shall be liable for

liquidated damages for each violation in any amount equal to SFBGS's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. SFBGS acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to SFBGS from any contract with the City and County of San Francisco.

27.30. Tobacco Product Advertising Prohibition. SFBGS 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 the property which is the subject of this Lease. This 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 prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

27.31. First Source Hiring Ordinance. The provisions of San Francisco Administrative Code Chapter 83, the First Source Hiring Program, are incorporated in this Section by reference, and are made a material part of this Lease as though fully set forth herein. As an essential term of, and consideration for, this Lease, unless exempted by the City's Office of Economic and Workforce Development, SFBGS shall enter into a First Source Hiring Agreement with the City, on or before the effective date of the Lease. SFBGS shall keep, and provide to the City, accurate records demonstrating its compliance with the First Source Hiring Program. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the Office of Economic and Workforce Development.

27.32. 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.

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

27.34. Vending Machine/Non-alcoholic Beverage Contract. SFBGS hereby agrees to abide by any and all provisions of any contract entered into by City for the purpose of the sales of non-alcoholic beverages at City-owned facilities.

27.35. No Light, Air or View Easement. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to the Premises shall in no way affect this Lease or impose any liability on City as landlord under this Lease.

27.36. Parties' Inability to Perform. If either Party is unable to perform or is delayed in performing any of its obligations under this Lease, by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, protests, riots, demonstrations, inability to obtain utilities or materials or by any other reason beyond such Party's reasonable control, no such inability or delay shall constitute an eviction or breach under this Lease, or impose any

liability upon such Party or its Agents by reason of inconvenience, annoyance, interruption, injury or loss to or interference with the other Party's business or, in the case of SFBGS, SFBGS' use and occupancy or quiet enjoyment of the Premises or any loss or damage occasioned thereby.

27.37. Notification of Limitations on Contributions. Through its execution of this Lease, SFBGS acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. SFBGS acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. SFBGS further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of SFBGS's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in SFBGS; any subcontractor listed in the contract; and any committee that is sponsored or controlled by SFBGS. Additionally, SFBGS acknowledges that SFBGS must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. SFBGS further agrees to provide to City the name of the each person, entity or committee described above.

27.38. Public Transit Information. SFBGS shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of SFBGS employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at SFBGS's sole expense.

27.39. Drug-Free Workplace. SFBGS acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. SFBGS agrees that any violation of this prohibition by SFBGS, its Agents or assigns shall be deemed a material breach of this Lease.

27.40. Preservative-Treated Wood Containing Arsenic. As of July 1, 2003, SFBGS 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 under Section 1304 of the Environment 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, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. SFBGS may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude SFBGS 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.

27.41. Resource Efficiency. SFBGS acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-

efficient buildings and resource-efficient pilot projects. SFBGS hereby agrees that it shall comply with all applicable provisions of such code sections.

27.42. Food Service Waste Reduction Requirements. SFBGS agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth. This provision is a material term of this Lease. By entering into this Lease, SFBGS agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, SFBGS agrees that the sum of $100 liquidated damages for the first breach, $200 liquidated damages for the second breach in the same year, and $500 liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of SFBGS's failure to comply with this provision.

27.43. No Smoking in City Parks. SFBGS agrees to comply with Section 1009.81 of the San Francisco Health Code, which provides: "Smoking is prohibited on any unenclosed area of property in the City and County of San Francisco that is open to the public and under the jurisdiction of the Recreation and Park Commission or any other City department if the property is a park, square, garden, sport or playing field, pier, or other property used for recreational purposes, or a farmers' market."

27.44. Prohibition of the Sale of Lottery Tickets. The selling of any lottery tickets on the Premises is expressly prohibited.

27.45. Graffiti Removal. 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 the 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 County and its residents, and to prevent the further spread of graffiti. City shall remove all graffiti from the Premises within forty eight (48) hours of the earlier of SFBGS's (a) discovery and notification of the graffiti to City or (b) receipt of notification of the graffiti from the Department of Public Works. 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.). Any failure of Lessee to comply with this Section of this Lease shall constitute an Event of Default of this Lease, subject to **Section 18.1** above.

28. QUALITY OF SERVICES AND PRODUCTS OFFERED

SFBGS hereby agrees that any food and refreshments offered for sale hereunder, if any, shall be of good quality and that the service shall be prompt, clean, courteous, and efficient. Department shall have the right to raise reasonable objections to the quality of the food, beverages, and service(s) provided and SFBGS shall have the obligation to address those objections by modifying the causes of those objections until corrected to the satisfaction of the Department.

29. PARTICIPATION IN CITY CUSTOMER SATISFACTION PROGRAM

SFBGS hereby agrees to participate in any customer satisfaction program developed by the City, provided that the participation requirements of the Customer Satisfaction Program shall be reasonable.

30. SIGNS AND ADVERTISING

SFBGS hereby agrees not to erect or maintain, nor permit to be erected or maintained, upon any part of the Premises, any signs without obtaining the Garden Director's written consent in advance.

31. SUSTAINABLE FOODS

Sustainable foods are those which, through their production, purchase, and consumption, enhance the health of the environment, producers and consumers through one or more of these methods: growing, processing and distributing locally; using low or no synthetic agricultural chemicals; fairly trading with developing countries; meeting animal welfare standards; processing minimally; no genetic modification; no unnecessary antibiotics; and no added growth hormones.

SFBGS shall use commercially reasonable efforts to incorporate sustainable food concepts into everyday operations of any food related business on the Premises. City encourages SFBGS to source sustainable foods by buying certified and/or locally produced food products. Acceptable sustainability certifications are limited to organic certification under the National Organic Standards Act ("USDA Organic), Fair Trade certification, Protected Harvest certification, Food Alliance certification, Rainforest Alliance certification, Certified Humanely Raised and Handled certification, American Humane certification, Marine Stewardship Council certification, and Salmon-Safe certification. Sustainability-related product claims that are acceptable under this clause include "grass-fed" claims, "not treated with artificial growth hormones (RBGH)" claims," produced without the nontherapeutic use of antibiotics" claims, and "raised without added hormones/no hormones added" claims.

Locally produced food products are produced within 200 miles of San Francisco including the following counties in the North Coast, Central Coast, Sacramento and San Joaquin Valleys: Alameda, Amador, Butte, Calaveras, Colusa, Contra Costa, El Dorado, Fresno, Glenn, Kern, Kings, Lake, Madera, Marin, Mariposa, Mendocino, Merced, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sierra, Solano, Sonoma, Stanislaus, Sutter, Tehama, Tulare, Tuolumne, Yolo, and Yuba counties.

SFBGS shall also provide an annual report on each anniversary date of this Lease outlining how SFBGS incorporated these sustainable food concepts into everyday operations of any food and beverage concession and how SFBGS informed customers and the youth employed by SFBGS, if any, regarding sustainable foods. This report shall include the percentage of total sales that were products certified as sustainably produced.

[No further text this page.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LESSEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL AN ORDINANCE OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY, WHICH ORDINANCE SHALL THEN BE DULY APPROVED BY THE CITY'S MAYOR. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ENACTMENT OF SUCH AN ORDINANCE AND THE APPROVAL THEREOF BY THE MAYOR, AND THIS LEASE SHALL BE NULL AND VOID UNLESS CITY'S MAYOR AND THE 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 ORDINANCE WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

City and SFBGS have executed this Lease as of the date first written above.

SFBGS:
SAN FRANCISCO BOTANICAL GARDEN SOCIETY
AT STRYBING ARBORETUM,
a California nonprofit public benefit corporation

By: _____
Executive Director

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By:_____
PHILIP A. GINSBURG
General Manager
Recreation and Park Department

APPROVED BY
RECREATION AND PARK COMMISSION
PURSUANT TO RESOLUTION NO. _____ DATED:_____

_____
Margaret McArthur, Commission Liaison

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Anita L. Wood, Deputy City Attorney

EXHIBIT A- DEPICTION OF BOTANICAL GARDENS

City and County of San Francisco

Beginning at a point on the northeast corner of Nineteenth Avenue and Lincoln Way: thence running easterly along the south boundary of Golden Gate Park to the westerly line of the Ninth Avenue entrance to the Park; thence running northerly along the new westerly line of the new Ninth Avenue drive to the intersection of the said westerly line of the new Ninth Avenue drive with the southerly line of Middle Drive; thence westerly along the southerly line of the South Drive [renamed Martin Luther King, Jr. Drive] to the easterly line of the Cross-Over Drive; thence southerly and along the easterly line of Cross-Over Drive to the point of beginning.

EXHIBIT B- DEPICTION OF PREMISES

EXHIBIT B-1 – OFFICE AND LIBRARY SPACE LOCATIONS

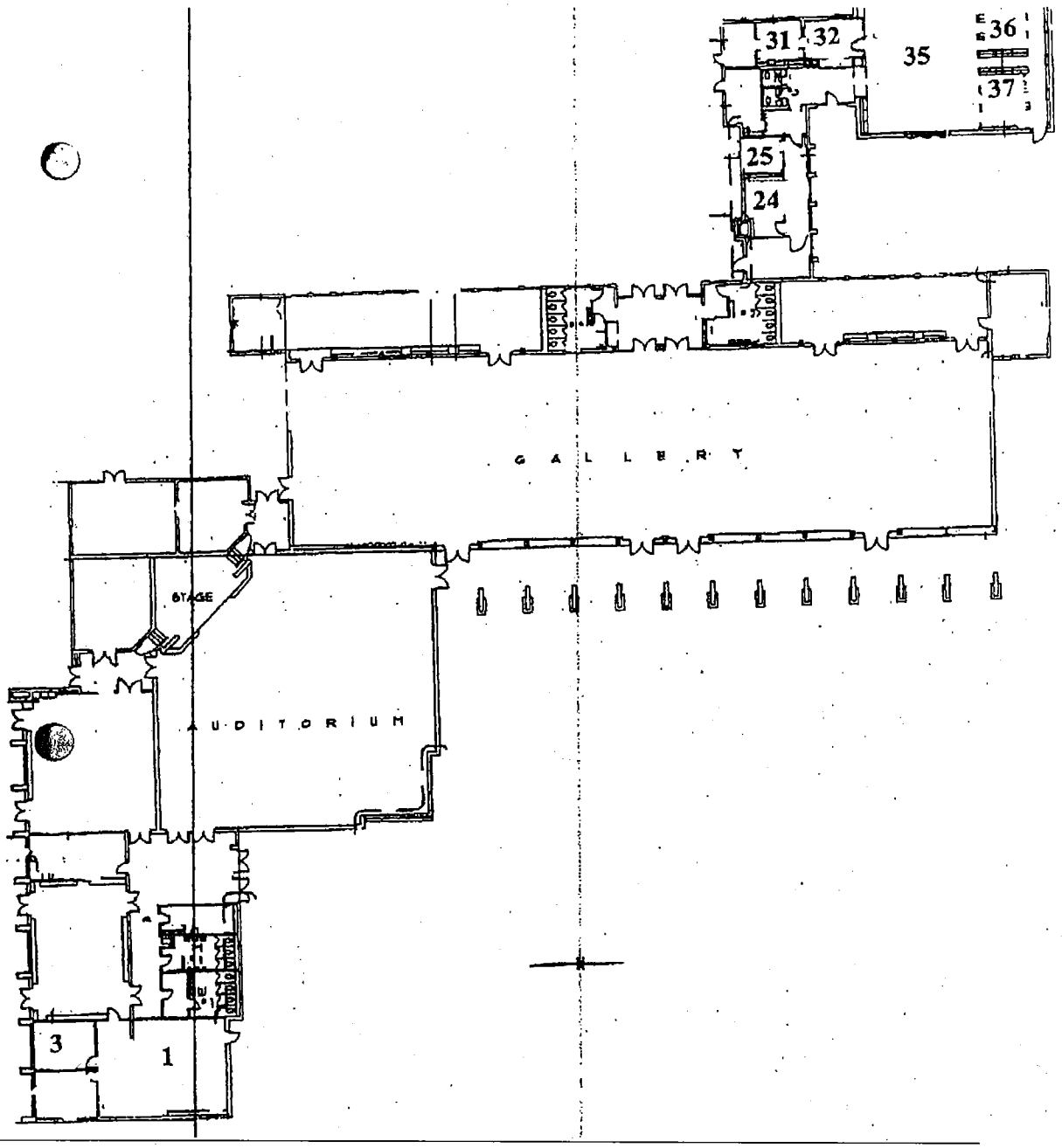


EXHIBIT B-2 – HORTICULTURAL PREMISES

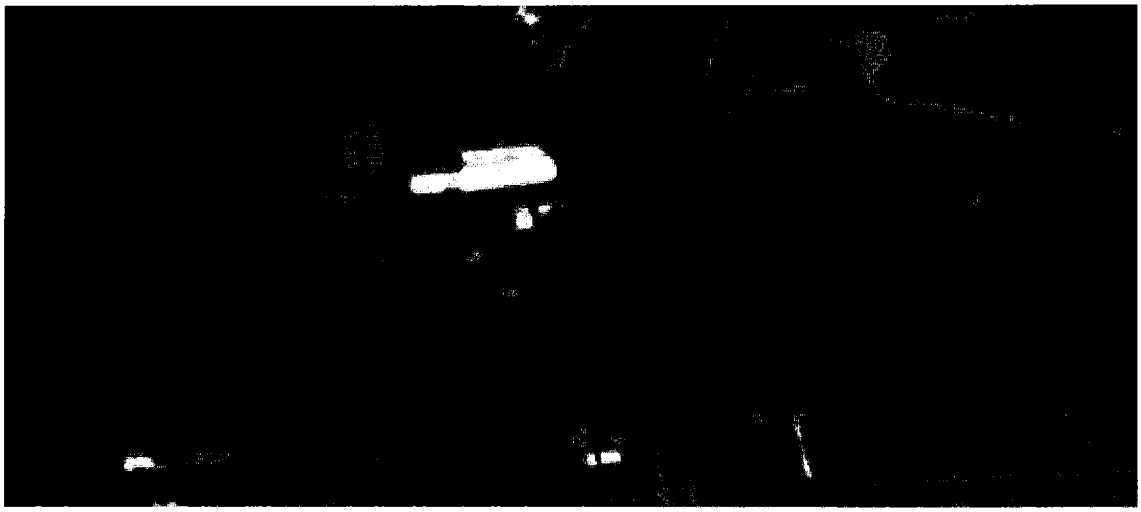
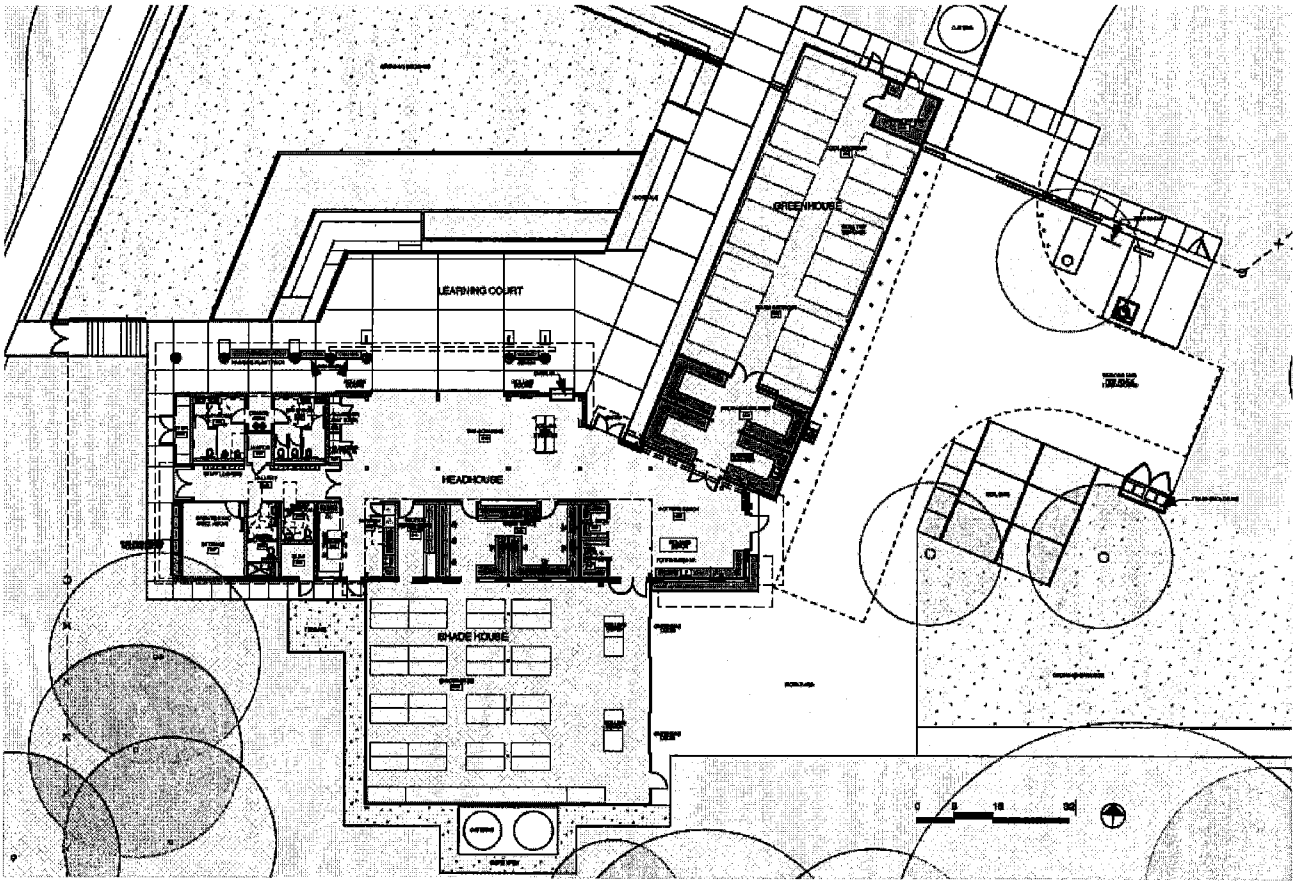


EXHIBIT B-3 – NURSERY PREMISES



NURSERY: CENTER FOR SUSTAINABLE GARDENING
SAN FRANCISCO BOTANICAL GARDEN AT STRYBING ARBORETUM

SITE PLAN
03/06/2012

EXHIBIT C

FORM OF VOLUNTEER RELEASE

PROJECT SITE: _____
DATE: _____
GROUP NAME: _____

HOLD HARMLESS AGREEMENT

In consideration for being granted permission to work as a volunteer, I, the undersigned, shall protect, hold free and harmless, defend and indemnify the City and County of San Francisco including its agents from any and all claims of any kind and from all liability, penalties, costs, losses, damages, expenses, claims, or judgements (including attorney's fees) resulting from injury, death, or damage to visitor, third parties, myself or other volunteers, or property of any kind, which injury, death or damage arises out of or is in any way connected to the volunteer work assignment.

Name(Print)_____Signature_____Date_____
Name(Print)_____Signature_____Date_____
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Name(Print)_____Signature_____Date_____
Name(Print)_____Signature_____Date_____

EXHIBIT D

RULES AND REGULATIONS

Please see following link for San Francisco Recreation and Park Department Park Code:

http://library.municode.com/index.aspx?clientId=14138&stateId=5&stateName=California

EXHIBIT E

ALLOCATION AND DISTRIBUTION OF ADMISSIONS RECEIPTS

Fees paid for admission to the Botanical Garden pursuant to **Section 6.11** of the Lease ("Admission Receipts") shall be solely for the benefit of the Botanical Garden and shall be allocated and distributed pursuant to the terms of **Article 7** of the Lease and this **Exhibit E**. It is understood and agreed by the Parties that the charging of admissions to the Botanical Garden, the rate of such admissions and the terms of such allocation are subject to amendment by action of City's Board of Supervisors, in its sole discretion at any time, and in the event of such an amendment **Article 7** of the Lease and this **Exhibit E** shall be revised to the extent required to reflect such amendment.

1. Allocation. Admission Receipts shall be allocated and paid out on a monthly basis as described below:

(a) Admission Receipts shall first be used to reimburse SFBGS for its approved "Authorized Collection Expenses" during such period. As used in this **Exhibit E,** "Authorized Collection Expenses" means all costs and expenses incurred by SFBGS in connection with its collection of Admission Receipts, including, without limitation, personnel costs, rent or related fees for equipment, telephone and data charges, office supplies, training, visitor maps and publications, and advertising and publicity costs in connection with the collection of Admissions Receipts. "Authorized Collection Expenses" shall not include capital expenses, penalties, late charges or interest on any late payments, or taxes or other amounts withheld from wages or salaries which have not actually been paid by SFBGS during the month for which reimbursement is being made.

(b) Secondly, following the payment of the amounts specified in Paragraph 1(a) above, the Admissions Receipts shall be paid to the Department until the Department has received an aggregate amount of $250,000 per Fiscal Year pursuant to this Paragraph 1(b) (such amount subject to adjustment as provided in Paragraph 1(f) below) (the "Annual RPD Allocation Cap"); provided, however, that before the allocation is used for any other Botanical Garden purpose, the Department shall use such allocation to fund three (3) gardeners who are dedicated solely to the care and maintenance of the Botanical Garden.

(c) Thirdly, following the payment of the amounts specified in Paragraphs 1(a) and 1(b) above, the Admissions Receipts shall be paid to SFBGS until the remaining approved direct out-of-pocket expenses incurred by SFBGS in the first-year of the Admissions program ending June 30, 2011, have been reimbursed. The Parties agree that this amount, as of June 30, 2011, was $86,620, of which $11,000 was reimbursed by City by check dated August 23, 2012.

(d) Fourthly, following the payment of the amounts specified in Paragraphs 1(a), 1(b) and 1(c) above, the Admission Receipts shall be paid to SFBGS until SFBGS has received an aggregate of $250,000 per Fiscal Year pursuant to this Paragraph 1(d) (such amount subject to adjustment as provided in Paragraph 1(f) below) (the "Annual SFBGS Allocation Cap"). SFBGS shall expend Admissions Receipts received pursuant to this Paragraph 1(d) for its "Education and Community Outreach Expenditures." As used in this Exhibit E, "Education and Community Outreach Expenditures" means costs and expenses incurred by SFBGS for education, community outreach, public programs and other initiatives agreed upon by SFBGS and the Garden Director and approved in writing by the Garden Director. "Education and Community Outreach Expenditures" may include, without limitation, costs and expenses for

implementation of free days for the general public, organization and management of volunteer and docent programs, organization and implementation of programs for seniors and school groups, administration of a community education program providing related classes and activities for minimal or no cost, and operation of the Library and Bookstore, including ordering and stocking books. Then,

(e) Finally, following the payment of the amounts specified in Paragraphs 1(a), 1(b), 1(c) and 1(d) above, the balance of Admission Receipts shall be paid into the "Botanical Garden Improvement Fund," which will be maintained by City without charge and shall not be commingled with other City funds. Any interest accruing on the funds in the Botanical Garden Improvement Fund shall be added to the Botanical Garden Improvement Fund. Expenditures from the Botanical Garden Improvement Fund shall be used by City and SFBGS only for the payment of costs and expenses for maintenance, renovation and improvement of the Botanical Garden and shall not be used for any other purpose unless the Parties otherwise agree in writing. Expenditures from the Botanical Garden Improvement Fund are intended to enhance the Botanical Garden and not to replace traditional sources or levels of City funding. Expenditures from the Botanical Garden Improvement Fund must be agreed upon by the Garden Director and Executive Director and are subject to approval by the General Manager.

(f) The Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap shall each be subject to adjustment every five years beginning with July 1 of the Fiscal Year that is five (5) years after the year of the Commencement Date (e.g., July 1, 2018 if the Commencement Date is in 2013), and on July 1 of every five (5) years thereafter (each adjustment, an "Allocation Adjustment" and each date of adjustment, an "Allocation Adjustment Date"). The Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap shall each be adjusted to the *lesser* of the amount resulting from the following formulas (x) and (y), provided that in no event shall the Annual RPD Allocation Cap or the Annual SFBGS Allocation Cap on or after the Adjustment Date be less than the amount in effect immediately prior to the Adjustment Date:

(x) CPI Formula. The Adjustment Index shall be compared with the Base Index. If the Adjustment Index has increased over the Base Index, then the Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap on and after such Adjustment Date shall each be set by multiplying the then-current Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Base Index.

(y) 3% Per Annum Increase. The Annual RPD Allocation Cap and the Annual SFBGS Allocation Cap shall each be adjusted by applying a three percent (3%) increase in such amount, to be compounded annually as of July 1 for each of the five years preceding the Allocation Adjustment Date.

Notwithstanding the foregoing,

(i) with respect to any Fiscal Year as to which the aggregate amount of Admission Receipts available for distribution pursuant to Paragraphs 1(b) and 1(d) above (after deduction of any amount payable with respect to such Fiscal Year pursuant to Paragraph 1(c)) is $500,000 or less, no Allocation Adjustment will apply with respect to such Fiscal Year, and

(ii) with respect to any Fiscal Year as to which the aggregate amount of Admission Receipts available for distribution pursuant to Paragraphs 1(b) and 1(d) above (after deduction of any amount payable with respect to such Fiscal Year pursuant to

Paragraph 1(c)) exceeds $500,000 but is less than the amount needed to distribute the fully-adjusted Allocation Amount to the Department and SFBGS pursuant to Paragraphs 1(b) and 1(d) above, the Allocation Adjustment shall be reduced pro rata so that the same amount is distributed to each Party under Paragraph 1(b) above and Paragraph 1(d) above.

2. Admission Account. SFBGS shall establish, fund and maintain a bank account for the deposit of Admission Receipts (the "Admission Account") with a depository institution reasonably acceptable to City in accordance with **Section 7.5** of the Lease. SFBGS will use the Admission Account for all Admission Receipts prior to disbursement to City as required under this Lease. Any interest accruing on the funds in the Admission Account shall be added to the Admission Account. Funds from the Admission Account shall not be commingled with other funds. SFBGS shall cause each person who has authority to withdraw or transfer funds from the Admission Account to be bonded or otherwise insured. The Admission Account shall be subject to a mutually-agreed control agreement pursuant to which City will be granted a perfected security interest therein. 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 Admission Account.

3. Distributions.

(a) On or before the thirtieth (30th) day following its receipt of a Monthly Admission Receipts Statement, City shall pay to SFBGS via check the amount of its Authorized Collection Expenses for such month.

(b) Once City has received the amounts specified in Paragraph 1(b) above in any given Fiscal Year, City shall begin to pay to SFBGS the amounts described in Paragraphs 1(c) and 1(d), and to the Botanical Garden Improvement Fund the amounts described in Paragraph 1(e), such payments to be made on a monthly basis and on or before the thirtieth (30th) day following City's receipt of the applicable Monthly Admissions Receipts Statement.

(c) In the event this Lease terminates during any given month, (i) payment of Admission Receipts to City for that portion of the month during which SFBGS was in occupancy of the Premises shall be determined and reported by SFBGS to City within twenty (20) days after SFBGS ceases to collect Admission Receipts on the Premises, and (ii) SFBGS's and City's payment obligations under this **Exhibit E** shall remain in effect.

4. Annual True-Up. In the event that the payments made by SFBGS and City in respect of Admission Receipts and Authorized Collection Expenses during the Fiscal Year described by an Annual Admission Receipts Report have not been properly made in accordance with this **Exhibit E**, City and/or SFBGS, as the case may be, shall make payments to each other, or the Botanical Garden Improvement Fund, as appropriate, so as to properly allocate the Admissions Receipts for such Fiscal Year. Such payments shall be made within thirty (30) days of City's receipt of such Annual Admission Receipts Statement.

MEMORANDUM OF AGREEMENT
(Strybing Arboretum)

THIS MEMORANDUM OF AGREEMENT (this "Agreement") dated to be effective as of March 1, 2002, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, ("City"), acting by and through the San Francisco Recreation and Park Commission (the "Commission"), and the STRYBING ARBORETUM SOCIETY, a California non-profit public benefit corporation ("SAS").

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The City owns the Strybing Arboretum & Botanical Gardens located in Golden Gate Park in San Francisco and any and all improvements located thereon, as such area and improvements may be modified, expanded or revised from time to time (collectively, the "Gardens"). The City also owns any and all intangible personal property used in the ownership, use or operation of the Gardens, including without limitation the right to use and control any trade name, trademark or proprietary plant germplasm used or developed in connection with the Gardens, except as otherwise provided in Section A.6 below with respect to certain intellectual property rights which SAS may now or hereafter own exclusively. The Commission has jurisdiction over the Gardens and is responsible, through the City's Recreation and Park Department (the "Department"), for its operation and management. The Gardens is a 55-acre living museum of more than 8,000 plant varieties, and is a treasure for the residents of San Francisco and the Bay Area as well as for visitors from around the world. For 60 years, the distinctive beauty and extraordinary diversity of collections found at the Gardens have attracted international attention, including being named as one of the 100 best public or private gardens in North America.

B. SAS is a non-profit 501(c)(3) corporation devoted to support, promote, and enhance the use, appreciation and stature of the Gardens. SAS has provided invaluable and essential support and assistance to the City in the management and operation of the Gardens for the past 46 years, including the construction and donation of the Helen Crocker Russell Library Building (the "Library"), management and operation of the Library and a bookstore, funding a special area plan for the Gardens as part of the Golden Gate Park Master Plan, ongoing educational and visitors programs, visitor publications, and fundraising to support the Gardens. In addition, as a response to a lack of City funding, SAS has employed a plant collections manager (the "SAS Collections Manager") to provide essential services to the Gardens. The Department and Commission recognize and applaud SAS' invaluable support of the Gardens and wish to encourage and promote the on-going beneficial relationship between the Gardens and SAS.

C. The Department, Commission and SAS recognize that San Francisco's unique botanical gardens inspire visitors with the extraordinary diversity of rare and unusual plants that can be grown in coastal California. Through its programs and displays the Gardens celebrate the bond between people and plants, and instill a deeper understanding of the necessity to conserve Earth's biological diversity. Consistent therewith, the mission of the Gardens is to create, sustain and interpret a distinct, documented collection of Mediterranean, mild temperate and tropical cloud-forest plants displayed in designed gardens and habitats, and to provide a place of exceptional beauty and natural sanctuary. The mission of SAS is to create a community to actively support the Gardens with fundraising, promotion and advocacy, and to provide outstanding botanical, horticultural and environmental education opportunities for people of all ages.

D. The Department and SAS recognize the need for increased collaboration and support to meet the challenges and opportunities of creating world-class botanical gardens for the 21st century. The parties desire to build upon their long-standing successful relationship, and enter into this Agreement as a means to provide a cooperative management and operations structure for the Gardens in order to realize their shared goal of creating one of the world's outstanding public botanical gardens, representing San Francisco's horticultural heritage as well as diverse collections from around the world, and to evidence their commitment to increase levels of private and public financial support and resources to support such goal. Leadership for the Gardens will be enhanced by providing (i) a clear management structure in which both the Department and SAS participate, and (ii) a means of attracting greater financial support in order to implement the special area plan for the Gardens.

E. In connection with SAS' ongoing relationship with the Gardens, SAS will lease certain office space in the San Francisco County Fair Building (the "Building") for administrative purposes. SAS also desires to lease and continue to operate the Helen Crocker Russell Library, to access and utilize horticultural space in the Gardens (as it may be modified, expanded or revised from time to time) and in the main greenhouse ("Greenhouse"), lath house and container growing ground, and to utilize space in the Building for educational seminars, receptions, lectures and other special events in accordance with the terms and conditions of the Lease (as defined in Section C.1, below) and the City's standard permitting procedures. Such areas to be leased by SAS and located in the Gardens (including space in the Building, Library, bookstore, Greenhouse and horticultural areas of the Gardens) are more particularly defined in the Lease as the "Premises". Any and all references in this Agreement to "Premises" shall have the meaning ascribed thereto in the Lease, as the same may be amended or modified from time to time.

F. The Department is willing to agree to such Lease and the use by SAS of the Premises and has determined that such agreements are in the public interest by enabling SAS to perform services in furtherance of the public purposes of the Gardens and facilitating SAS' efforts to raise private funds to help augment City funding for the Gardens.

G. The Department and SAS desire to set forth their understanding of the cooper management and operations structure of the Gardens, the essential terms and conditions relating to SAS' use and lease of City owned buildings, and to express their mutual support for the endeavors described herein.

ACCORDINGLY, the Department and SAS agree and express their intent to act and cooperate as follows:

A. MANAGEMENT STRUCTURE

1. Term of Agreement. This Agreement shall become effective upon full execution and delivery hereof and approval of this Agreement by the City in accordance with applicable Laws (as defined in Section G.13. below) (the "Effective Date") and shall expire as of the earlier of two (2) years after the Effective Date, or such earlier date as of which this Agreement terminates in accordance with its terms (the "Initial Expiration Date"). The period from the Effective Date until the Initial Expiration Date shall be referred to herein as the "Term." In the event this Agreement is extended, the Term shall include the Extension Term, subject however to any termination rights set forth in this Agreement. Provided that no event of default by SAS has occurred under the Lease (defined in Section C.1 below) which remains uncured beyond any applicable cure period, and that such Lease remains in full force and effect, SAS shall have a one-time option ("Extension Option") to extend the term of this Agreement for an additional seven (7) year period (the "Extension Term") commencing on the Initial Expiration Date. SAS may exercise the Extension Option by providing written notice to City of its intent no sooner than 360 days but not less than 180 days prior to the Initial Expiration Date (the "Extension Deadline"), provided that if SAS has not exercised the Extension Option as of the Extension Deadline, the City thereafter shall provide to SAS written notice of the Extension Deadline (the "Reminder Notice"), and SAS shall have an additional ten (10) business day time period from the date it receives such Reminder Notice in which to provide written notice to City as to whether or not SAS elects to exercise the Extension Option. In the event SAS does not provide such written notice to City within said additional ten (10)-business day period, then SAS shall be deemed to have elected not to exercise the Extension Option, and the Extension Option shall be null and void. Notwithstanding anything to the contrary contained herein, the Extension Option shall remain subject however to the right of SAS or the City to terminate the Agreement, in their respective reasonable discretion, effective as of the Initial Expiration Date upon providing not less than 90 days' and not more than 180 days' advance written notice to

the other party prior to the Initial Expiration Date, and provided further however, that the term shall not be extended beyond the date which is nine (9) years after the Effective Date.

2. General.

(a) The Department and SAS shall cooperatively manage the Gardens as provided in this Section 2. The Department, in collaboration with SAS, shall take the primary role in managing the following aspects of the Gardens operations: strategic and master site planning, plant collections development, plant collections documentation, signage, and renovations and maintenance of the Gardens, the Building, the Library, bookstore and ancillary structures pursuant to written standards established by the Department, as may be modified or amended from time to time by the Department in its sole discretion ("Department's Primary Responsibilities"). SAS, in collaboration with the Department, shall take the primary role in managing the following aspects of the Gardens operations: visitor services, garden interpretation, educational programming, community relations, marketing, special events, bookstore management, volunteer program coordination and library operations ("SAS' Primary Responsibilities"). The Department shall coordinate SAS recreation and horticultural job training programs with its own programs. The Department shall remain responsible for managing its own activities related to the Department's Primary Responsibilities, but shall consult with SAS' executive director ("SAS Director") in the management of such activities in the event that the Department's activities may have a material impact on SAS' activities. In addition, SAS shall remain responsible for managing its own activities, including book and plant sales, fundraising, and membership, but shall consult with the City's Arboretum & Botanical Gardens Director (the "SABG Director") in the management of such activities in the event that SAS' activities may have a material impact on the Department's activities.

(b) SAS shall comply with the Americans with Disabilities Act ("ADA"). Specifically, SAS must comply with ADA as if SAS were a public entity. SAS shall not discriminate against persons with disabilities in the provision of services, benefits or activities provided under this Agreement, and further agrees that any violation of this paragraph 2(b) on the part of SAS, its employees, agents or assigns will constitute a material breach of this Agreement.

(c) The Commission and the Department's General Manager (the "General Manager") shall designate the SABG Director and one (1) other person to serve with the SAS Board of Trustees, provided that such

members may not vote and may not be the General Manager or a current Commission member. Both such designees may participate in such of the SAS committees, as may be assigned by the chairperson of the SAS Board of Trustees ("SAS Board Chair").

3. Resolution of Disagreements. The SABG Director will consult with and carefully consider the views of the SAS Director in his or her management and operational decisions relating to the Department's Primary Responsibilities. The SAS Director will consult with and carefully consider the views of the SABG Director in his or her management and operational decisions relating to SAS' Primary Responsibilities. If the SABG Director and the SAS Director are unable to reach agreement on an issue relating to the Department's Primary Responsibilities or SAS' Primary Responsibilities, the Department's Superintendent of Recreation and Parks will consult with the SAS Board Chair, the SAS Director and the SABG Director, and the General Manager will decide the issue. If the SAS Board Chair does not agree with the outcome of such decision, the parties will cooperate with each other to submit the dispute to an independent mediator which is compliant with applicable contracting requirements of the City (to be selected by unanimous consent of the parties, which shall only be withheld on the basis of good faith concerns about the independence, adequacy of expertise, or compliance with City contracting requirements of the proposed mediator, and to be hired and paid for by SAS), who shall have ten (10) business days after the matter is fully submitted to him or her to propose a non-binding settlement of the dispute. Each party agrees to participate in good faith in the mediation and to bear its own costs; provided, however SAS shall pay all other costs of the mediation. If any party refuses, in its sole discretion, to accept the proposed resolution of the mediator, it shall give prompt written notice of such refusal to the other party, and the dispute shall be submitted to the Commission. Final decision making authority on all matters relating to operation and management of the Gardens shall rest with the Commission.

4. SABG Director Vacancy. In the event that there is a vacancy in the position of the SABG Director, the General Manager, in the General Manager's discretion, will establish a search committee to nominate a SABG Director candidate to the General Manager, and the General Manager will appoint at least two members to such search committee. The SAS Board Chair will appoint one additional member of such search committee for every two members appointed by the General Manager. All other Department staff for the Gardens will be appointed through ordinary City procedures. The parties acknowledge and agree that all employment and discharge decisions and procedures shall be subject to all applicable

Laws, including without limitation, any approvals by the Civil Service Commission, if applicable.

5. Plant Collections Manager and Other Employees. Currently, due to the Gardens' funding shortfall, the SAS Collections Manager provides plant collections documentation and associated functions for the Gardens. SAS and the Commission agree that such functions would be better served by a funded City position. The Department and SAS agree to work together to fund a City staff position of plant collections manager for the Gardens. While SAS continues to provide support for plant collections documentation for the Gardens, the SAS Collections Manager will remain an employee of SAS, but will report to and be managed on a daily basis by the SABG Director. The SAS Director will solicit performance evaluation comments relating to the SAS Collections Manager's work plan and performance from the SABG Director on at least an annual basis. The SAS Director will consider such comments in setting an annual collections-management work plan and giving his or her performance evaluation of the SAS Collections Manager. In the event that the parties hereto agree that it is desirable to provide for any additional City personnel related to the enhanced operation and/or maintenance of the Gardens, SAS and the City each agrees to use its reasonable efforts to jointly seek funding for such other positions.

6. Department Intellectual Property and Goodwill. The parties hereto recognize the goodwill associated with the Department, the Strybing Arboretum & Botanical Gardens, and SAS. SAS and the Department agree not to take any action detrimental to such goodwill, and SAS agrees not to take any action which may confuse the public as to the ownership of the Gardens. In effecting this provision, and in order to delineate and protect each party's intellectual property rights, the parties agree as follows:

(a) Trademark/Copyright. SAS agrees not to infringe upon any trademark or copyright now or hereafter owned by the Department. The Department agrees not to infringe upon any trademark or copyright now or hereafter owned by SAS. Any such infringement by either party shall be treated as an Event of Default under this Agreement.

(b) Right of Review. The SABG Director shall have the right to review and approve in advance materials used for merchandising and certain of SAS' publications and membership or general mailings, including without limitation informational and educational brochures, newsletters, solicitations, and fundraising campaign materials, in accordance with the

review standards set forth in Exhibit C-1 attached hereto and incorporated herein by reference. All print and web-based publications by SAS and the Department also shall make clear that the Gardens are owned by the City and cooperatively managed with SAS, through use of approved logos, letterhead, or by other approved means, in accordance with the approved written terminology guide set forth in Exhibit C-2 attached hereto and incorporated herein by reference. The SABG Director may establish guidelines and procedures subject to the standards set forth in Exhibits C-1 and C-2 relating to approval of such materials and shall not unreasonably withhold or delay his or her approval of such materials. If any such material is not commented upon or approved by the SABG Director within three (3) business days after receipt by the SABG Director, or such later time frame as may be noted for such matter on Exhibit C-1 attached hereto, it shall be deemed approved.

(c) Third Party Infringement. Each party hereto shall have the right to take whatever action it deems necessary to protect the intellectual property to which it has exclusive ownership. With regard to any jointly owned intellectual property, the Department shall have the sole right to take any action with regard to such property, provided that after the payment of any and all costs or expenses incurred by the City or the Department in connection with such claim, SAS and the Department shall share equally in the remainder of any such recovery or compensation that may be awarded.

(d) Specified Properties. Exhibit C-3 sets forth properties upon which the Parties have reached agreement. Each party agrees and warrants not to take any action to exercise control over, or in any way undermine the other party's rightful ownership of the properties as set forth in Exhibit C-3.

7. SAS Indemnity. SAS, on behalf of itself and its successors and assigns, shall indemnify, defend and hold harmless ("Indemnify") City including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, the Commission and all of its and their agents, employees, officers and contractors of such party ("Agents,") and their respective heirs, legal representatives, successors and assigns (individually and collectively, the "Indemnified Parties"), and each of them, from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including, without limitation, direct and vicarious liability of every kind (collectively, "Claims"), incurred in connection with or arising in whole or in part from SAS' acts and omissions, all regardless of the active or

passive negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on, the Indemnified Parties. The foregoing indemnity obligation ("Indemnity") shall exclude Claims arising directly from the City's acts and omissions, Claims arising in whole or in part directly from the acts of other non-SAS sponsored persons or entities occurring in the Gardens that were expressly approved in writing by the Department, and Claims to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any Claim. SAS specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to SAS by City and continues at all times thereafter. SAS' obligations under this Section shall survive the termination of this Agreement for Claims arising during the Term.

8. Volunteer Releases. SAS shall obtain a duly authorized written release and waiver in substantially the form attached hereto as Exhibit D, as the same may be amended from time to time by City in its sole discretion, from each volunteer who performs any interpretation, gardening or other work in or about the Gardens, and shall provide copies of all executed releases to the SABG Director.

B. SUPPLEMENTAL FUNDING AND PUBLIC FUNDING

1. Supplemental Funding by SAS. SAS shall use its reasonable efforts to raise private funds for the Gardens for the purposes of (i) providing funds to supplement City appropriations for the Gardens, including, but not limited to, renovation and installation of gardens, maintenance of existing gardens, acquisition of special plant collections, procurement of special equipment and satisfaction of other capital improvement projects (as may be mutually agreed upon through joint planning of SAS and the Department), (ii) providing funds for financial support for City staff positions related to the operation and maintenance of the Gardens, including without limitation the position of SAS Collections Manager, and (iii) otherwise providing funds to enhance City funding for educational programs, other particular programs, ancillary activities, operations and services of the Gardens. Such fundraising is intended to enhance the Gardens and not to replace traditional sources or levels of City funding.

2. Notice to Department of Terms of Gifts. SAS shall not accept any proposed gifts which could impose financial or other obligations or liabilities on the City or the property, programs or activities under the Commission's jurisdiction, including the Gardens, without previously obtaining all required City approvals. SAS shall provide the City with reasonable advance written notice of the terms and conditions of any such gift, and prior to City's acceptance of any such gift, SAS shall obtain the approval of the General Manager, the Commission, and the Board of Supervisors if required. With respect to disclosure of gift and donor information, SAS agrees to comply with all applicable laws, including any applicable provision of Chapter 67 of the San Francisco Administrative Code (the "Sunshine Ordinance").

3. Acceptance of Gifts. The General Manager shall be authorized to accept and expend gifts from SAS in accordance with the Commission's policy on accepting gifts, for Gardens-related purposes throughout the term of this Agreement and to agree to reasonable terms and conditions imposed with respect to such gifts, except where such conditions involve the expenditure of City funds or the incidence of City obligations that are inconsistent with the City Charter.

4. Fiscal and Budgetary Provisions. All the terms hereof shall be subject to the City Charter's fiscal and budgetary provisions.

5. Funding to the Gardens. For so long as SAS leases space in the Building pursuant to the Lease, SAS shall make gifts of funds or assets solely to the Gardens and not to any other botanical garden or park.

6. Public Commitment. The Department shall use its reasonable efforts to increase the level of public funding in order to provide the personnel, supplies and physical infrastructure necessary to meet the maintenance standards established by the Department for the Gardens.

C. LEASE OF SPACE TO SAS

1. Lease. Subject to all necessary governmental approvals and applicable Laws, the Commission and SAS shall enter into a lease substantially in the form attached hereto as Exhibit B (the "Lease"), relating to SAS' use and occupancy of certain Premises (as defined in the Lease) located in the Gardens, including office space in the Building, the Library, bookstore space, and other greenhouse and horticultural space in the Gardens, as the

same may be modified, expanded or revised from time to time, on the terms and conditions set forth in the Lease.

2. Library Collection.

(a) Subject to the terms and condition of the Lease, the parties anticipate that SAS' use and operation of the Helen Crocker Russell Library or portions thereof shall include the display, storage, preservation and protection of that certain collection of books, records, prints, periodicals, photographs, graphics, and other art and archival materials currently located in the Helen Crocker Russell Library, and any data or information related thereto, as the same may be supplemented from time to time (collectively, the "Library Collection") and made available to the public. The parties acknowledge and agree that as of the effective date of this Agreement, (i) the City owns the special collection of architectural, landscape architectural and engineering plans, surveys, specifications and drawings currently stored or located in the Rare Book Room of the Library building, and such materials and documents specifically are excluded from the Library Collection, and (ii) SAS owns the Library Collection. In an effort to preserve and protect the Library Collection, the parties agree to cooperate in good faith to design, install and construct in the future a mutually acceptable improved fire protection system and related improvements for the Helen Crocker Russell Library. Any such improvements shall be deemed to be "Alterations" by SAS, as such term is defined in the Lease, and shall be completed in accordance with plans and specifications acceptable to and approved by City in its sole and absolute discretion and otherwise in accordance with the terms and conditions set forth in the Lease related to tenant Alterations.

(b) Right of First Offer. If at any time during the term of this Agreement SAS intends to offer for sale to third parties or to accept an offer of a third party to purchase any portion or item of the Library Collection which SAS owns having in each instance a value of greater than Five Hundred Dollars ($500.00) per item, SAS shall first give written notice to City of its intention to sell any such portion or item of the Library Collection (the "SAS Sale Notice"). The SAS Sale Notice shall constitute an offer to sell any such portion of the Library Collection to City at the Purchase Price (as defined below) and otherwise in accordance with the terms of the SAS Sale Notice. City shall have thirty (30) days after receipt of the SAS Sale Notice to accept such offer, by delivery of written notice to SAS (the "City Commitment"), subject however to all applicable fiscal provisions of the City's Charter, any applicable Laws, and to the determination of a Purchase Price (as defined below) acceptable to City in its reasonable discretion which has been approved by City in accordance

with applicable Laws. In the event that City fails to provide to SAS the City Commitment within said 30 day time period, City shall be deemed to have rejected the offer evidenced by the SAS Sale Notice.

(c) Closing. In the event that City exercises its right of first offer, the parties shall promptly execute any and all documents deemed reasonably necessary by City to evidence and consummate the sale of the Library Collection. The closing date shall be thirty (30) days after the date of the City's receipt of all final approvals by the City as required under applicable Law; provided, however, that in the event the City fails to receive such final approvals, City shall be entitled to terminate the City Commitment and shall have no further liability or obligation under the City Commitment. The Purchase Price shall be paid in full at closing in cash, or as otherwise agreed between the parties. SAS shall represent and warrant to City that SAS has full legal title to the portion of the Library Collection being transferred, and shall transfer such portion of the Library Collection to City free from any and all liens or encumbrances and otherwise completed in accordance with the terms and condition of any transfer documents entered into by the parties.

(d) Purchase Price. The Purchase Price ("Purchase Price") shall be equal to the fair market value ("FMV") of the portion the Library Collection. For purposes of this Agreement, FMV means the fairest price estimated in terms of money which SAS could obtain if the Library Collection portion were sold in bulk in the open market, allowing a reasonable time to find a purchaser who purchases with knowledge of the uses for which the Library Collection portion in its then condition is adapted and for which it is capable of being used, and taking into account the completeness of any collection within the Library Collection portion and the rarity and condition of any component of the Library Collection portion. The FMV shall be determined as follows: upon delivery of the City Commitment to SAS, the parties shall endeavor to agree on the FMV, and, if they are unable to do so on or before the thirtieth (30th) day after SAS' receipt of the City Commitment, then the parties, or their respective designees or agents, shall each simultaneously exchange with each other a sealed envelope with a written determination of the FMV at 12 p.m. on the ninetieth (90th) day after the expiration of that 30-day period. If both valuations are timely submitted and they differ by less than five percent (5%) of the lower of the two, the average of the two valuations shall be the FMV and shall be final and binding on the Parties. If the two valuations are not timely submitted, or if the two valuations differ by more than five percent (5%) of the lower of the two, the Parties shall select a neutral evaluator, acceptable to the City in its reasonable discretion (including

compliance with any applicable City contracting requirements) (the "Referee") within 20 days thereafter. If the two valuations are not timely submitted, then the Referee shall make a FMV determination of the Library Collection portion within 90 days after being selected as Referee. The parties shall deliver copies of both valuations (to the extent available) to the Referee, and within five (5) business days after the later of the Referee's receipt of such valuation, or if applicable, the Referee's FMV determination, the Referee shall select the valuation which he or she believes most accurately represents the FMV. The selected valuation shall be the FMV and shall be final and binding upon the Parties, subject however to any necessary approvals by the City. The Referee appointed pursuant to this Section shall have not less than 10 years experience evaluating the fair market value of assets comparable to the Library Collection portion. The cost of the Referee shall be borne equally by the Parties.

D. REPRESENTATIONS AND WARRANTIES

1. Representations and Warranties of SAS. SAS covenants and warrants that it is a non-profit public benefit corporation duly organized, validly existing and in good standing in the State of California. SAS covenants and warrants that it has been organized for the express purpose described in Recital B above and is duly maintained as a 501(c)(3) tax-exempt corporation. SAS covenants to provide the City with a copy of any amendments to its articles of incorporation, and to notify City of any changes in its corporate status.

E. DEFAULT, REMEDIES AND TERMINATION

1. Default. Any of the following shall constitute an event of default ("Event of Default") hereunder:

(a) a failure by either party to comply with any covenant, condition or representation made under this Agreement and such failure continues for fifteen (15) business days after the date of written notice by the other party, or if the cure requires more than fifteen (15) business days, then such period of time as is reasonably necessary to cure such failure provided that the party receiving such notice initiates such cure within the fifteen (15) business day period and thereafter diligently prosecutes such cure to completion.

2. Remedies of City. If an Event of Default by SAS occurs under this Agreement, then City shall have the right, in its sole discretion and at its sole election, to:

(a) waive such default,
(b) continue this Agreement, pending an action for damages and any other remedies available to City at law or in equity hereunder, including costs and expenses incurred hereunder, or
(c) terminate this Agreement, in each case by written notice to SAS, effective as of the date set forth in such notice.

3. Remedies of SAS. If an Event of Default by City occurs under this Agreement, then SAS shall have the right, as its sole election, to proceed with one of the following mutually exclusive alternatives with respect to such default(s):

(a) waive such default, or
(b) terminate this Agreement, in each case by written notice to City, effective as of the date set forth in such notice.
Notwithstanding anything herein to the contrary, in no event shall City be liable to SAS for any damages, whether direct, indirect, special, consequential or incidental (including, without limitation, damages for lost revenues) in connection with any provision of this Agreement.

4. Default by SAS Under Lease. In addition to any termination rights set forth elsewhere in this Agreement, the parties acknowledge and agree that if an event of default by SAS occurs under the Lease, which remains uncured beyond any applicable grace period set forth in the Lease, then in such event, City shall have the right, in its sole discretion and at its election, to terminate this Agreement by providing written notice to SAS, effective as of the date set forth in such notice.

5. Effect of Termination. Upon termination of this Agreement in accordance with this Agreement, each of the parties will be discharged from any further obligations and liabilities under this Agreement, except for the obligations and liabilities that expressly survive such termination under the terms of this Agreement.

F. NOTICES

1. Notices. Unless otherwise expressly provided herein, any notice given under this Agreement shall be effective only if in writing and given by delivering the notice in person or by sending it certified mail with a return

receipt requested or by Express Mail or other reputable overnight courier, return receipt requested, with postage prepaid, as follows:

City: Director, Strybing Arboretum & Botanical Gardens
McLaren Lodge, Golden Gate Park
San Francisco, California 94117
Fax: (415) 221-8034

SAS: Executive Director, Strybing Arboretum Society
9th Avenue at Lincoln Way, Golden Gate Park
San Francisco, California 94122
Fax: (415) 661-3539

or to such other address as any party may designate as its new address for such purpose by written notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice in compliance with the foregoing provisions of this Section shall be deemed to have been when received if sent by certified mail, one day after the date it is made if sent by Express Mail or other reputable overnight courier, or upon the date personal delivery is made to the address(es) noted above, as the same may be updated in accordance with this Section F.1 . For convenience of the parties, copies of notices may also be given be facsimile to the telephone number set forth herein or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

G. GENERAL PROVISIONS

1. Entire Agreement. This Agreement, including the exhibits hereto, which are made a part of this Agreement, contains the entire understanding between the parties and supersedes all other oral or written agreements.

2. Amendments. Neither this Agreement nor any term or provisions hereof may be changed or terminated, except by a written instrument signed by the parties hereto.

3. Approvals. All City approvals under the agreements contemplated hereby shall be given by the SABG Director except as otherwise specified herein or in the City Charter.

4. Conflict of Interest. SAS states that it is familiar with provisions of Section 8.105 of the San Francisco Charter and Section 87100 et seq. of

the California Government Code and certifies that it does not know of any facts which constitute a violation of such regulations.

5. Non-discrimination. SAS 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, height, weight, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with SAS, in any of SAS' 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 SAS.

6. Subject to Charter Limitations; City Ordinance Requirements. Any obligations of the City pursuant to any of the agreements contemplated herein are subject to the budget and fiscal provisions of the San Francisco Charter. SAS agrees to comply with each of the provisions set forth in Exhibit A *("Ordinances of the City and County of San Francisco")* and any other applicable City Ordinance, including any applicable provision of the Sunshine Ordinance. All references to "Contractor" in Exhibit A shall be deemed to refer to SAS.

7. Effect. The parties understand and agree that the provisions of Section C above are not intended to be, and shall not become, contractually binding on the parties, nor is this Agreement intended to create any third party beneficiary rights. No legal obligations among the parties shall exist with regard to the subject matter of Section C above, unless and until the parties have negotiated and executed final agreements as contemplated hereby and such agreements have been approved SAS' board of directors and by the City, in accordance with applicable Laws.

8. Cooperation. Subject to the terms and conditions of this Agreement, SAS, and the City, acting by and through the SABG Director and SAS Executive Director, shall use their good faith best efforts to do, or cause to be done, all things reasonably necessary or advisable to carry out the purposes of this Agreement and the uses of the Library, Building and the Gardens contemplated hereby as expeditiously as practicable, subject to all applicable approvals.

9. Independent Relationship of the Parties. The City shall not be liable for any act of SAS and SAS shall not be liable for any act of the City, and nothing herein contained shall be construed as creating the relationship of

employer and employee between the City and SAS or any of their respective agents or employees. SAS shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this Agreement. SAS has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this Agreement. SAS agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this Agreement shall be deemed to render the City a partner in SAS' business, or joint venturer or member in any joint enterprise with SAS. SAS shall Indemnify the City against any Claims relating to the foregoing.

10. No Third Party Beneficiaries. Nothing contained in this Agreement shall create or justify any claim against the City or SAS by any third person with respect to the performance of any duties or other projects being undertaken by the SAS or the City. The provisions of this Agreement are not intended to benefit any third party, and no third party may rely hereon.

11. Compliance with Rules and Regulations. With respect to all of the matters addressed in this Agreement, SAS shall comply with all reasonable rules and regulations established by the Department.

12. 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.

13. Compliance with Laws. The parties hereto shall be and remain in compliance with, and perform all of their respective obligations under this Agreement in accordance with, all present and future laws, ordinance, resolution, regulation, requirement, proclamation, order or decree (collectively, the "Laws") of any municipal, county, state or federal government or other governmental, administrative or regulatory authority

relating to the Gardens or the use, operation or occupancy thereof and with any and all recorded covenants, conditions and restrictions affecting the Gardens or any portion thereof, whether in effect at the time of execution of this Agreement or adopted or recorded at any time thereafter and whether or not within the present contemplation of the parties, including without limitation compliance with the ADA or any other federal, state or local disability rights legislation.

14. Non-Liability of City Officials, Employees and Agents. No elective or appointive board, commission, member, officer, employee or other agent of City shall be liable to SAS, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to SAS, its successors and assigns, or for any obligation of City under this Agreement or otherwise.

The parties hereto have executed this Agreement on the day first mentioned above.

STRYBING ARBORETUM SOCIETY,
a California non-profit public benefit corporation

By _____
Its Chairman, Board of Trustees

By _____
Its Immediate Past Chair, Board of Trustees

CITY AND COUNTY OF SAN FRANCISCO
RECREATION AND PARKS DEPARTMENT

By _____
ELIZABETH GOLDSTEIN
General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Deputy City Attorney

John C. Clifford, MAI

CLIFFORD
ADVISORY
LLC
Real Estate Valuation ■ Arbitration

June 22, 2012

Mr. John Updike
City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Room 400
San Francisco, CA 94102

RE: **Appraisal Report**
Market Rent Valuation
Center for Sustainable Growth
and
County Fair Building
Golden Gate Park
San Francisco, CA

Mr. Updike,

Subsequent to your request and authorization, I have completed an appraisal to estimate the Market Rental Value for the proposed Center for Sustainable Growth and the existing County Fair Building at Golden Gate Park San Francisco, CA. The valuation relies upon the hypothetical assumption:

1) the Center for Sustainable Growth is completed in 2013 at a cost of $14,248,143.

PROPERTY 1 is the proposed Center for Sustainable Gardening project in Golden Gate Park. The project site is under public ownership and the new project will replace the existing San Francisco Botanical Garden at Strybing Arboretum. The CSG project includes the demolition of an existing 4,642 square-foot greenhouse building and associated pavement and ancillary structures, and construction of a new 9,830 square-foot nursery facility. The proposed nursery would consist of a greenhouse, shadehouse, headhouse, support space, outdoor nursery space, and an outdoor Learning Court.

PROPERTY 2 is the existing space at the County Fair Building in Golden Gate Park. The existing space comprises office, library, storage and book store premises and older horticultural space in the nursery area. The total area encompasses approximately 4,349 SF.

In order to appraise the property, I have completed an inspection of the subject properties, and observed trends of land uses in the area. In addition, the appraiser investigated proposed development costs for Property 1 and prevailing rates of return to establish market rent; and investigated recent office and industrial lease transactions for Property 2.

Based upon the analysis of the available information, the Market Rental Value of the Fee Simple Interest in the subject properties, as described herein as of June 15, 2012, is estimated to be:

The market rent for Property 1 is $605,546/Yr

The market rent for Property 2 is $81,289/Yr

The summary narrative report contains 44 pages, plus the addenda. The valuation stated herein is subject to the conditions and assumptions stated on the following pages. The valuation and report is intended to

☐268 Bush Street #2300 ■ San Francisco, California 94104
☐800 Redwood Highway, Suite 616-225 ■ Mill Valley, California 94941
john.clifford@cliffordadvisory.com ■ (415) 269-0370 ■ Fax (415) 891-8833

CLIFFORD
ADVISORY
LLC

Real Estate Valuation ■ Arbitration

SUMMARY
APPRAISAL REPORT

Complete Appraisal

Market Rent
Valuation
for the
Center for Sustainable Growth
And
County Fair Building
At
Golden Gate Park
San Francisco, CA

Prepared For

City and County of San Francisco
Department of Real Estate

June 2012

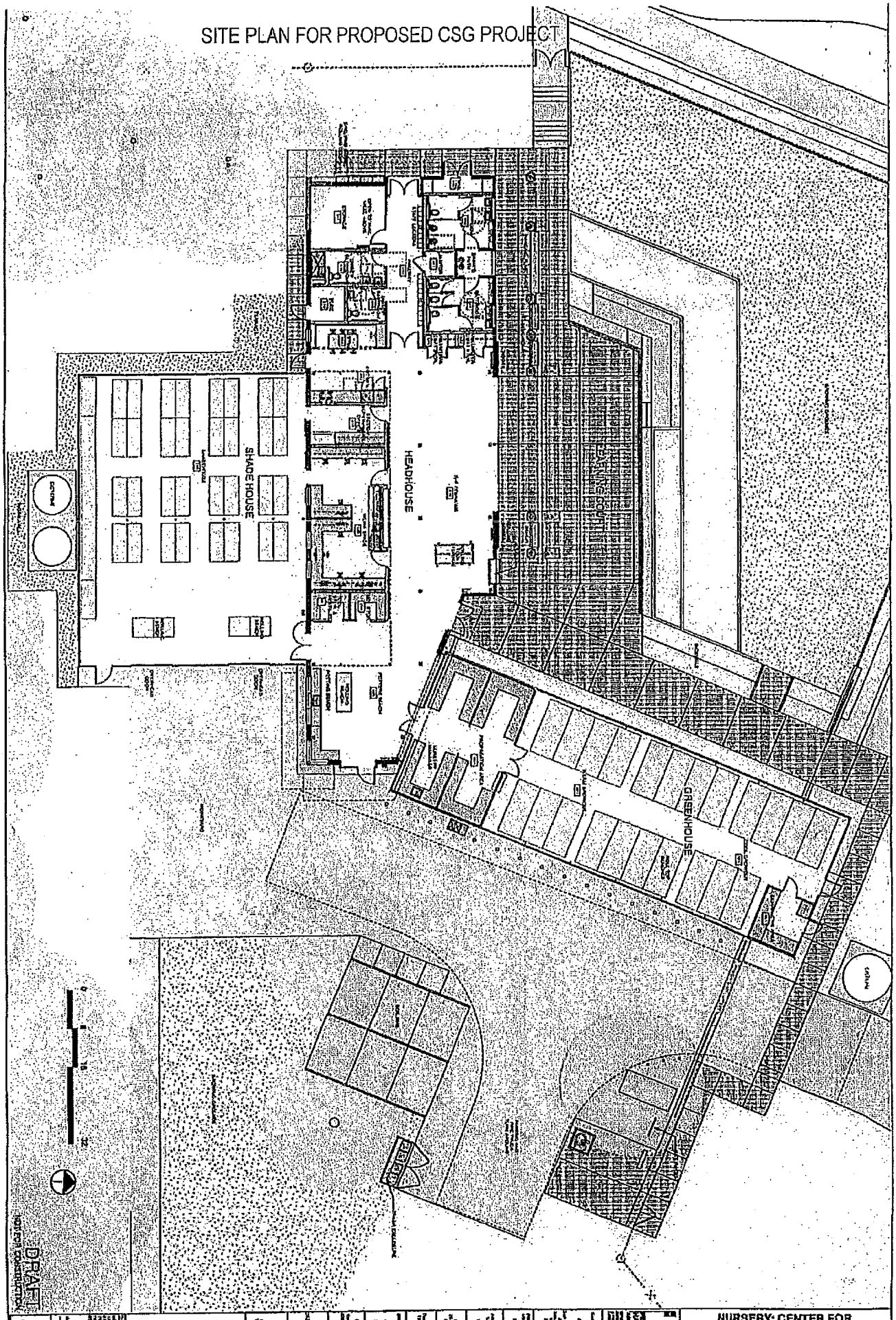
conform with the Uniform Standards of Professional Appraisal Practice (USPAP). Further, the appraisal is subject to the requirements of the Code of Ethics and the Standards of Professional Conduct of the Appraisal Institute.

Respectfully submitted,

CLIFFORD ADVISORY, LLC

John C. Clifford, MAI
SCGREA Certificate No. AG007177

SITE PLAN FOR PROPOSED CSG PROJECT



A1.

FLOOR PLAN

NURSERY: CENTER FOR SUSTAINABLE GARDENING
SAN FRANCISCO BOTANICAL GARDEN AT STRYBING ARBORETUM
9TH AVENUE AT LINCOLN WAY
SAN FRANCISCO, CA 94122

INTRODUCTION

A. Appraisal Problem

The intended use of the appraisal analysis presented herein addresses two properties.

PROPERTY 1 is the proposed Center for Sustainable Gardening project in Golden Gate Park. The project site is under public ownership and the new project will replace the existing San Francisco Botanical Garden at Strybing Arboretum. The intended use of the appraisal is to estimate the market rental value for the proposed improvements subject to completion.

The San Francisco Botanical Garden Society (SFBGS) is a non-profit entity that has actively supported the San Francisco Botanical Garden since 1955, operating in partnership with the San Francisco Recreation and Park Department (RPD). SFBGS has offered to donate to the City and County of San Francisco the design and construction of a new nursery facility, known as The Center for Sustainable Gardening (CSG), as a gift-in-place valued at approximately $14 million.[1] The terms and conditions of the SFBGS gift require that the existing nursery be replaced and become the hub of the Botanical Garden Plant Propagation and Plant Collection Management. All of the uses of the nursery will be to further the mission and purpose of the Botanical Garden. The nursery will be jointly used by RPD and SFBGS to support activities to those conducted in the existing nursery. Before construction of the nursery begins, SFBGS and RPD will enter into a lease agreement that incorporates these understandings.

The CSG project includes the demolition of an existing 4,642 square-foot greenhouse building and associated pavement and ancillary structures, and construction of a new 9,830 square-foot nursery facility that would range in height from 9 to 28 feet. The proposed nursery would consist of a greenhouse, shadehouse, headhouse, support space, outdoor nursery space, and an outdoor Learning Court. In addition, the headhouse portion of the nursery is designed so that it could be expanded by up to approximately 1,320 square feet at a later date, as the programmatic needs and funds allow, for a total nursery size of 11,150 square-feet[2]. The proposed project also includes creating a vehicular and emergency service access route from Martin Luther King Jr. Drive (MLK Drive) to the Nursery by widening and extending an existing 10 foot wide pathway to a 20 foot wide access route. The proposed nursery would be accessed by pedestrians via existing paved pathways from within the Botanical Garden. An rendering of these areas that are also depicted on **Illustrations A and B**. It is understood that in return for SFBGS's gift to the City, it shall receive a rent credit for occupancy of the CSG facility. The intended use of the appraisal is to establish the rent credit based on market rent.

PROPERTY 2 is the existing space at the County Fair Building in Golden Gate Park. The existing space comprises office, library, storage and book store premises and older horticultural space in the nursery area. The total area encompasses approximately 4,349 SF. **Table 2** presents a summary of these areas that are also depicted on **Illustration D**. It is understood that in return for SFBGS's gift to the City, it shall receive a rent credit for occupancy of the County Fair Building facility. The intended use of the appraisal is to establish the rent credit based on market rent.

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[1] The project costs were developed by the project consultants, Oppenheim Lewis (OL). The budgeted 2012 costs total $14,248,143. Mr. Lewis representing OL reported that Oliver & Company, a construction, management and development firm, is preparing a quantitative cost estimate for the project. The cost estimate is to be completed in approximately 2 months. As discussed later, the project costs have a substantial contributory value in the determination of the appraiser's estimate of market rent. The appraiser strongly recommends the market rent determination be re-evaluated subject to the final cost analysis.

[2] The potential expansion area of 1,320 SF is not part of the valuation analysis presented herein.

B. Intended Use and Users of the Appraisal

The subject property comprises a portion of the existing San Francisco Botanical Gardens project in San Francisco's Golden Gate Park. It is understood the Recreation and Parks Department as represented by the City and County of San Francisco Real Estate Division may use the report to establish market rent for the occupancy of the new and existing project facilities.

It is the client's responsibility to read this report and to inform the appraiser of any errors or omissions of which the client is aware prior to utilizing this report or making it available to any third party. No duplication is permitted without the written authorization of John C. Clifford, MAI. Distribution of this report is the sole prerogative of the client and no distribution is allowed without specific direction of the client. Please refer to Item 18 of the Assumptions and Standard Limiting Conditions for further clarification.

C. Report Format

This is a summary appraisal report that intends to comply with the reporting requirements were forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice (USPAP). As such, it presents discussions of the data, reasoning and analyses used in the appraisal process to develop the appraiser's opinion of value. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below.

D. Scope of Appraisal Development and Reporting Process

In preparing this appraisal for Property 1, the appraiser inspected the subject site and the exterior of the improvements; reviewed illustrative documents and new construction budget, interviewed city officials and professional project representatives, gathered and reviewed competitive market area data for competitive costs to produce a substitute facility as appropriate for this Special Purpose – Limited Market property. There exists no truly comparable sale transactions that could be applied in a Sales Comparison Approach, nor as a public cultural asset could competitive market rental transactions, utilization and operating expenses for similar properties be applied in an Income Approach.

In preparing this appraisal for Property 2, the appraiser inspected the subject site and the exterior and interior of the improvements; reviewed illustrative documents, interviewed city officials, gathered and reviewed competitive market area data for comparable rental properties.

E. Competency Provision

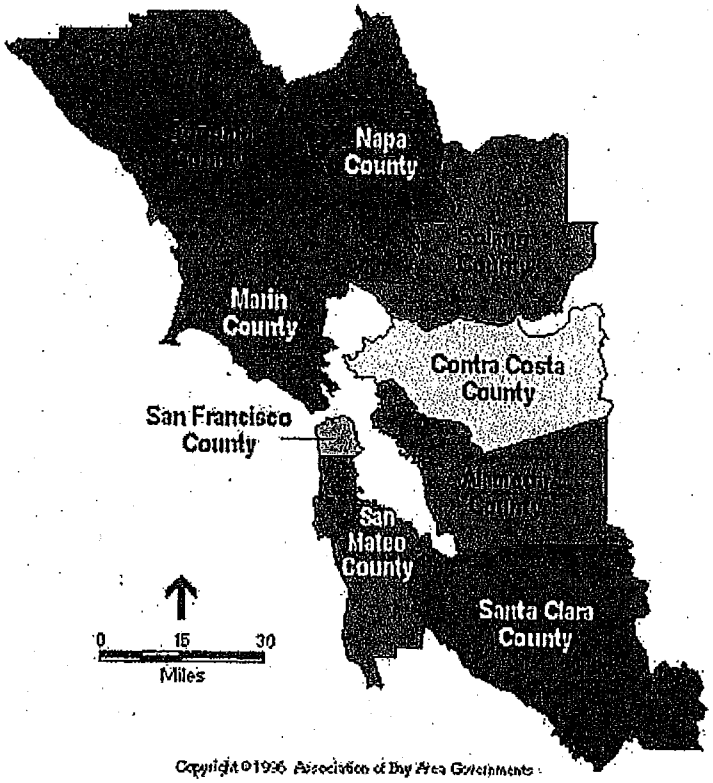
The appraiser possesses the knowledge and required ability to appraise the subject property, and has appraised this property type before both within its competitive market area and in other San Francisco Bay Area locations. Please refer to the Addenda for a summary of the appraiser's experience.

[redacted]

A. Region, City and Neighborhood

Typically separated into six distinct areas, the real estate markets in the Bay Area include Alameda County, San Francisco, Silicon Valley, San Mateo County, Contra Costa County, and the North Bay. The subject is located in San Francisco.

San Francisco leads the region as the financial and cultural center, corporate headquarters location for major global companies and magnet for tourism. San Francisco is the hub of Bay Area finance, design, film, fashion, accounting, consulting, and advertising activities. It also offers a world-class amenity base, outstanding city and bay views, and convenient access to the entire Bay Area. Major regional transit systems are routed through San Francisco.



San Francisco serves as the retail and employment hub for the nine county Bay Area. The city of San Francisco is located at the northern tip of the San Francisco Peninsula. Fortune Magazine's top 500 CEOs have frequently selected San Francisco as their "most admired" U.S. City.

The city is at the geographical center of the San Francisco Bay Area, as it covers the tip of a peninsula on the west side of San Francisco Bay. It encompasses approximately 47 square miles and has been fully developed since a post World War II building boom swallowed the last of its sand dunes in the western portion of the city. Virtually any new development requires re-use of existing parcels. The small geographic area of the city has resulted in a higher density of development in other portions of the Bay Area where development has, for the most part, been consistent with national suburban development patterns and land for additional development still exists. San Francisco's location at the tip of an arrow peninsula has resulted in limited access corridors to it. Basically, traffic can enter San Francisco by land from the south or by one of two bridges, the Golden Gate Bridge, providing access to the North Bay, and the Bay Bridge, which serves the East Bay.

San Francisco, the heart and soul of America's fifth-largest metropolitan area with seven million residents, has long been the financial center of the West Coast. San Francisco's dynamic and diverse economy is supported by one of the most highly educated populations in the country that enjoys a high quality of life in one of America's most desirable 24-hour cities. Businesses have long recognized these attributes and have established San Francisco as a popular headquarters location and, in recent years, established it as California's second largest high-technology center behind Silicon Valley. San Francisco is an important business, financial and cultural center for the nation's western region, with an influence that extends across the country and around the world. The characteristics of the City include the following:

Demographics	Education	Expertise
Resident labor force: 3.2 million	Highest number of top-ranked graduate programs in the nation for science math and engineering	Business Services: Consultants, Lawyers, Accountants, Managers
Number of Jobs: 3.5 million	37%college degrees or beyond	Financial Services: Banks, Brokerage, Securities
62% of population is between 18-64 years of age	14% graduate degrees or beyond	Media/Information Technology: Advertising, Marketing, Internet Publishing, Engineers

66% of population have no children under 18 living at home	Area universities produce more PhD scientists and engineers (850) than any other area in US	Tourism/Retail Trade: Artists, Entertainers, Hotel, Travel. Restaurants, Sales

Recent development in San Francisco attests to the vitality and dynamic growth potential of the local economy. Currently, major projects continue forward that include Hunters Point Shipyard Candlestick Point, Treasure Island, Transbay Terminal Center, and Mission Bay. San Francisco is an important business, science and technology, financial and cultural center for the nation's western region, with an influence that extends across the country and around the world. Although it's regional and local economy remains weakened, its long-term outlook is deemed favorable. For many reasons the Bay Area is so desirable. These include good weather, traditional and European charm in a friendly village community benefiting from panoramic water and city skyline views. It's close-in location lacking the usual problems related to urban sprawl make it attractive to urban professionals living in, and tourists visiting the San Francisco Bay Area.

The subject property neighborhood is located inside Golden Gate Park, proximate to the Inner Sunset district. Golden Gate Park located in San Francisco, California, is a large urban park consisting of 1,017 acres (412 ha) of public grounds. Configured as a rectangle, it is similar in shape but 20% larger than Central Park in New York, to which it is often compared. It is over three miles long east to west, and about half a mile north to south. Golden Gate Park was carved out of sand and shore dunes that were known as the "outside lands" in an unincorporated area west of then-San Francisco's borders. Although the park was conceived under the guise of recreation, the underlying justification was to attract housing development and provide for the westward expansion of The City. The park's engineer William Hammond Hall prepared a survey and topographic map of the park site in 1870 and became commissioner in 1871. The actual plan and planting were developed by Hall and his assistant, John McLaren. The first stage of the park's development centered on planting trees, in order to stabilize the ocean dunes that covered three-quarters of the park's area. By 1875, about 60,000 trees, mostly Blue Gum Eucalyptus, Monterey pine and Monterey cypress, had been planted. By 1879, that figure had more than doubled to 155,000 trees over 1,000 acres (400 ha). With 13 million visitors annually, Golden Gate is the third most visited city park in the United States after Central Park in New York City and Lincoln Park in Chicago.

The cultural and recreational amenities of the park include:

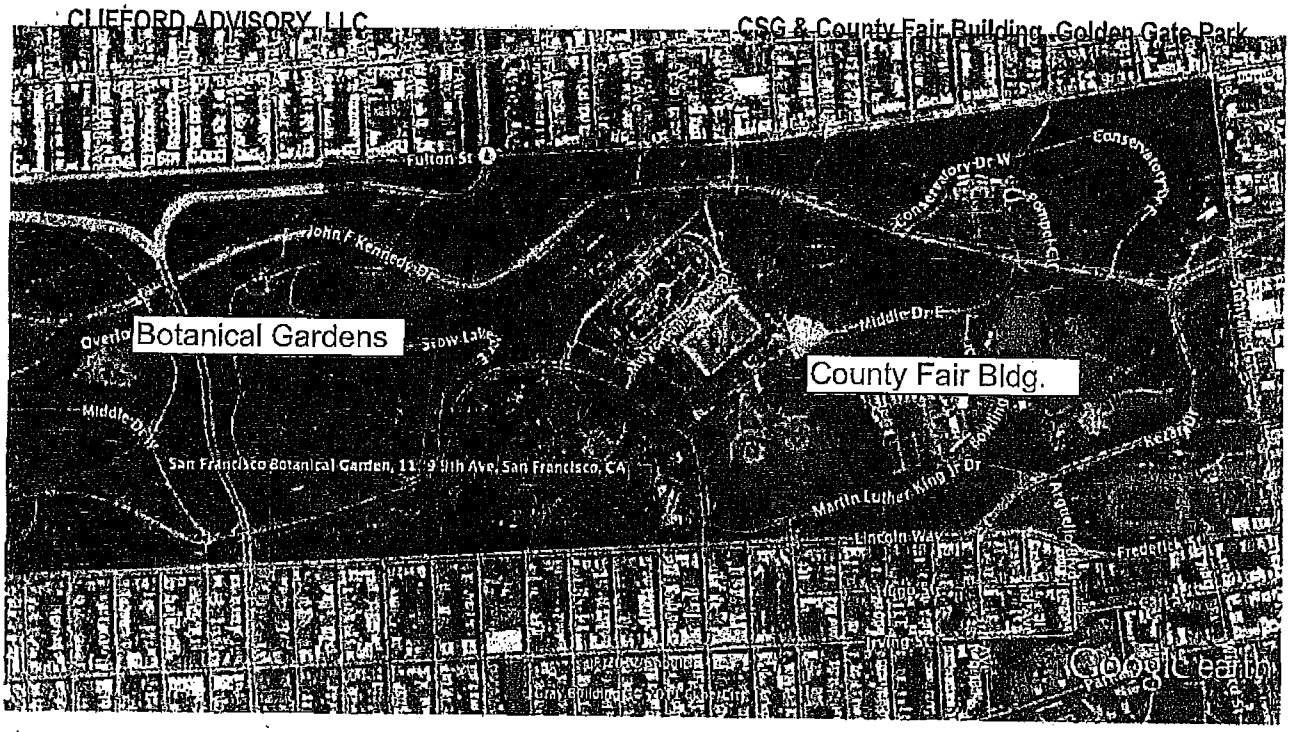
De Young Museum
On October 15, 2005, the de Young Museum reopened in a new facility that integrates art, architecture, and the natural landscape in one multifaceted destination. The new de Young provides San Francisco with a landmark building to showcase the museum's priceless collections of American art from the 17th through 20th centuries and art of the native Americas, Africa, and the Pacific.

Japanese Tea Garden
This is the oldest public Japanese tea garden in the United States, created for the 1894 California Midwinter International Exposition and later expanded by Japanese immigrant Makoto Hagiwara. Enjoy its elaborate carved gates and five-story pagoda, high-arching Drum Bridge, koi ponds, and stone lanterns, as well as the many Japanese and Chinese plants adorning its five acres.

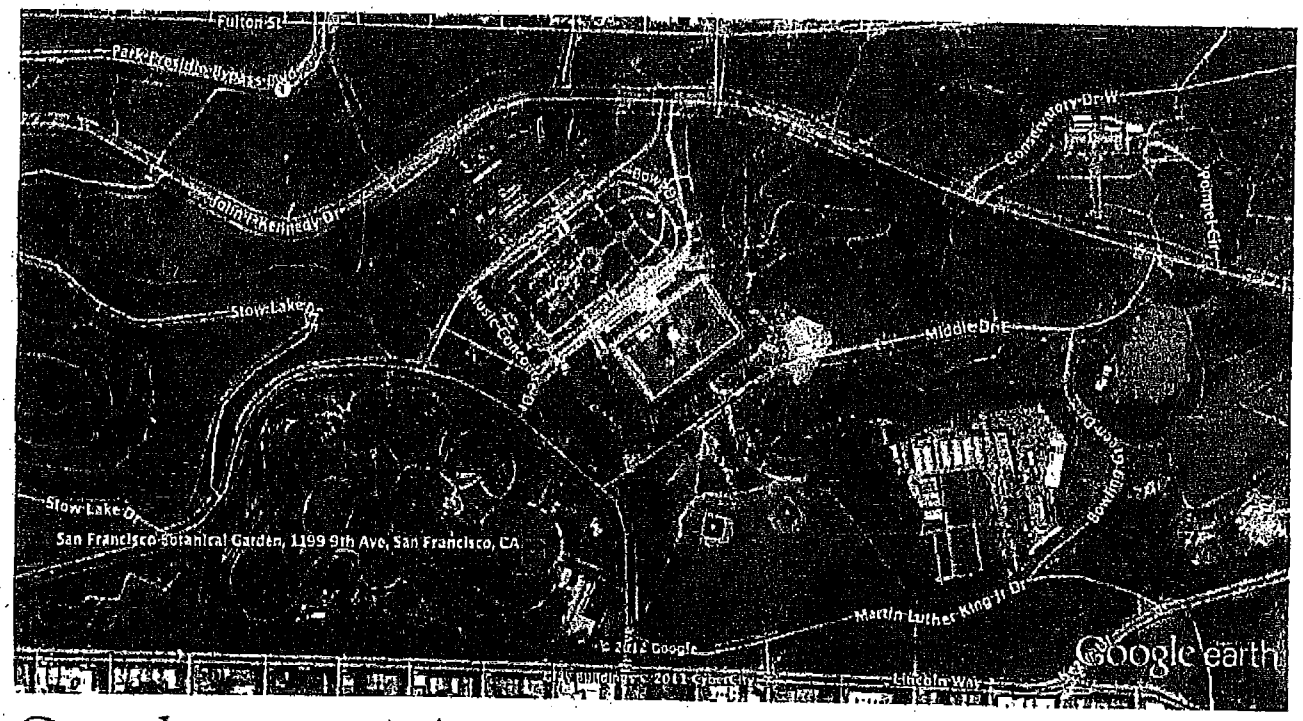
California Academy of Sciences
The California Academy of Sciences is a planetarium, aquarium, and natural history museum as well as a groundbreaking research institution. In 2008 the Academy reopened in a stunning new building that combines innovative "green" architecture with inventive exhibits, including the four-story Rainforests of the World dome, the Philippine Coral Reef, and Water Planet.

Conservatory of Flowers
A Victorian confection built of wood and glass, the Conservatory, which opened in 1879, is the oldest building in Golden Gate Park. It houses a living museum of rare aquatic and tropical plants, including a 100-year-old giant Imperial Philodendron and a world-renowned collection of orchids.

Children's Playground and Carrousel
Generations of San Franciscans (and young visitors from around the world!) have fond memories of the children's playground and the nearby 1914-vintage carrousel. The playground, built in 1887, underwent a major renovation and reopened in 2007 as the Koret Children's Quarter.



GOLDEN GATE PARK



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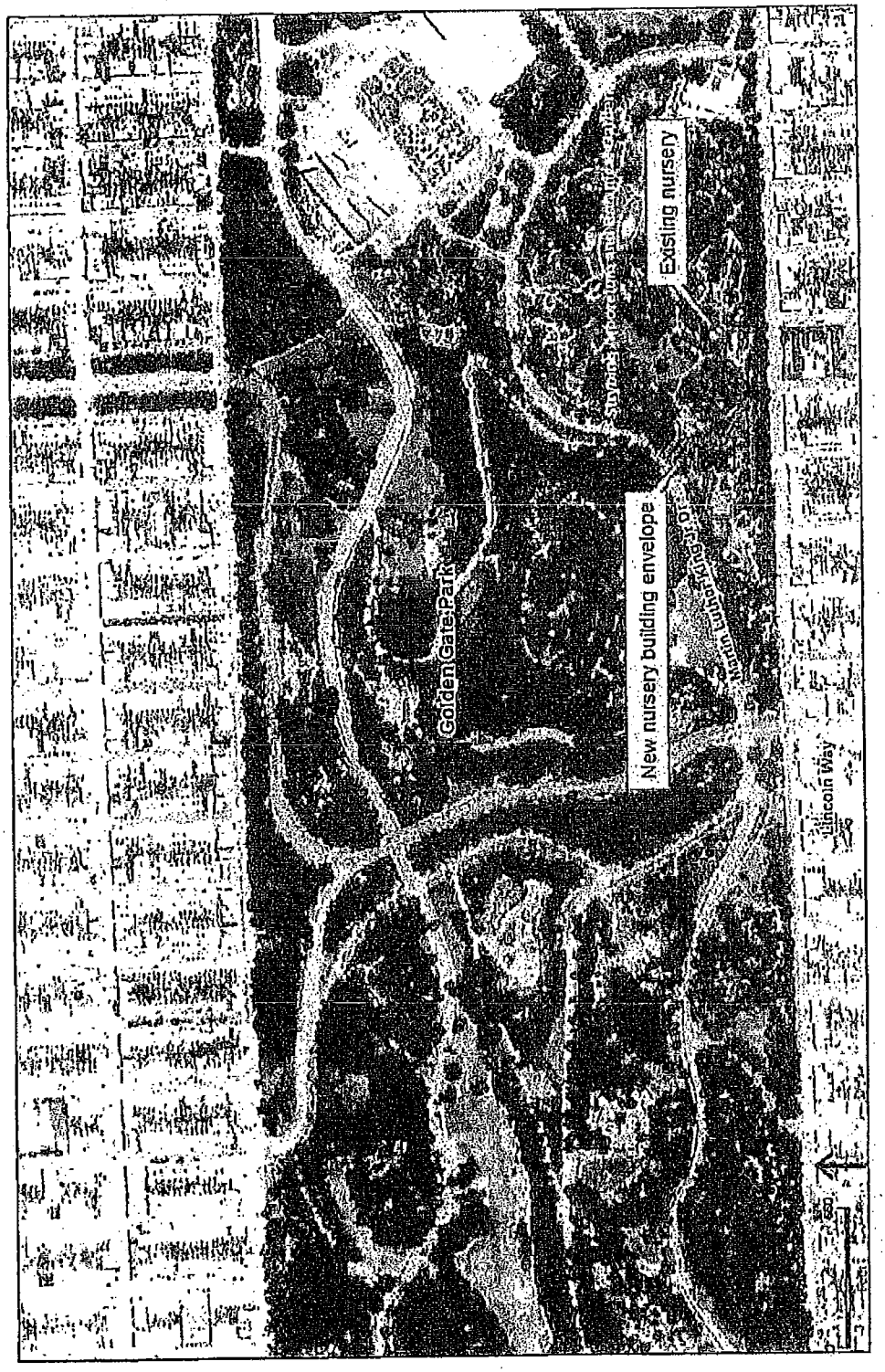


San Francisco Botanical Garden Nursery Project . 2008660

SOURCE: ESA, USGS, 2006

Nursery: Center for Sustainable Gardening

Case No. 2008.0845E

Our Collections

- Andean Cloud Forest [under renovation]
- Australia
- Chile
- Gondwana Circle [under development]
- New Zealand

- Camellia Garden
- Moon Viewing Garden
- Southeast Asian Cloud Forest [under renovation]
- Zellerbach Garden of Perennials

- California Native
- Redwood Grove
- Children's Garden (Program Area)
- Succulent Garden

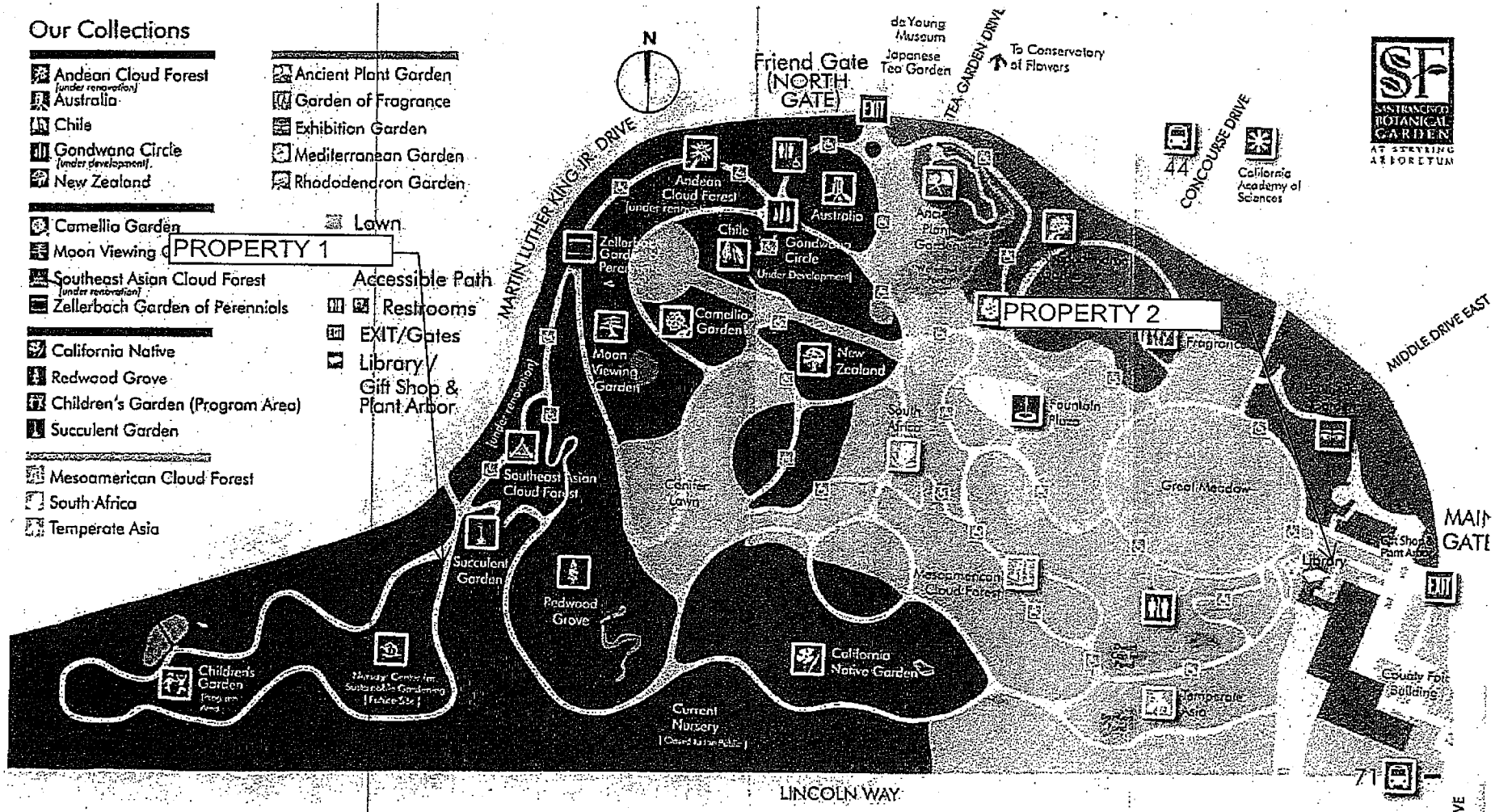
- Mesoamerican Cloud Forest
- South Africa
- Temperate Asia

- Ancient Plant Garden
- Garden of Fragrance
- Exhibition Garden
- Mediterranean Garden
- Rhododendron Garden

- Lawn

Accessible Path

- Restrooms
- EXIT/Gates
- Library / Gift Shop & Plant Arbor



WELCOME to San Francisco Botanical Garden where you can explore 55 acres of gardens with over 50,000 plants from around the world. You'll discover incredible rarities from Asia, Australia, New Zealand, Central and South America, and South Africa, plus our award-winning California Native Plant Garden complete with a century-old redwood forest. Get ready to experience one of the most diverse botanical gardens on earth!

Dutch Windmill & Queen Wilhelmina Tulip Garden
On the far western edge of Golden Gate Park, the Dutch Windmill once pumped irrigation water that helped transform the park's western half from dunes to landscaped lawns and gardens. Beneath the windmill is the Queen Wilhelmina Tulip Garden.
Stow Lake
Visitors can rent a boat and paddle around the park's biggest lake, past an old stone bridge, a waterfall, and a Chinese pavilion. Or climb Strawberry Hill, an island in the center of the lake, for views of the city.
Golden Gate Park Tennis Complex
Golden Gate Park has 21 tennis courts near the children's playground and carrousel that can be reserved for a nominal fee.
The Music Concourse
The Music Concourse is a vital civic and cultural space within Golden Gate Park, hosting free concerts on Sundays during the summer and serving as a respite and picnic spot year-round for visitors to nearby cultural facilities.
Beach Chalet
This 1925 Spanish Revival building at the park's western end, restored in 1996, originally housed a restaurant and bathing facilities for Ocean Beach swimmers. A series of WPA-era murals and mosaics adorn the ground floor, where you'll also find a Golden Gate Park visitor center and the Park Chalet restaurant; upstairs is the Beach Chalet restaurant, with sweeping views of the Pacific.
Sharon Art Studio
Sharon Art Studio is San Francisco's largest public community art center, offering affordable classes in ceramics, glass, jewelry, drawing, and watercolor for youth, adults, and seniors.
Golden Gate Park Bird Almanac
The park provides shelter and food for many species of birds, including hummingbirds, herons, hawks, owls, ducks, warblers, woodpeckers, and finches.

Other features include Lawn Bowling, National AIDS Memorial Grove, Bison Paddock and Spreckels Lake.

In conclusion, the subject property is well located, benefiting from its close proximity to major cultural and recreational assets set inside one of the largest urban parks in the country.

B. Property 1 – San Francisco Botanical Garden – Site and Building Characteristics

The City maintains and operates real property located in Golden Gate Park known as the San Francisco Botanical Garden that features more than 8,000 different kinds of plants from around the world on 55 acres. The project is located within the San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park. Strybing Arboretum was originally established through a bequest by Helen Strybing in 1927 and a greenhouse and related support facility has been located within the Botanical Garden since the 1960s.

The San Francisco Botanical Garden Society (SFBGS) is a non-profit entity that has actively supported the San Francisco Botanical Garden since 1955, operating in partnership with the San Francisco Recreation and Park Department (RPD). SFBGS has offered to donate to the City and County of San Francisco the design and construction of a new nursery facility, known as The Center for Sustainable Gardening (CSG), as a gift-in-place valued at approximately $14 million. The terms and conditions of the SFBGS gift require that the existing nursery be replaced and become the hub of the Botanical Garden Plant Propagation and Plant Collection Management. All of the uses of the nursery will be to further the mission and purpose of the Botanical Garden. The nursery will be jointly used by RPD and SFBGS to support activities to those conducted in the existing nursery. Before construction of the nursery begins, SFBGS and RPD will enter into a lease agreement that incorporates these understandings.

The greenhouse and related facilities are necessary in order to maintain and support the many botanic collections that have been created in the Botanical Garden. Careful design of the site and the landscaping has been incorporated into its design to minimally affect the Botanical Garden, or the visitors' enjoyment of Strybing Arboretum. The fundamental purpose of the CSG is to replace the existing nursery facilities that were built many years ago and currently provide substandard working conditions for the dedicated RPD employees, SFBGS employees, and volunteers. Please refer to photographs of the existing subject Property 1.

The proposed CSG development generally described as a nursery facility consists of a greenhouse, shade house, head house, support space, outdoor nursery space, and an outdoor learning court. The nursery will be located slightly to the

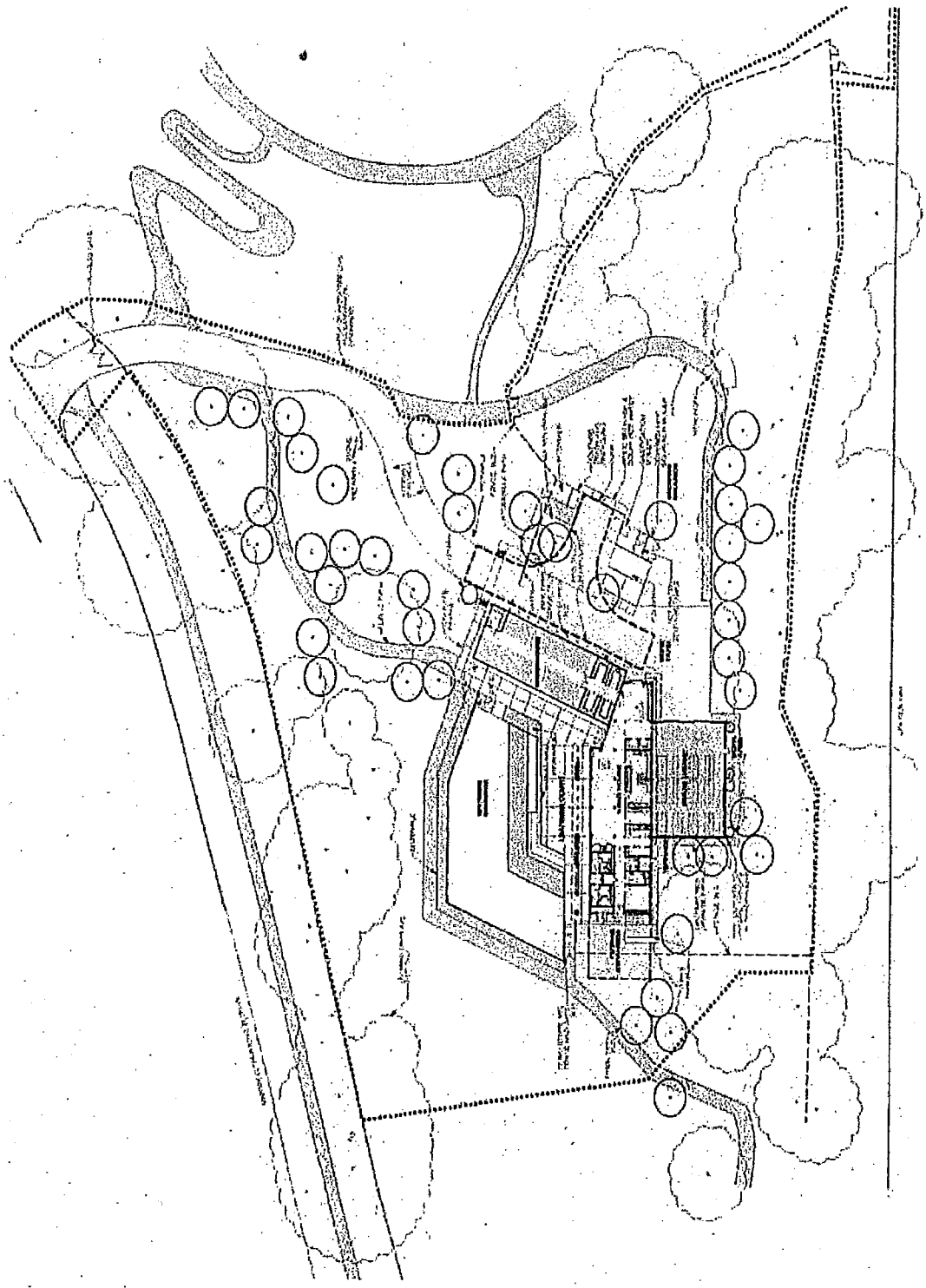


Figure 3 **Site Plan**

Case No. 2008.0845E 12 Nursery: Center for Sustainable Gardening

SAN FRANCISCO BOTANICAL GARDEN
NURSERY: CENTER FOR SUSTAINABLE GARDENING
EXISTING CONDITIONS

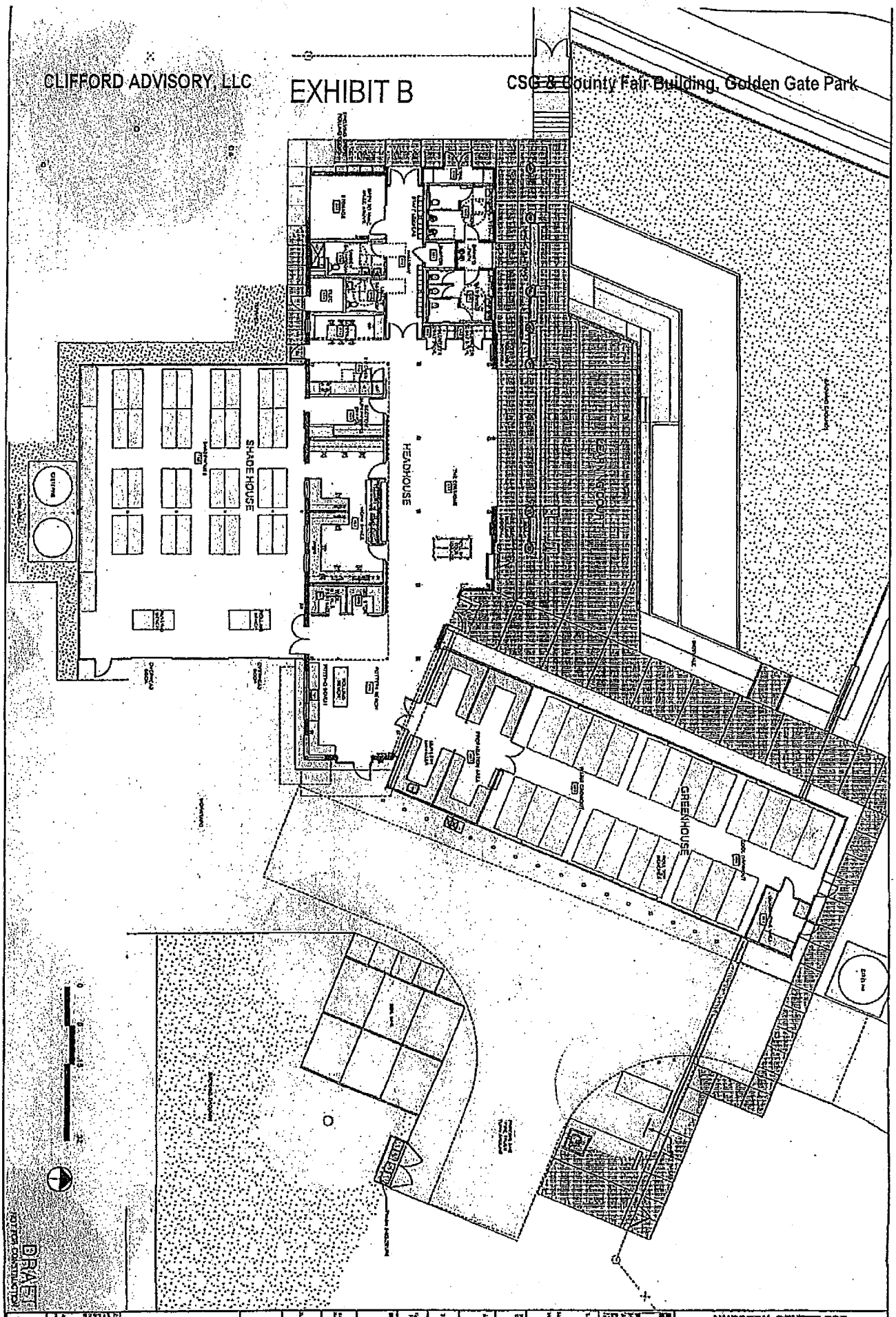
Figure 2 **Existing Conditions of the Botanical Garden**

Case No. 2008.0845E | 11 | Nursery: Center for Sustainable Gardening

CLIFFORD ADVISORY, LLC

EXHIBIT B

CSC & County Fair Building, Golden Gate Park



A1.1

FLOOR PLAN

NURSERY: CENTER FOR SUSTAINABLE GARDENING
SAN FRANCISCO BOTANICAL GARDEN AT STRYBING ARBORETUM
9TH AVENUE AT LINCOLN WAY
SAN FRANCISCO, CA 94122

EXHIBIT C

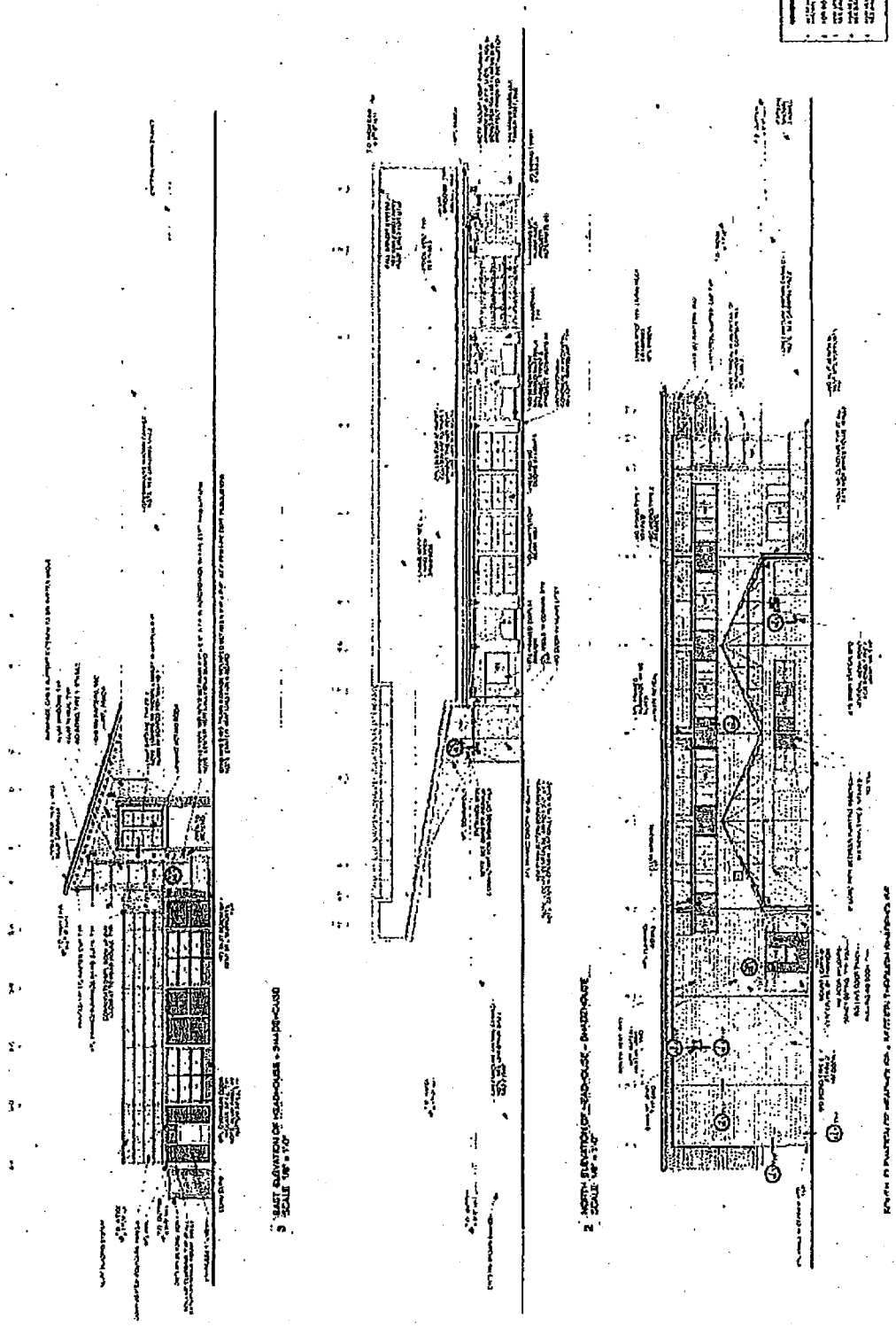


Figure 4 Proposed Nursery: Center for Sustainable Gardening Elevations

Case No. 2008.0845E 13 Nursery: Center for Sustainable Gardening

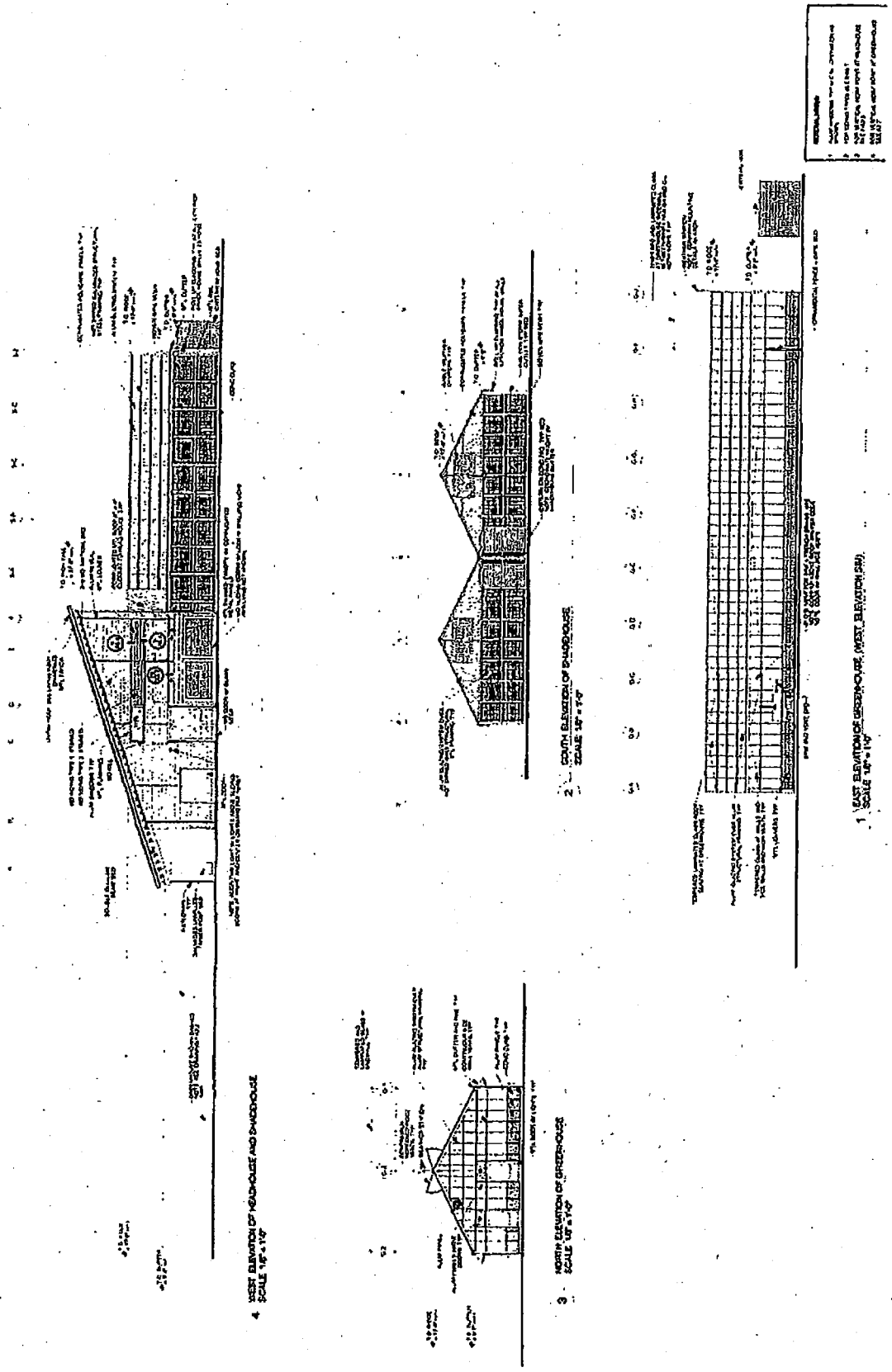
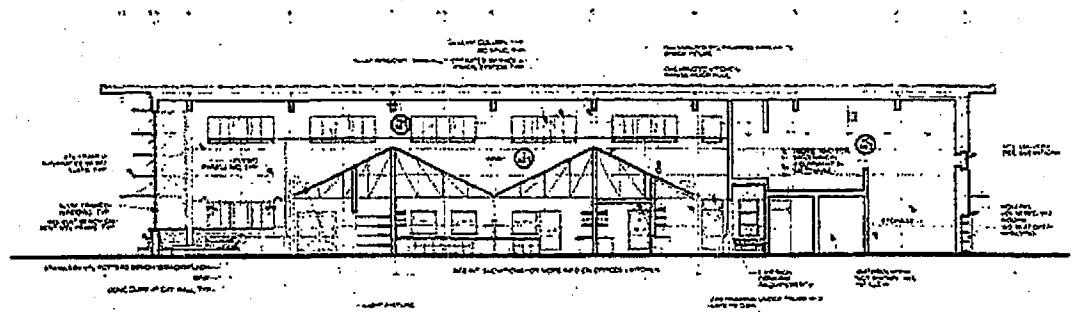
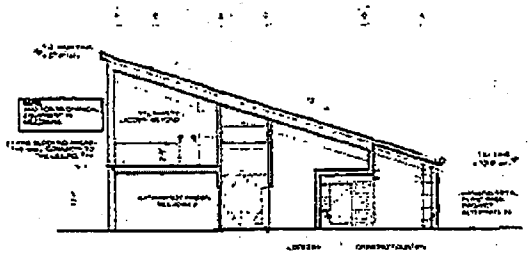


Figure 5 **Proposed Nursery: Center for Sustainable Gardening Elevations**

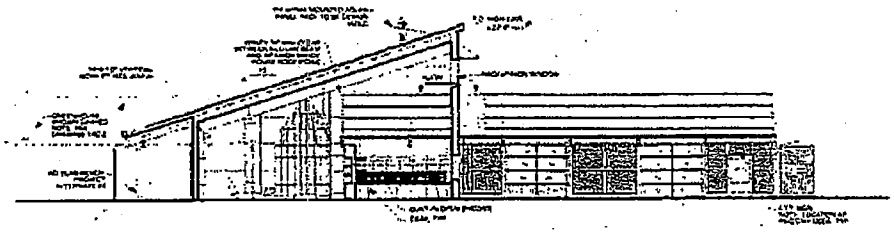
Case No. 2008.0845E | 14 | Nursery: Center for Sustainable Gardening



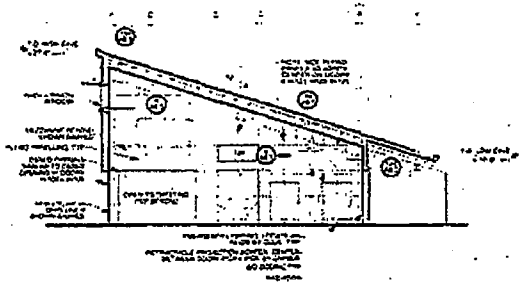
4 LONGITUDINAL BUILDING SECTION (FOR MORE INFORMATION SEE INTERIOR ELEVATIONS)
SCALE: 1/8" = 1'-0"



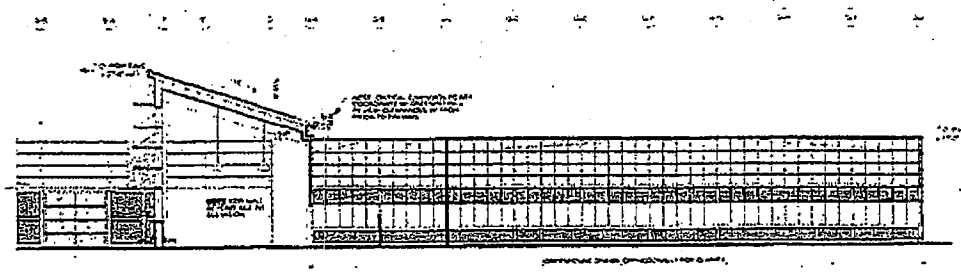
5 SECTION THROUGH HEADHOUSE, LOOKING WEST (FOR MORE INFORMATION SEE INTERIOR ELEVATIONS)
SCALE: 1/8" = 1'-0"



3 SECTION THROUGH HEADHOUSE + SHADE HOUSE, LOOKING EAST (FOR MORE INFORMATION, SEE INTERIOR ELEVATIONS)
SCALE: 1/8" = 1'-0"



2 SECTION THROUGH HEAD HOUSE & COMMONS, LOOKING WEST



1 BUILDING SECTION @ POTTERS BENCH (FOR MORE INFORMATION SEE INTERIOR ELEVATIONS)

Figure 6 **Proposed Nursery: Center for Sustainable Gardening Elevations**

G-5

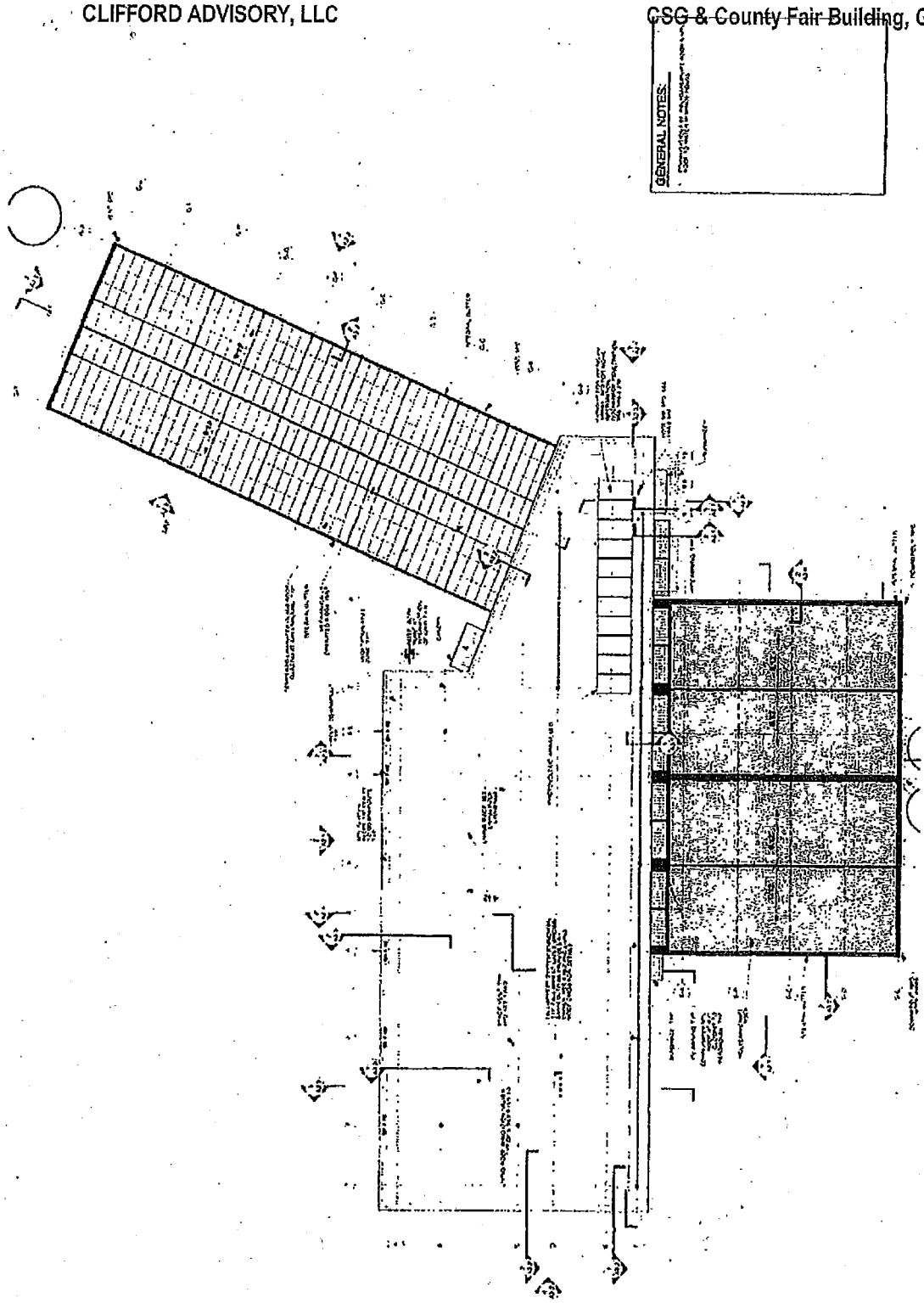


Figure 7 **Proposed Nursery: Center for Sustainable Gardening Roof Plan**

Case No. 2008.0845E | 16 | Nursery: Center for Sustainable Gardening

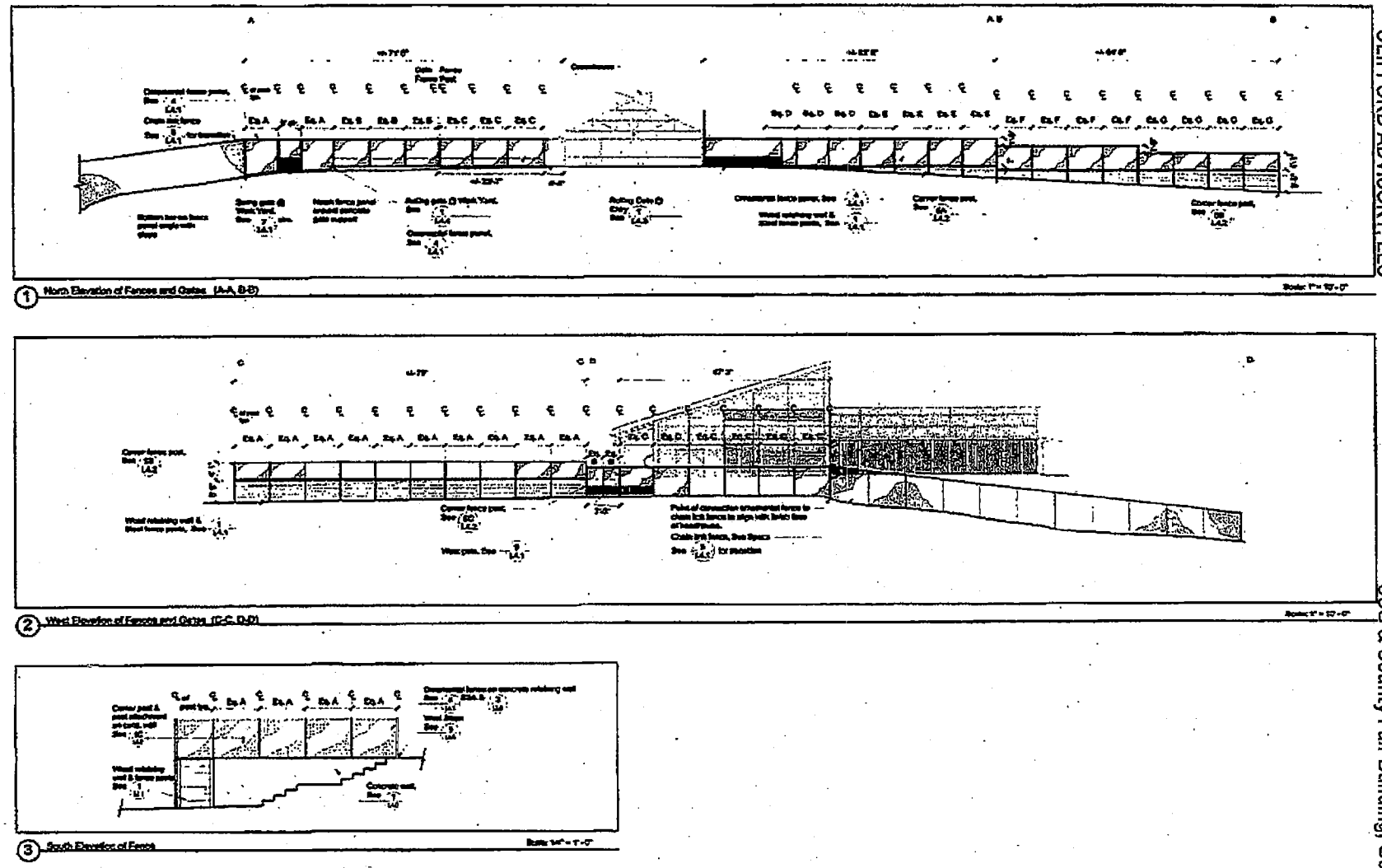


Figure 8 **Proposed Nursery: Center for Sustainable Gardening Elevations with Perimeter Fence**

CLIFFORD ADVISORY, LLC
CSG & County Fair Building, Golden Gate Park
C - 7
16

west of the existing facilities at a higher elevation and in an area that is vastly preferable for nursery due to its improved weather conditions. The footprint of the proposed development represents a very small increase within the 55-acre Strybing Arboretum.

The project underwent an environmental review in the form of a mitigated negative declaration. The project has been reviewed under Case 2008.0845E. On August 17, 2011, the Planning Department published a preliminary mitigated negative declaration (MND) under CEQA guidelines Section 15070. The project is consistent with the eight priority policies of Planning Code Section 101.1. Only one comment letter was submitted that contained any negative comments regarding the project. The final MND was issued on November 29, 2011.

The project site is located within Golden Gate Park Assessors Block 1700, Lot 001 in the Western Portion of the Botanical Garden in proximity to the intersection of Lincoln Way and 15th Avenue directly adjacent to the Inner Sunset neighborhood. The project site totals approximately 2.5 acres that includes the total size of the area being proposed for improvements. The project site is located within a Public Zoning District with open space height and bulk limits.

The new nursery building will be located in approximately the same location as envisioned in the garden Master Plan though in the interest of eliminating paved areas and non-essential parking, 16 parking places that were proposed have been removed, leaving only one handicap accessible space. The proposed project requires a variance from Planning Code Section 151 for off-street parking requirements. The proposed project also includes creating a vehicular and emergency access route from Martin Luther King, Jr. Dr. (MLK Dr.) to the nursery by widening and extending an existing 10-foot wide pathway to a 20-foot wide access route. Additionally this access route would include the creation of one ADA parking space and an emergency vehicle turnaround space adjacent to the proposed nursery. The proposed nursery would be accessed by pedestrians via existing paved pathways from within the botanical garden and from a separate pedestrian pathway from MLK Dr. that would be constructed as part of the proposed project. Pedestrian walkways that currently traverse the project site would be rerouted to bypass the proposed nursery location.

The overall square footage and building components of the nursery building are also comparable to those of the project envisioned in the Garden Master Plan, although the square footage has been reallocated within the nursery complex as a result of subsequent detail programming for the project. The project totals 11,150 square feet (including a possible future expansion of 1,320 square feet). Aside from the minimized paved areas, the site improvements are currently proposed including earth materials bins, container storage and growing grounds and the fence and gated entryways encircling the site. However, the project requires the removal of a number of trees to construct the new nursery and to remove some diseased and damaged trees in the project area. An improvement measure recommended in the mitigated negative declaration states that all native trees be replaced at a 3:1 ratio and all non-native trees be replaced at a 1:1 ratio.

C. Property 1 – Project Design and Costs

The project architect, Fernau & Hartman, designed the project as depicted in Exhibit B. Please refer to Exhibits B and C for an illustration of the proposed CSG improvements. These were provided by the project consultants, Oppenheim Lewis, and Mr. Scott Lewis was interviewed to better understand the project design and budgeted costs. As shown, the project incorporates a design featuring the Headhouse, flanked by a Greenhouse, Shadehouse and Learning Court along with terrace, growing grounds, soil bins and workyard. The single level design incorporates vertical development of approximately 9,830 SF along with extensive surface and yard improvements.

Mr. Lewis prepared the project budget that is presented as Table 1. The budgeted 2013 costs total $14,248,143. Mr. Lewis reported that Oliver & Company, a construction, management and development firm, is preparing a quantitative cost estimate for the project. The cost estimate is to be completed in approximately 2 months. As discussed later, the project costs have a substantial contributory value in the determination of the appraiser's estimate of market rent. The appraiser strongly recommends the market rent determination be re-evaluated subject to the final cost analysis.

TABLE 1

San Francisco Botanical Garden
Nursery: Center for Sustainable Gardening
San Francisco, CA

Project Cost Summary

Project Construction Cost		
Nursery: Center for Sustainable Gardening	$5,750,000	
Sitework	2,400,000	
Subtotal	$8,150,000	
Escalation to Spring 2013 Const Start	300,000	
Construction Contingency	754,339	
Total Project Construction Cost		**$9,204,339**
Soft Cost		
Design & Management Fees	2,235,266	
Internal Project Costs	146,544	
Fixtures, Furnishings & Equipment	575,000	
Signage & Wayfinding	150,000	
Other Fees & Services	1,476,877	
Artwork	50,000	
Subtotal Soft Cost	$4,633,687	
Contingency for Soft Cost	170,874	
Total Project Soft Cost		**$4,804,561**
Other Project Cost		
Financing & Fundraising	$0	
Endowment Contribution	0	
Operational Transition	0	
Other Pre-Opening Costs	20,000	
Sunk Costs as of January 2008	219,243	
Total Other Project Costs		**$239,243**
Total Project Cost		**$14,248,143**

The appraiser discussed the line item cost budget. Mr. Lewis indicated the amount includes a $300,000 allowance for anticipated cost escalation between 2012 when the budget was developed and May 2013 when the project construction begins. The budget also includes $239,243 for "sunk costs" that represents a variety of cost expenditures that were required prior to the decision to proceed and obtain commitment by the several agency and non-profit interest involved in the project. Vertical development approximates $5.4 million for construction of 9,830 SF. This equate to approximately $550/SF. This includes the approximate 4,230 SF Headhouse, and 2,800 SF in each of the Greenhouse and Shadehouse structures. However, the project includes extensive surface or horizontal improvements as well. The budget includes $2.4 million for site work that includes clearing, grading, utilities, and soft and hardscape improvements associated with access, parking, growing grounds, work yard, etc. As noted previously, the site area that supports CSG is approximately 2.5 acres (108,900 SF). Excluding the approximate 9,830 SF footprint for vertical development, the net site area approximates 99,070 SF. The $2.4 million site work budget indicates a unit price of approximately $24/SF.

The nursery and site improvement costs total $8.15 million. These costs are then adjusted 3.7% for time between the 2012 estimate and the 2013 construction start. Finally, a contingency of $754,339 (9.25%) is added. Total project construction costs amount to $9.204 million.

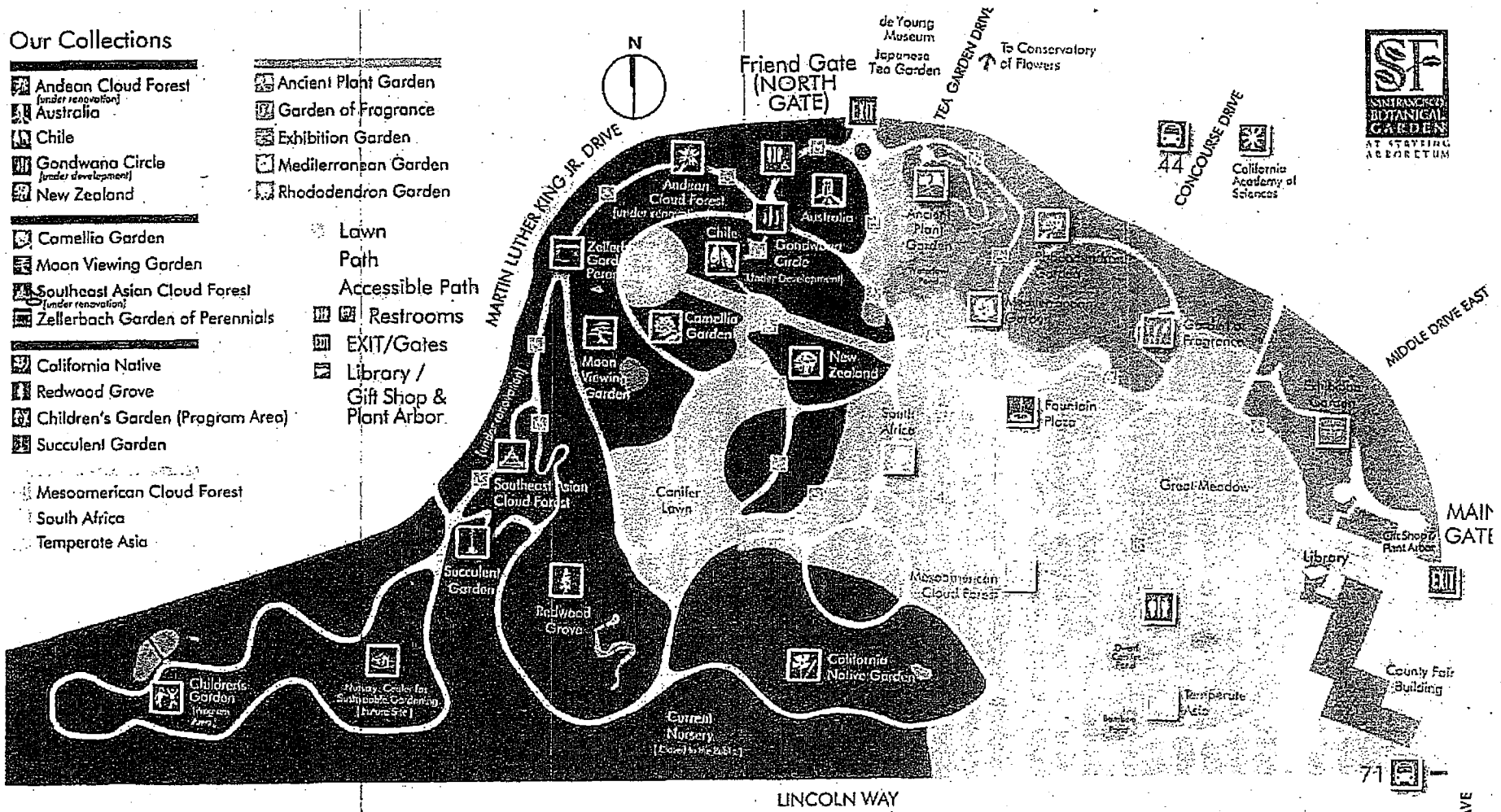
In addition to the project construction costs, the budget includes soft costs and other project costs. Combined these total approximately $5,044,000, or 55% of the project construction costs. The soft costs include $2.235 million for design and management fees, and $1.48 million in other fees and services. The project appears to be rather unique in terms of location and function and quality, and consequently requires extraordinary expertise. It is not the intent or role of the appraiser to imply any review or critical assessment of the aforementioned budget. The appraiser has reviewed and relied upon budgets for many unusual and special purpose projects such as hospitals, stadiums, biotechnology, manufacturing facilities, and complex and environmentally sensitive redevelopment projects such as Treasure Island, Mission Bay, Hunters Point, Transbay Terminal, and others. By comparison the level of soft costs appears elevated, but may not be atypical for the scale and site-specific characteristics of the CSG. Again it is noted that Oliver & Company, a construction, management and development firm, is preparing a quantitative cost estimate for the project that may yield some variance, or not. Based on the available information provided to date, the project costs are deemed to be reliable and have a substantial contributory value in the determination of the appraiser's estimate of market rent. The appraiser strongly recommends the market rent determination be re-evaluated subject to the final cost analysis.

D. Property 2 – San Francisco County Fair Building – Site and Building Characteristics

PROPERTY 2 is a portion of the existing space in the County Fair Building in Golden Gate Park. Its civic address is identified as 1199 9th Avenue. The existing space comprises office, library, storage and book store premises and older horticultural space in the nursery area. The total area encompasses approximately 4,349 SF. **Table 2** presents a summary of these areas that are also depicted on subject photographs. The largest component of Property 2 is the Helen Crocker Russell Library of Horticulture, established in 1972. It is northern California's most comprehensive horticultural library. The library houses approximately 27,000 volumes and 350 plant and garden periodicals. The library also features a 1,600-volume children's botanical library.

Referring to the photographs of the subject Property 2, the premises are most similar and for the most part function as office premises for the administrative and operations of the SFBGS including the library. The premises are identified on **Exhibit D** and appear to be compatible with adjoining premises and uses for public assembly and other activities conducted at the County Fair Building. The bookstore and the horticultural premises are located nearby the County Fair Building that contains the office premises. The small bookstore is located near the entrance to the Botanical Gardens and adjacent to the County Fair Building adequately oriented toward public pedestrian traffic. The horticultural facilities are remotely located within the existing Botanical Gardens area and are not available for public access. These older and dilapidated shed buildings serve as working greenhouse and lath house structures. These structures were built in 1969, some 42 years ago but were partly reinforced with concrete piers and wood framing in 1995. The approximate 800 SF Lath house is largely wood frame and its plexi-glass roof surface is

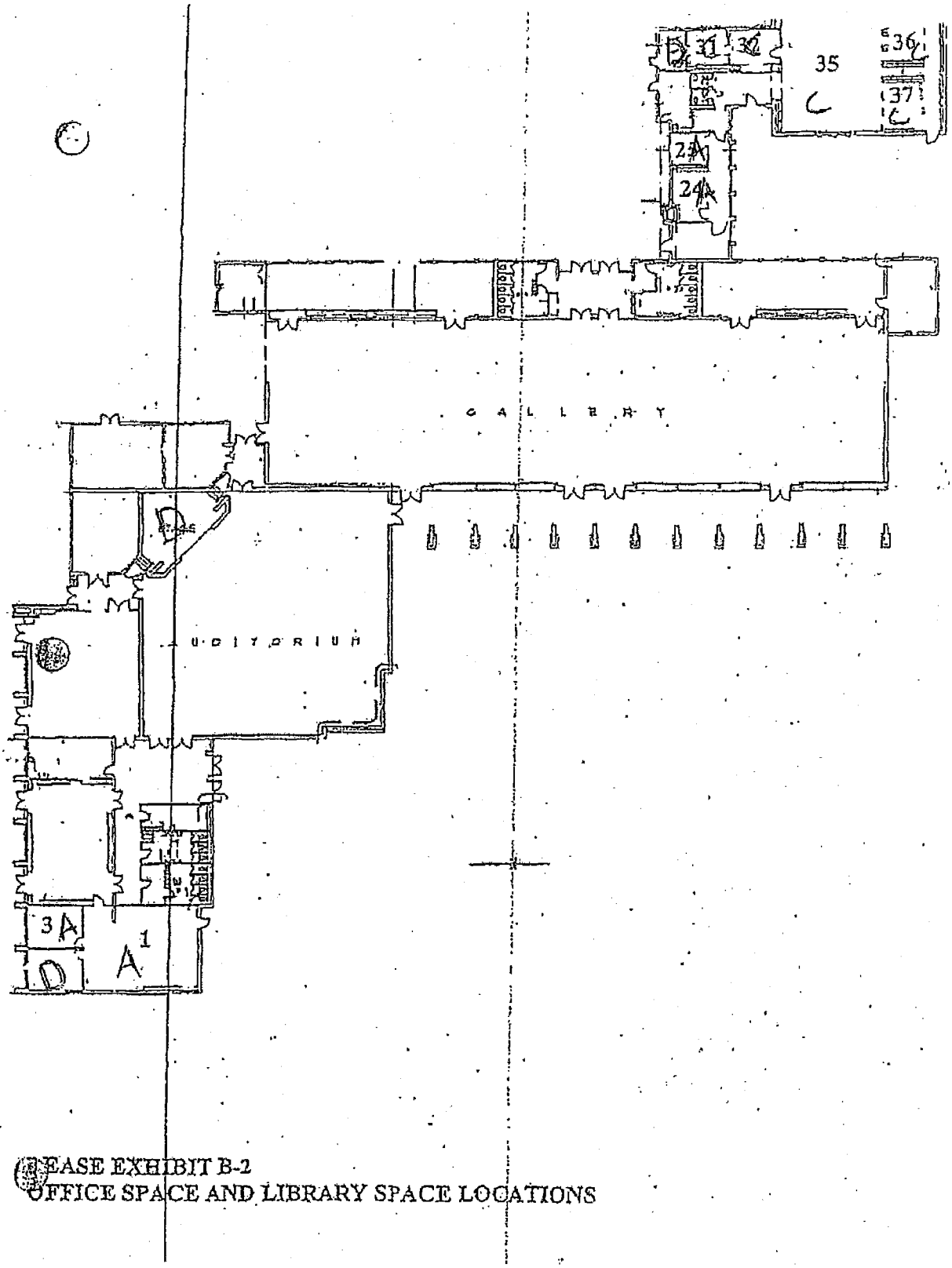
EXHIBIT D



WELCOME to San Francisco Botanical Garden where you can explore 55 acres of gardens with over 50,000 plants from around the world. You'll discover incredible rarities from Asia, Australia, New Zealand, Central and South America, and South Africa, plus our award-winning California Native Plant Garden complete with a century-old redwood forest. Get ready to experience one of the most diverse botanical gardens on earth!

CLIFFORD ADVISORY, LLC

CSG & County Fair Building, Golden Gate Park

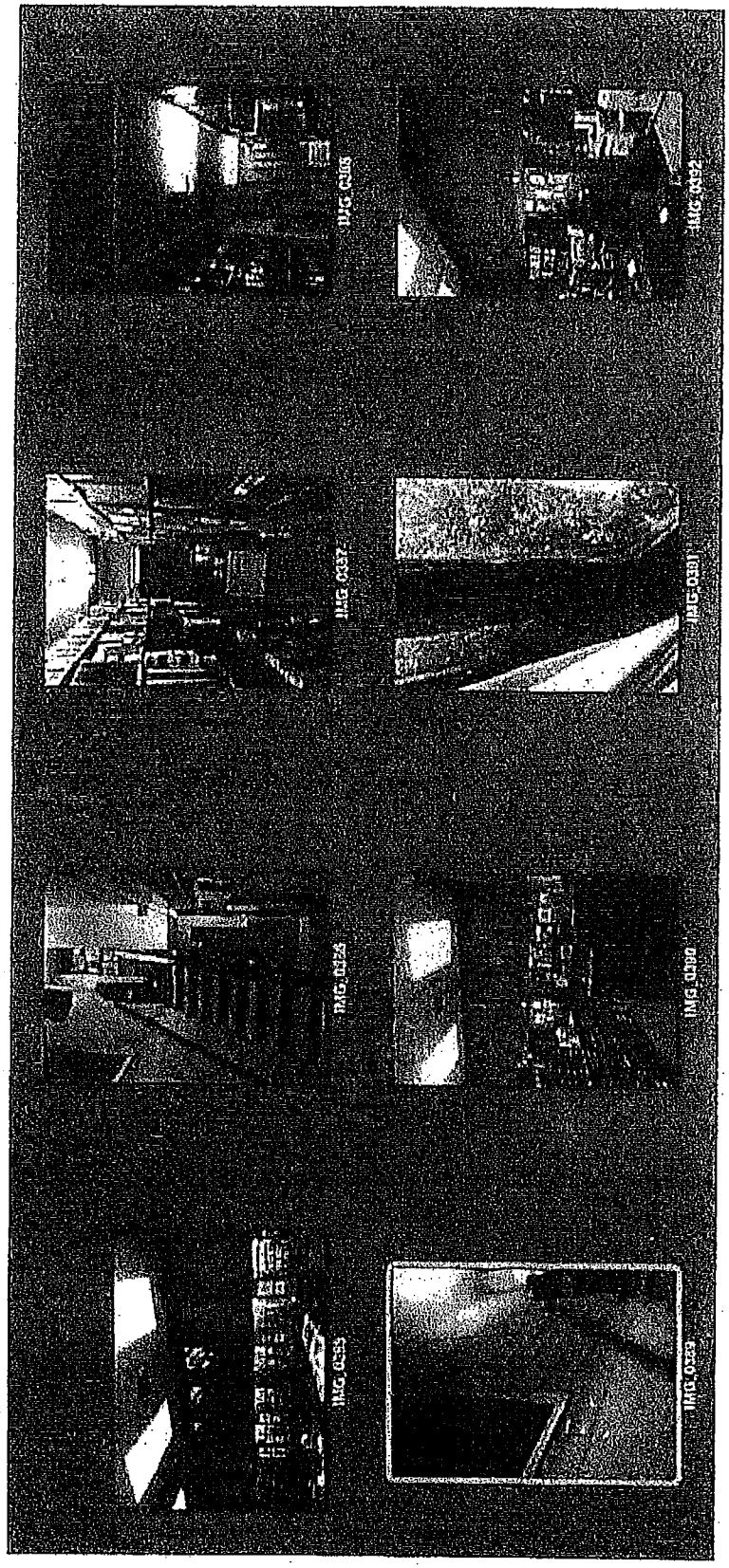


LEASE EXHIBIT B-2
OFFICE SPACE AND LIBRARY SPACE LOCATIONS

TABLE 2

PROPERTY 2 CHARACTERISTICS

Component	SF	Use - Comments	
A	1,127	Office	Average Condition - Adequate Design
B	1,378	Library	+ Average Condition - + Average Design
C	80	Office	Fair-Average Condition
D	84	Bookstore	Average Condition
E	1,680	Horticultural	Physical and Functional Obsolescence
	4,349		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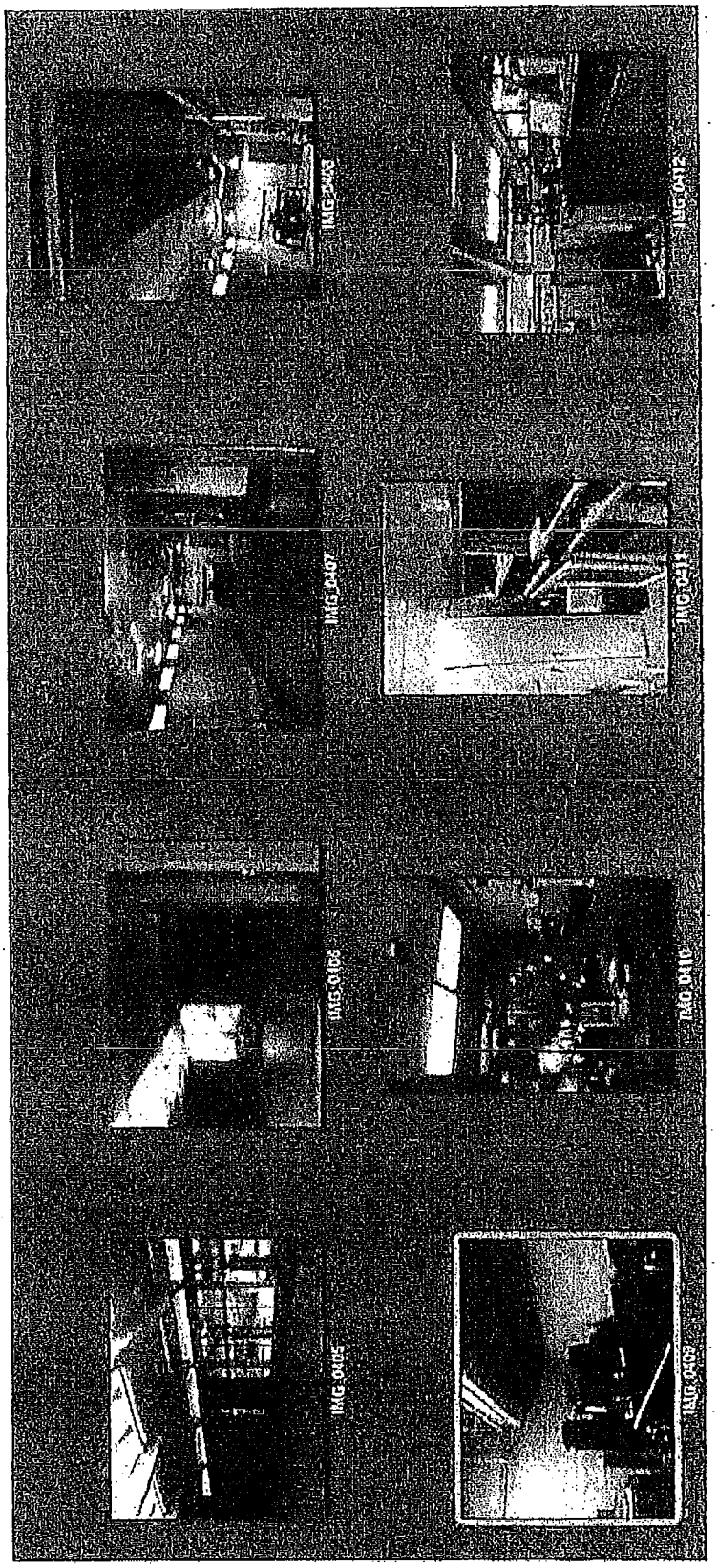
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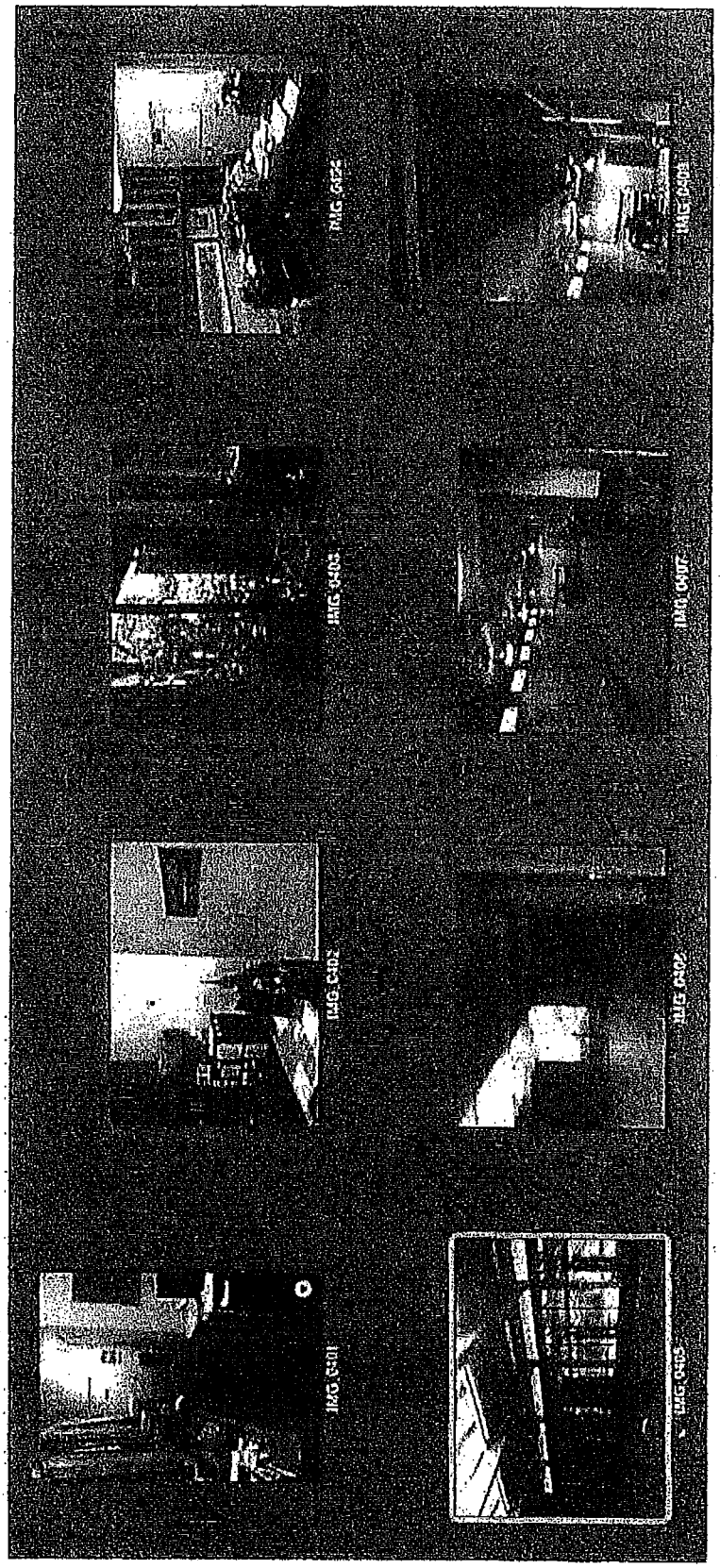
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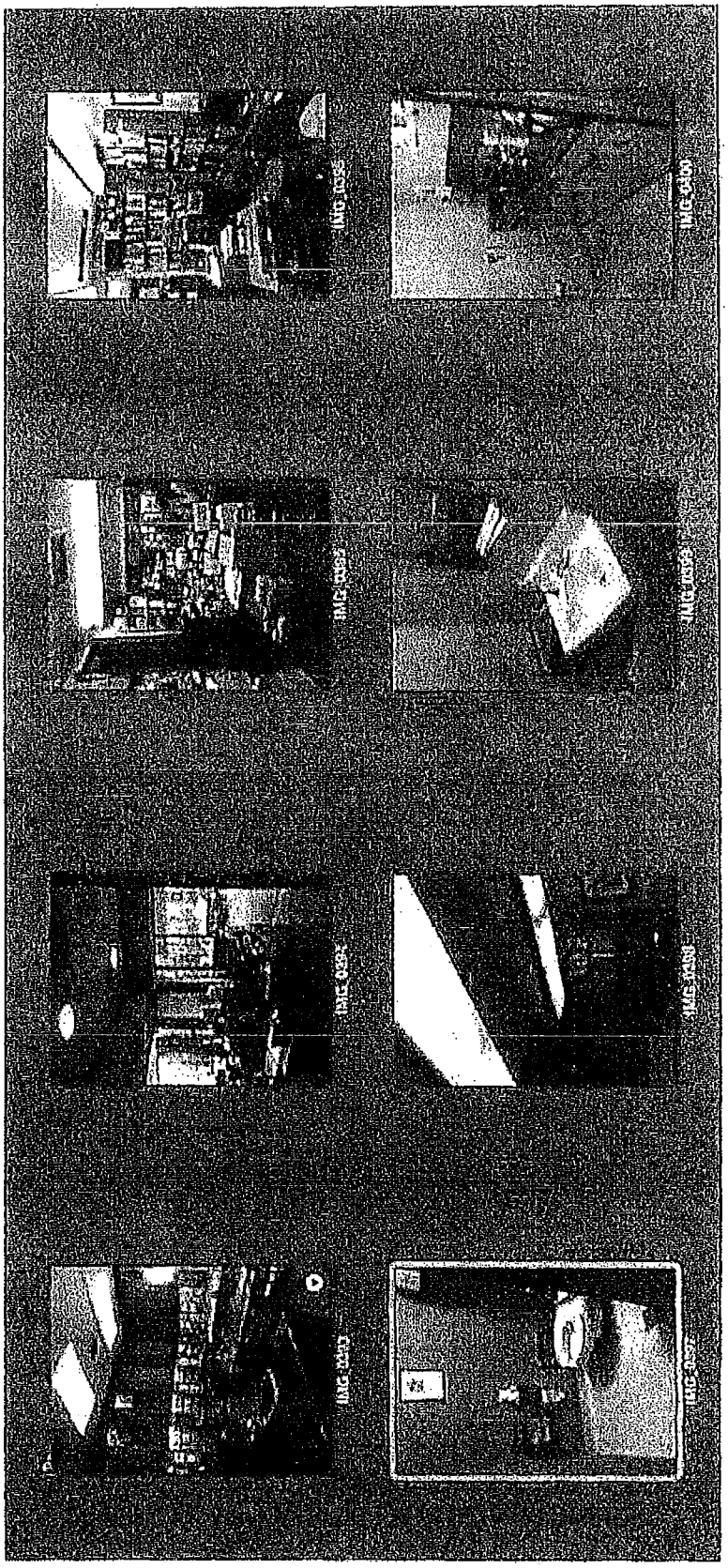
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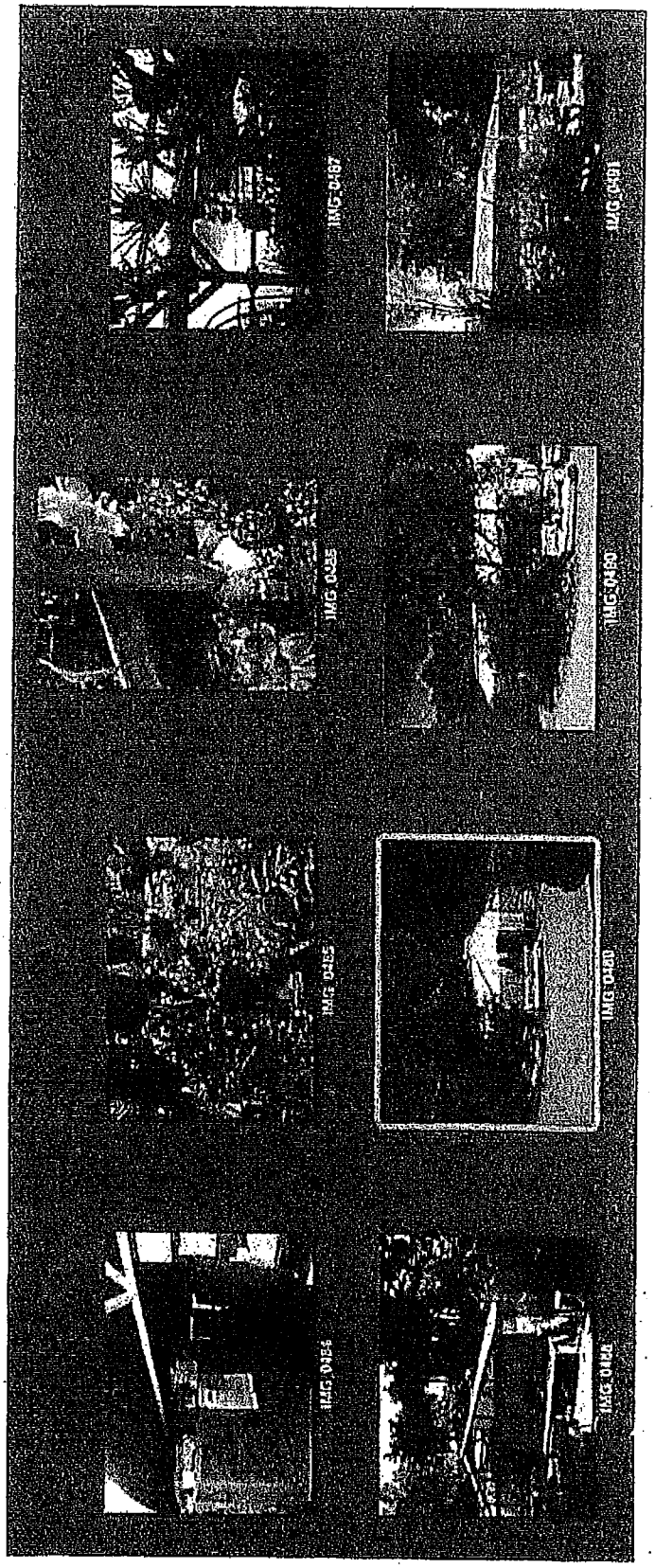
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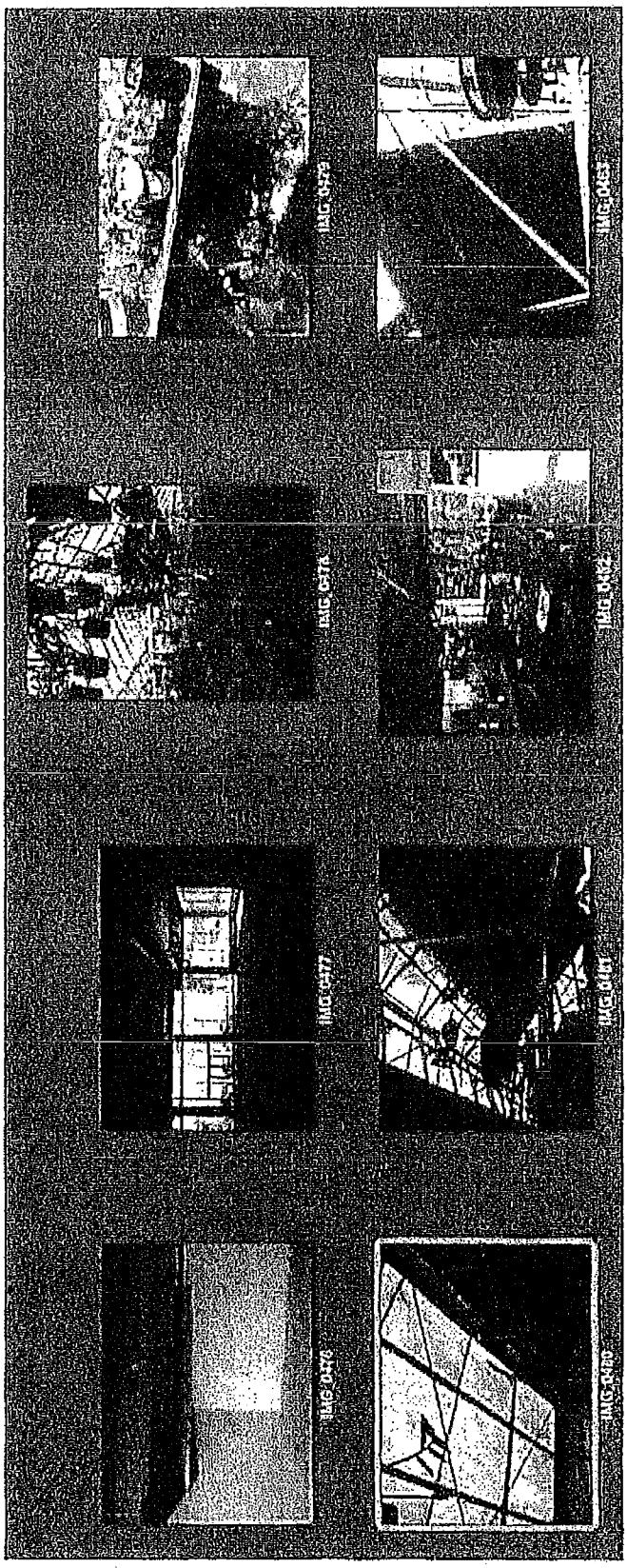
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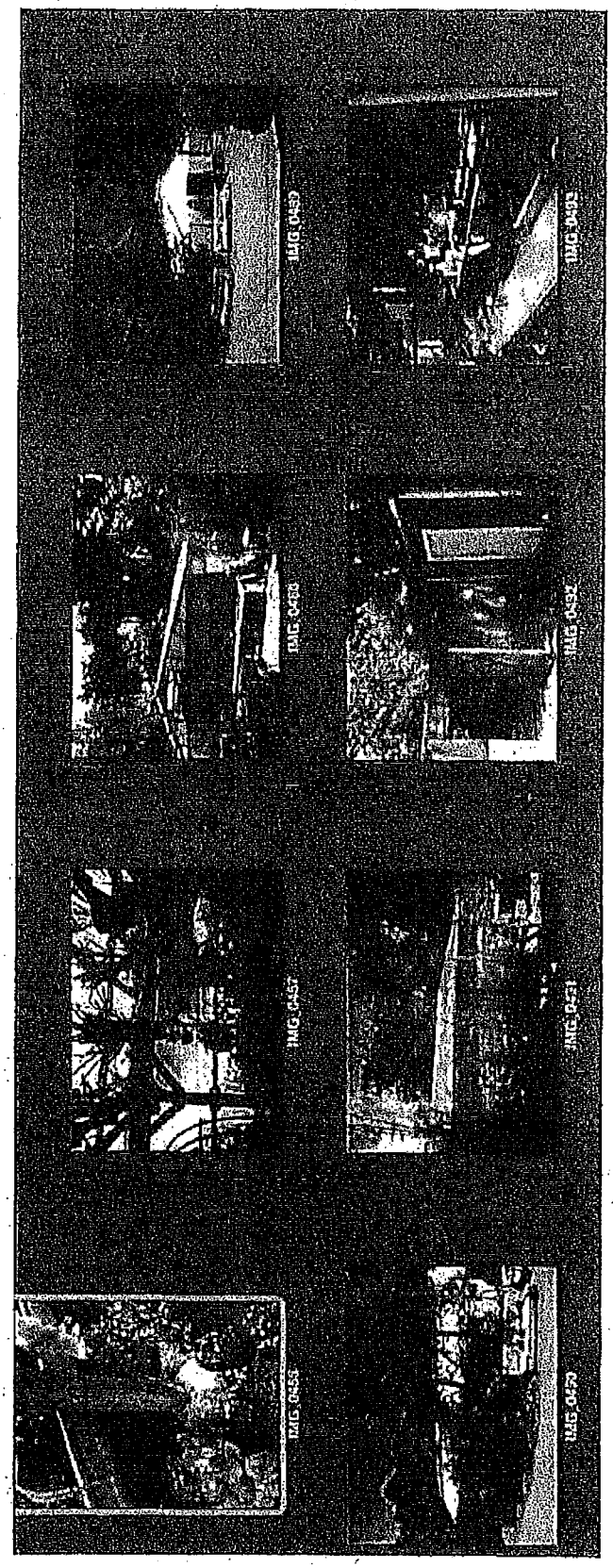
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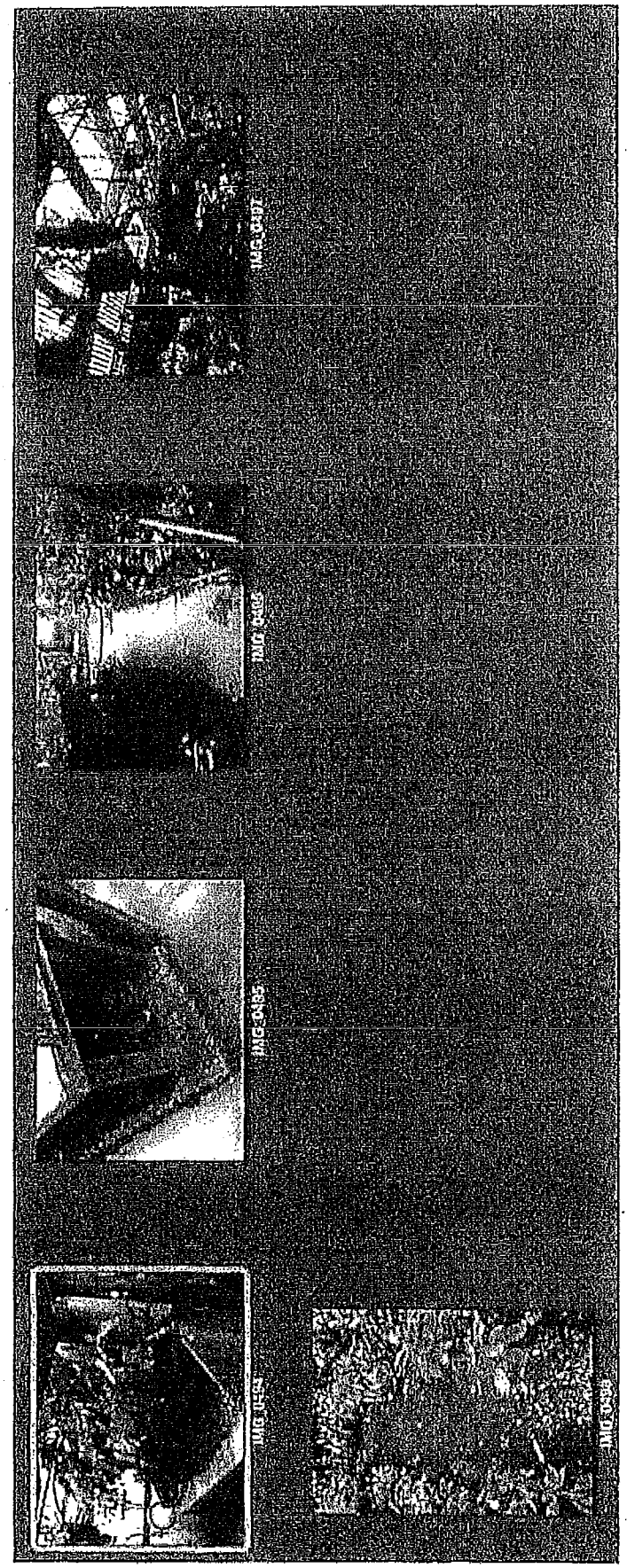
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mostly occluded and no longer functions in the manner intended. The approximate 800 SF metal and glass greenhouse was built in 1969 and reflects a rusted and sub-standard condition and functional utility. Property 1 is intended to replace these structures to provide working nursery and educational facilities.

E. Environmental Conditions

For the purposes of this analysis, the existence (if any) of potentially hazardous materials migrating into, the disposal onto, or used in the construction or maintenance of the improvements, is not considered unless otherwise noted. These materials may include (but are not limited to) asbestos containing materials (ACMs) or other toxic substances. The appraiser is not qualified to investigate or detect such substances, and the client is advised to retain an expert in this field.

F. Ownership History

Ownership of the subject Property 1 and 2 Building improvements are assumed to be under the ownership of the City and County of San Francisco. The assumption is based on the premise of the appraisal that upon completion of the Property 1 building improvements, the improvements will be gifted to the City and County of San Francisco.

G. Title and Legal

For the purposes of this analysis, no title report was reviewed. It is assumed there exists no adverse easements or encumbrances that would have a detrimental affect on the utility, marketability or value of the subject property. Unless otherwise noted, it is assumed no conditions of title exist which would have a detrimental affect on the utility, marketability or value of the subject property. Please refer to Item 2 of the appraisal Assumptions and Limiting Conditions.

H. Legal Description

No legal description for the subject properties was provided.

I. Taxes & Assessments

It is understood the property is public and exempt from ad valorem taxation. However, the lease of the property may create a possessory interest under California revenue and Taxation Code Section 107. The appraiser was not provided any information regarding assessed valuation for the possessory interest.

III. VALUATION METHODOLOGY

A. Introduction – Property 1

In order to appraise the market rental value for Property 1, the appraiser completed an inspection of the subject property, and observed trends of land uses in the area, along with investment and development activity for Special Purpose – Limited Market facilities. In addition, construction costs, and improved market sales were researched along with rental income characteristics. These factors require the valuation analysis to rely on appropriate methodology.

The concept of the valuation should provide an appropriate (rental) return on the (capital) value of the asset being utilized and leased. This can be derived by a variety of methodologies. Among the valuation methodologies, the Cost Approach appears most appropriate. This is due to the fact that no sales or lease transactions could be located for any modern nursery projects that provide any meaningful indication of value. However, the Cost Approach can be used to determine the CSB value, and prevailing rates of return on property investments can be relied upon to establish a competitive rental value. *The Appraisal of Real Estate*, recognizes the validity of the Cost Approach as it states; *The cost approach is used to estimate the market value of proposed construction, special-purpose or specialty properties, and other properties that are not frequently exchanged in the market.*

As further support for reliance upon the Cost Approach, an authoritative text published by the Appraisal Institute, *The Appraisal of Real Estate*, recognizes the validity of the Cost Approach as it states;

> "The cost approach is used to estimate the market value of proposed construction, special-purpose or specialty properties, and other properties that are not frequently exchanged in the market. Buyers of these properties often measure the price they will pay for an existing building against the cost to build a replacement, minus depreciation or the cost to purchase an existing structure and make any necessary modifications..."

The Cost Approach utilizes a method in which the value of the property is derived by estimating the reproduction or replacement costs new of the improvements, deducting therefrom depreciation due to all causes attributable to the improvements, (and then adding the Market Value of the land). For reasons outlined below, the land component is excluded from this analysis. This method is based on the theory of substitution that implies that a knowledgeable buyer will pay no more for the real property than the cost of producing a comparable property of similar utility.

The final step in determining the market rent for the subject property is to select an appropriate rate of return which can be applied to the asset value to calculate a market rent.

B. Property 1 - Valuation

1. *Site Valuation*

For this analysis, and as a condition of the subject valuation, the rental value of the site that supports Property 1 is excluded. This is due to the fact that the rent credit is attributed to the gift of the new improvements that will be completed at a cost of approximately $14 million by the San Francisco Botanical Garden Society (SFBGS), a non-profit entity. The site is under public ownership and while it contributes to the location and function of the project, no rent credit can be attributed to the site.

2. *Valuation of CSG Nursery Improvements*

The subject nursery constitutes special purpose improvements that are uniquely designed to serve their intended use. The nursery improvements, as described previously, were designed by architect, Fernau & Hartman. The budgeted 2013 costs total $14,248,143 as presented on Table 1. These were provided by the project consultants, Oppenheim Lewis. Mr. Lewis reported that Oliver & Company, a construction, management and development firm, is preparing a quantitative cost estimate for the project. The project costs have a substantial contributory value in the determination of the appraiser's estimate of market rent.

Vertical development approximates $5.4 million for construction of 9,830 SF. This equates to approximately $550/SF. This includes the approximate 4,230 SF Headhouse, and 2,800 SF in each of the Greenhouse and Shadehouse structures. However, the project includes extensive surface or horizontal improvements as well. The budget includes $2.4 million for site work that includes clearing, grading, utilities, and soft and hardscape improvements associated with access, parking, growing grounds, work yard, etc. The $2.4 million site work budget indicates a unit price of approximately $24/SF of site area. The nursery and site improvement costs total $8.15 million. These costs are then adjusted 3.7% for time between the 2012 estimate and the 2013 construction start. Including a 9.25% contingency ($754,339), total project construction costs amount to $9.204 million. Soft costs and other project costs, combined, total approximately $5,044,000. The budgeted project construction, soft and other costs total **$14,248,143**. This amount is used to derive the market rental value for the improvements.

3. Rate of Return

The next step is to select an appropriate rate of return to provide a competitive return on the value of the underlying asset. The appraiser has investigated comparative yield indexes for real estate assets, bonds, etc. A compilation of these survey is presented in the addenda. For the subject, an appropriate rate of return is tempered by the demand of its use that is deemed to be relatively secure given it functions as an important cultural asset, in comparison to alternative investments in real estate where demand is more directly impacted by economic cycles that currently during the past 3 – 4 years is being re-priced due to increasing risk.

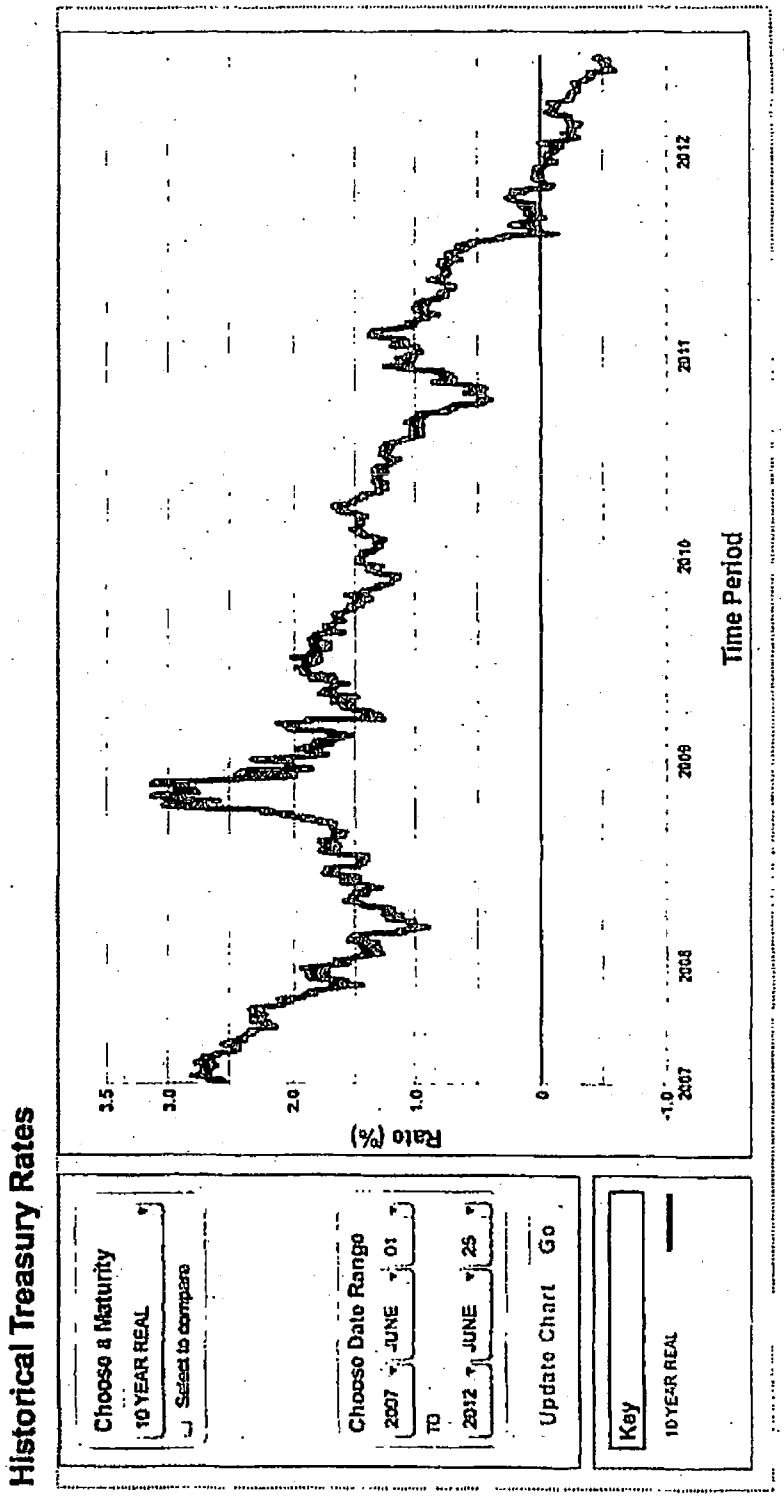
For this analysis, given the relative safety of an unsubordinated position or obligation, prevailing short – long term US bond yields are considered. Treasury Bond rate trends are deemed to reflect "risk-free" rates. These rate indications are considered to reflect the low end of the range for rates applicable to the subject property. Currently, prevailing US bond yields approximate 2.2% depending on their short – long term characteristics. Please refer to Exhibit E.

As an alternative consideration, the aforementioned factors rank the security of the rent obligation similar to a ground lease transaction wherein the owner of the leasehold improvements is induced or motivated to insure the ground rent is paid so as to secure its investment in the leasehold improvements. Thus, the analysis takes into consideration the prevailing rates of returns indicated by ground lease investments and transactions.

Historically, ground lease rates of return vary dependent upon the economic cycle where lower rates prevail during a recessionary economy and higher rates during an expansionary cycle. Depending on the relative quality and appeal of the location for ground lease site, ground lease rates up to 8 – 10% have been reported. However, these transactions tend to reflect older agreements conveying use for mid-long term periods that insulate the parties from inflation and market volatility and are also impacted by periodic adjustments, if any. In the case of the subject, and consistent with the current recessionary cycle, inflation is likely to remain stable and relatively low, although there is market concern that mid-long term inflation may be on the horizon.

Thus, a rate between relatively safe rates and current real estate investment rates is considered appropriate for the subject valuation. The application of this rate to either cost factor (new or depreciated) yields annual rental components as presented below. In order to establish a competitive Rental Value for the subject, it is deemed appropriate that it provide an appropriate return on the asset value. Typically a competitive rate of return reflects a measure of demand and risk that is associated with the development and operation of the asset, as well as the contract terms of the lease. No terms of a lease agreement have been provided for this analysis.

The appraiser has completed a survey of yield rates indicated by the purchase of ground lease assets. The results of the survey are presented on **Table 2**. Ground leases acquired as investments reveal yields that range from 4.17% to 7%. The range is indicative of both the acquisition date and the yield rate that is indexed to the prevailing 20 – 30 year Treasure bond rate at the time of the ground lease. These vary significantly over time and by land use, and in some cases a participation rent factor. None of these transactions involve special use properties, but relate to more intensive commercial uses such as retail, hotel, apartments and offices. Primary consideration is given to recent transactions #1,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10 YEAR REAL
Select to compare
Choose Date Range
2007
JUNE
01
TO
2012
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25
Update Chart
Go
Key
10 YEAR REAL
Rate (%)
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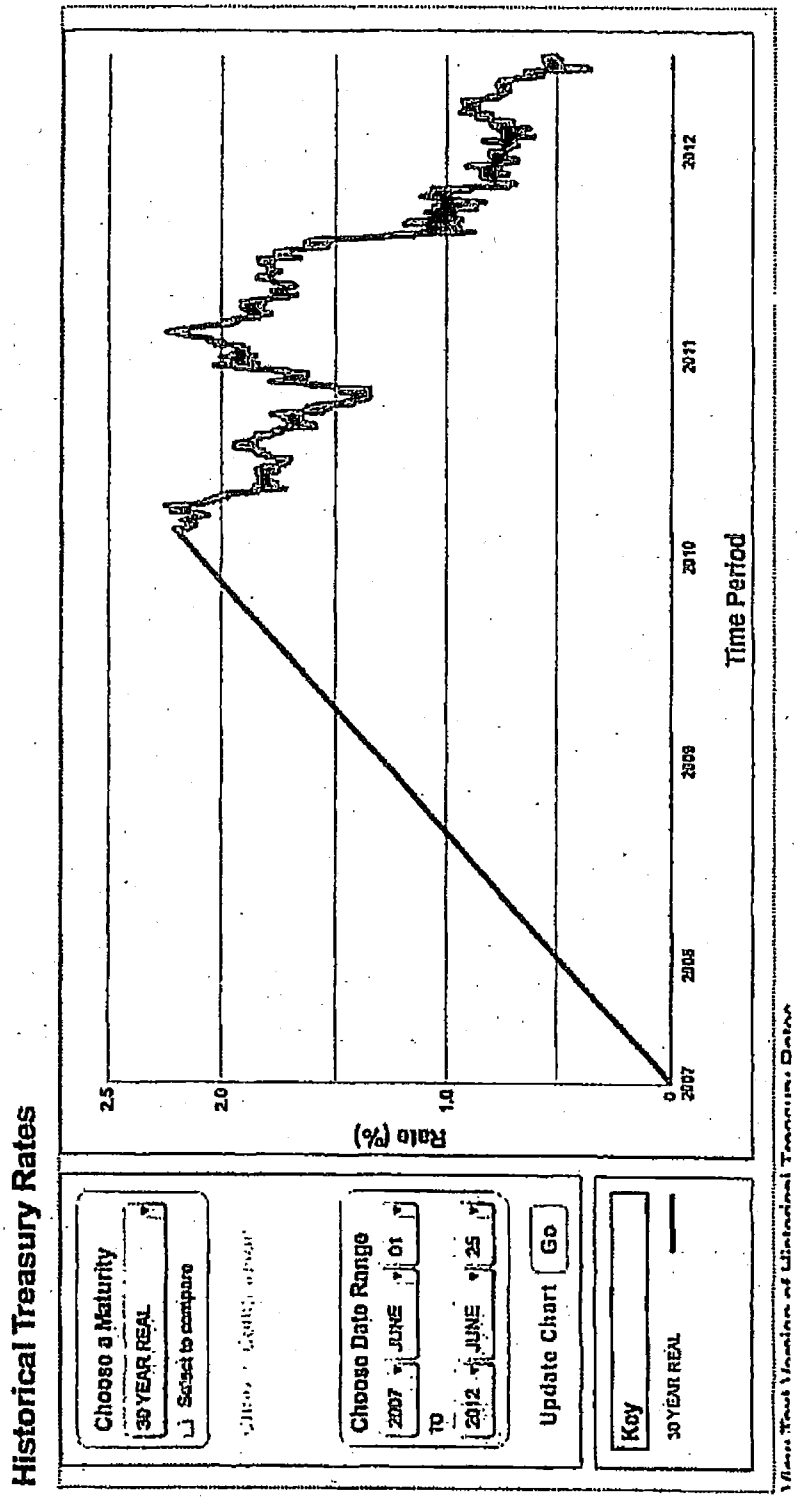
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TO
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Update Chart
Go
Key
30 YEAR REAL
View Text Version of Historical Treasury Data
Rate (%)
2.5
2.0
1.0
0
2007
2008
2009
2010
2011
2012
Time Period

DATE	LT COMPOSITE (>10 Yrs)	TREASURY 20-yr CMT	EXTRAPC
06/01/12	2.11	2.13	N/A
06/04/12	2.16	2.17	N/A
06/05/12	2.21	2.23	N/A
06/06/12	2.32	2.34	N/A
06/07/12	2.33	2.35	N/A
06/08/12	2.34	2.36	N/A
06/11/12	2.29	2.30	N/A
06/12/12	2.35	2.37	N/A
06/13/12	2.28	2.30	N/A
06/14/12	2.31	2.33	N/A
06/15/12	2.28	2.30	N/A
06/18/12	2.26	2.28	N/A
06/19/12	2.31	2.33	N/A
06/20/12	2.31	2.34	N/A
06/21/12	2.28	2.30	N/A
06/22/12	2.35	2.37	N/A
06/25/12	2.28	2.31	N/A

Treasury Long-Term Average Rate and Extrapolation Factors. Beginning February 18, 2002, Treasury ceased publication of the 30-y February 19, 2002 through May 28, 2004, Treasury published a Long-Term Average Rate, "LT>25," (not to be confused with the Long-Te addition, Treasury published daily linear extrapolation factors that could be added to the Long-Term Average Rate to allow interested par June 1, 2004, Treasury discontinued the "LT>25" average due to a dearth of eligible bonds. In place of the "LT>25" average, Treasury pu rate on this page along with an extrapolation factor that was added to the 20-year Constant Maturity to obtain an estimate for a theoretic **reintroduced the 30-year constant maturity and is no longer publishing the extrapolation factor.**

The Long-Term Average Rate, "LT>25," was the arithmetic average of the bid yields on all outstanding fixed-coupon securities (i.e., ex years or more remaining to maturity. This series first appeared on February 19, 2002, following discontinuation of the 30-year Treasury c "LT>25" average was discontinued on June 1, 2004.

Linear Extrapolation Factors were determined by considering the slope of the yield curve at it's long end and extrapolating out to a the Factor to determine a 30-year proxy rate, add the factor to the 20-year Constant Maturity Rate. For example, if on a particular day the 20 Extrapolation Factor was 0.02%, then a 30-year theoretical rate would have been 5.40% + 0.02% = 5.42%. Publishing of the Linear Extr 9, 2006 with the reintroduction of the 30-year Constant Maturity Rate.

The Long-Term Composite Rate is the unweighted average of bid yields on all outstanding fixed-coupon bonds neither due nor callabl

For more information regarding these statistics contact the Office of Debt Management by email at debt.management@do.treas.gov.

TABLE 3

SUMMARY OF GROUND LEASE TRANSACTIONS

Comp #	Property location	Sale Date	Sale Price $ $/SF	Land Area (AC)	Annual Ground Rent	Term Adjustments	Capitalization Rate	Seller	Buyer	Comments
1	Mark Hopkins Hotel One Nob Hill San Francisco APN 0255-002	5 / 2010	$22,650,000 $399.98	1.3 56,725	$1,250,000 $1,500,000	52 years 2019 renewal 2062 expiration Average	5.52% 6.62% 6.43%	Lurie Mark Hopkins	SF MH Acquisition LLC	Improved with historic Mark Hopkins hotel 380 units (40 suites) Purchase was by RFR to Intercontinental but set by competitive bids
	Cap rate in comparison to 30 Yr Treasure TIPS at time of Sale >>>>>>>>>>>>						1.80%			
	Cap rate in comparison to 30 Yr Treasure Nominal at time of Sale >>>>>>>>>						4.30%			
2	Google - Charleston East Site NWC Charleston & N. Shoreline Blvd Mountain View APN 116-21-51	4 / 2011 signed 6 / 2011 COE	$30,500,000 $74	9.48 412,949	$693,610	Annual 3 % Reappraised every 10 yrs with 165% cap	2.27%	City of Mountain View	Google	Maximum FAR is 285,000 SF Google began negotiating ground lease with City of MV in 2009 based on 7% return on $24/SF land value - City conceded land value was below market. Google then prepaid lease at $30.5 million.
3	Google at NASA Research Park Parcels 1, 2 and 4 Mountain View	5 /2008	N/A See comments	41.28 1,798,157	$3,660,000	CPI every 5 yrs not to exceed 15% Reappraised every 10 years with capped increase at 216%	7.0%	Lessor NASA	Lessee Google	Tenant has right to construct 1,205,000 SF of office, R&D and a maximum of 105,000 SF housing Tenant incurs significant site work and receives land value credit.
4	Aqua Via Apartments 47590 Lincoln Marina Del Rey APN 4224-014-017	8 / 2010	$40,760,000 $235.11	3.98 173,369	$1,564,800	Base or 12% gross income	3.8%	Marina Terrace Associates	BRE Properties	500 unit apartment project built in 2001 - buyer owned leasehold improvements
	Cap rate in comparison to 30 Yr Treasure TIPS at time of Sale >>>>>>>>>>>>						1.80%			
	Cap rate in comparison to 30 Yr Treasure Nominal at time of Sale >>>>>>>>>						3.80%			
5	775 Ridder Park San Jose	4 / 2011	$30,500,000 $60.67	11.54 502,682		50 years		Sand Hill Property Co.		Improved with 141,100 SF plus garden center Lowes HIP, lease guaranteed by Lowes Inc. Lease began 12/2008 20 Yr lease with (5) 5 Yr renewal options flat 10 years, then 10% each 5 yrs
					$1,950,000	Yrs 1 - 10	6.39%			
					$2,145,000	Yrs 11 - 15	7.03%			
					$2,359,500	Yrs 16 - 20	7.74%			
					$2,595,450	Yrs 21 - 25	8.51%			
					$2,854,995	Yrs 26 - 30	9.36%			
					$3,140,495	Yrs 31 - 35	10.30%			
					$3,454,544	Yrs 36 - 40	11.33%			
					$3,799,998	Yrs 41 - 45	12.46%			
					$4,179,998	Yrs 46 - 50	13.70%			

#2 and #3. These occurred more recently and convey investment positions improved with substantial leasehold building improvements. The range of indicated rates range from 3.8% to 6.4%. The high end of the range is for a new bulk retail development project (#1) leased to Lowe's for 30 years. It is deemed to reflect an inferior higher risk property type with improvements that may lose functional and investment appeal, and as well has an inferior location. Ground lease transaction #2 and #3, are considered to provide more similar in terms of quality and risk. In addition, the appraiser investigated a variety of ground lease transactions entered into by Google in the Mountain View and former Moffett Field project areas. These transactions also shed light on prevailing risk rates for highly secured ground lease commitments that indicated rates from approximately 3% to 7%.

Once again, for this analysis, several factors must be considered. The underlying nursery improvements are considered more secure, and not directly exposed to market volatility in demand, occupancy and rental rates. Further, it should be noted the security of the rent obligation is enhanced by the substantial costs expended by the tenant to (originally construct the facility). Tenant quality is another consideration since the durability of rent obligation has always been, and especially now, is a critical factor in determining investment and risk assessment. The current commitment by an important and successful long-term occupant renders it attractive to alternative investors. Therefore, the appraiser concludes there is a high level of safety associated with the use of the property (and its ability to generate secure rental income). Accordingly, investment risk is mitigated and an appropriate rate of return is selected from the low end of the market range to determine the Rental Value for the subject. Thus, for the subject ground lease a competitive rate of return must be lower than the low end of the aforementioned range for improved properties. Based on these metrics, a competitive yield between not less than 3.5%, nor more than 5% is indicated.

Therefore, the appraiser concludes an appropriate rate of return within the lower-middle range from 4.25% is appropriate in determining a market-based update Rental Value for the property.

By multiplying these two factors a Rental Value amount is determined that provides a competitive return on the value of its asset that is calculated as follows:

ASSET VALUE	X	RATE OF RETURN	=	RENTAL VALUE
$14,248,143	X	4.25%	=	$605,546

C. Property 2 - Valuation

In order to appraise the market rental value for Property 2, the appraiser completed an inspection of the subject property, and observed trends of land uses in the area. The various components of the Property 2 are most similar to competitive Class C office space and industrial space for which comparisons can be made with recent lease transactions for use of such space. Consequently, the appraiser investigated recent lease transactions as well as current listing for available space, under the theory they represent the alternative occupancy costs for nearby locations. The data is presented on Table 3.

Comparable 1 is the current office location for the SFBGS at 1260 9th Avenue. It began occupancy in 2007 under a 2-year lease agreement that now continues as a month-to-month rental agreement. The premises include approximately 1,500 SF that constitutes a converted residential flat. The landlord recently implemented a rent increase for July at $3,500 that equates to a rate of $2.33/SF/MO. In addition to the rent, the tenant pays PG&E utility costs and provides its own janitorial services. The owner pays taxes as well as water, sewer and garbage expenses along with casualty insurance costs. This is tantamount to a gross lease structure.

TABLE 4

OFFICE LEASE COMPARABLES

Comp No.	Address	SF	Lease Date	Lease Term	Owner Expenses	Rent Escalation	TI $ / SF	Rent $/SF/MO
1	1260 9th	1,500	4/2007 > MTM	MTM	Modified	None	None	$2.33
2	1627 Irving	3,026	Available	Neg.	Modified	Neg.	Turnkey	$2.28
3	2150 Irving	2,500	Available	Neg.	Gross	Neg.	As Is	$1.50
4	2203 Irving	5,000	Available	Neg.	Full Service	Neg.	Turnkey	$3.50
5	2340 Irving	438 - 1,945	Available	Neg.	Net	Neg.	As Is	$1.50
6	2340 Irving	3,040	06/01/12	1 Yr	Net	N/A	None	$2.20
7	2537 Irving	1,700	Available	Neg.	Modified	Neg.	Turnkey	$1.71
8	350 Parnassus	22,257	Available	Neg.	Gross	Neg.	As Is	Neg.
9	350 Parnassus	800	06/01/12	10 Yrs	Full Service	Ann. 3%	$15/SF	$6.50

Comparable 2 is located at 1627 Irving (at 17th). It comprises available space in second and third floor premises that have been extensively renovated. The premises contain a total of 3,026 SF but it can be divided into two spaces. The current asking rent ranges from $2.28/SF/MO to $2.74/SF/MO. The reported expense base is modified with the owner paying taxes and insurance.

Comparable 3 is located at 2150 Irving (at 22nd). It comprises available space in second and third floor premises that are older. The premises contain a total of 2,500 SF but it can be divided into as small as 1,100 SF. The current asking rent is $1.50/SF/MO. The reported expense base is gross with the owner paying taxes and insurance.

Comparable 4 is located at 2203 Irving (at 23th). It comprises available space in newly renovated 2-story building. The premises contain a total of 5,000 SF but it can be divided into smaller units. The current asking rent is $3.50/SF/MO. The reported expense base is modified with the owner paying taxes and insurance.

Comparable 5 is located at 2340 Irving (at 24th). It comprises available space in a 3-story building. The premises contain a total of 5,628 SF but it can be divided into smaller units as small as 243 SF. The current asking rent is $1.50/SF/MO. The reported expense base is net with the tenant paying all expenses. Parking is available in the building but at an additional cost.

Comparable 6 is the recent lease of the ground floor premises at 2340 Irving. Thinktank Learning began occupancy in 2007 under a 1-year lease agreement that includes approximately 3,040 SF. The rent is $2.20/SF/MO and the expense base is net.

Comparable 6 is the recent lease of the ground floor premises at 2340 Irving. Thinktank Learning began occupancy in 2007 under a 1-year lease agreement that includes approximately 3,040 SF. The rent is $2.20/SF/MO and the expense base is net. The rent was set at a low rate since the tenant intended to pay all tenant improvement costs.

Comparable 7 is located at 2537 Irving (at 26th). It comprises available space in a newer 2-story building. The seconf floor premises contain a total of 1,700 SF. The current asking rent is $1.71/SF/MO. The reported expense base is modified net with the owner paying taxes and insurance.

Comparable 8 is located at 350 Parnassus. The project comprises a mid-rise medical office building at UCSF. The building management reports that a 10-year lease was just transacted for 800 SF that requires a full service rent of $6.50/SF/YR with 3% annual increases. A TI allowance of $15/SF was provided but no other rent concessions. The unit is on the 6th floor facing north with excellent views. This transactions is for information only given its location and orientation for medical office tenants.

The rental value for the subject is segregated between the County Fair Building premises and bookstore, and the older horticultural shed buildings. The County Fair Building office premises are well located inside the park environs, with generally good access to the nearby Inner Sunset neighborhood district and complimentary services. Parking is no less convenient than other neighborhood business districts, however, the overall garden and park setting is superior to many nearby options. The subject is a public property and exempt from real property taxes. Typically the competitive market conveys taxed properties that more often is the burden of the landlord, for which rent levels are adjusted on some level to offset the owner's obligation. Consequently the motivation or incentive varies between private property owner's efforts to recapture such costs compared to public properties, suggesting more competitive rent levels. The subject rent is projected on a gross basis, requiring tenant payment of all utilities and janitorial services, with taxes, structural maintenance and insurance the responsibility of the landlord. The market rental value for various component areas within the County Fair Building and bookstore is projected on **Table 4**.

The rental value for the older subject horticultural shed buildings, consideration is placed on their dilapidated condition and limited functional utility. The premises are obviously well located inside to support the park and gardens environs, but access and competitive appeal is limited. For comparison the reader is referred to **Table 5** for recent South of Market industrial lease transactions and indexed rental rates. The subject is inferior to each of the comparables and are

SUMMARY OF INDUSTRIAL LEASE COMPARABLES

TABLE 5

Comp. No.	Lessee and Location	Year Built	Rentable Area Sq. Ft.	(Date Signed)/ Start Date	Term	Monthly Rent Schedule: Months	Monthly Rent Schedule: Rent	Remarks
IL-1	Mixonic High volume DVD copier 1265 Folsom Street		10,150	(3/08)/ 3/08	5 yrs.	01 - 12 13 - 60	$1.15 IG 2% annual increases	Two-story production space with 5,400 sq. ft. downstairs and 4,750 sq. ft. upstairs. Has on-site parking for about 6 cars in rear.
IL-2	Graphic Reproductions 679 Bryant Street		8,000	(11±/08) 11/1/08	10 yrs.	01 02 - 12 13 - 120	-0- $1.20 IG 3% annual increases	Ground floor space in two-story multi-tenant building. Has small office area Leased "as is."
IL-3	Car detailer 840 Harrison Street	1917	9,360	(Late 6/09) 7/15/09	2 yrs.	01-24	$0.91 IG	Includes 2,720± sq. ft. (29%) of office space on 2 levels. Landlord provided no TI allowance; space rented "as is."
IL-4	Auto repair garage 135 Clara Street	1945	4,350	(6/11/09) 8/1/09	5 yrs.	01 02-12 13-24 25-36 37-48 49-60 Average	-0- $0.80 IG $0.95 IG $1.00 IG $1.05 IG $1.10 IG $0.985 IG	Includes 600± sq. ft. (14%) of mezzanine office space. Landlord provided no TI allowance; space rented "as is."
IL-5	Mission Creek Kitchen (catering company) 550 Alabama Street	1924	11,200	(6/2010)/ 7/2010	5 yrs.	Average	$1.21 IG	Two-story poured concrete industrial building with approximately 5,600 sq. ft. per floor; was substantially remodeled in 2002 and 2008. Ground floor is warehouse with dock-high truck door; second floor is improved showroom with private offices. Has hydraulic elevator to roof.

TABLE 5, Continued

615 Bayshore
615 Bayshore Blvd — *Unit:*
San Francisco CA
Zone: Bayshore Corridor
Major Use: Warehouse
Lessee: **Tez Marble, Inc.**
Lessor: Domenica Vassallo/Antoinette S
Sublease: No

Rentable SF:		10,200 SF	*Date Signed:*		06/22/2011
Base Rate:	$1.51	Gross	*Lease Start:*		07/01/2011
Effective Rent:	$1.63	Gross	*Lease Expiration*		11/30/2021
Rental Adjustments... 3%			*Lease Term:*		125M
			Ceiling Ht:		
Free Rent:		5M	*Office SF:*		0
NNN Cost:		$0.00	*Parking Ratio:*		
TIs New:		As Is	*Loading Dock:* 0	*Grade:*	1

CLIFFORD ADVISORY, LLC

National Industries City
2121 Oakdale Ave — *Unit:*
San Francisco CA
Zone: Bayshore Corridor
Major Use: Warehouse
Lessee: **ARB, Inc.**
Lessor: National Industries City
Sublease: No

Rentable SF:		12,788 SF	*Date Signed:*		11/12/2011
Base Rate:	$1.03	Ind Gross	*Lease Start:*		01/01/2012
Effective Rent:	$1.03	Ind Gross	*Lease Expiration*		11/30/2014
Rental Adjustments... 3%			*Lease Term:*		35M
			Ceiling Ht:		
Free Rent:		1M	*Office SF:*		0
NNN Cost:		$0.00	*Parking Ratio:*		
TIs New:		As Is	*Loading Dock:* 0	*Grade:*	0

CSG & County Fair Building, Golden Gate Park

2142 Jerrold
2142 Jerrold Ave — *Unit:*
San Francisco CA
Zone: Bayshore Corridor
Major Use: Warehouse
Lessee: **Allied Building Products Corp.**
Lessor: Somar Properties Llc
Sublease: No

Rentable SF:		12,305 SF	*Date Signed:*		06/24/2011
Base Rate:	$0.90	Gross	*Lease Start:*		08/01/2011
Effective Rent:	$1.04	Gross	*Lease Expiration*		09/30/2016
Rental Adjustments...			*Lease Term:*		62M
			Ceiling Ht:		
Free Rent:		1M	*Office SF:*		0
NNN Cost:		$0.00	*Parking Ratio:*		
TIs New:			*Loading Dock:* 0	*Grade:*	0

concluded to offer nominal utility and hence (rental) value. The same comments apply to taxes as stated previously. The subject rent is projected on a gross basis, requiring tenant payment of all utilities and janitorial services, with taxes, structural maintenance and insurance the responsibility of the landlord. The market rental value for various component areas within the County Fair Building, bookstore and horticultural structures is projected on Table 6.

D. Market Rent Conclusion

The intended use of the appraisal analysis presented herein addresses he market rental value for two properties.

PROPERTY 1 is the proposed Center for Sustainable Gardening project in Golden Gate Park. The project site is under public ownership and the new project will replace the existing San Francisco Botanical Garden at Strybing Arboretum. The market rent for Property 1 is **$605,546.**

PROPERTY 2 is the existing space at the County Fair Building in Golden Gate Park. The existing space comprises office, library, storage and book store premises and older horticultural space in the nursery area. The total area encompasses approximately 4,349 SF. The market rent for Property 2 is **$81,289**, under the premise annual CPI or fixed increases is anticipated.

TABLE 6

PROPERTY 2 RENTAL VALUATION

Component	SF	Use - Comments	$/SF/MO	$/MO	$/YR
A	1,127	Office	$2.25	$2,536	$30,429
B	1,378	Library	$2.35	$3,238	$38,860
C	80	Office	$2.00	$160	$1,920
D	84	Bookstore	$2.00	$168	$2,016
E	1,680	Horticultural	$0.40	$672	$8,064
	4,349		$1.56	$6,774	$81,289

ADDENDA

Appraisal Certification Statement

EXHIBIT E

I certify that, to the best of my knowledge and belief:

- the statements of fact contained in this report are true and correct.
- the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- I have made a personal inspection of the property that is the subject of this report.
- no one provided significant real property appraisal assistance to the person signing this certification.
- I have performed a previous appraisal of the subject property involving the subject property within the three years prior to this assignment.
- the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I has completed the continuing education program of the Appraisal Institute.

John C Clyde

Signature

6/22/2012

Date

EXHIBIT F

Assumptions and Standard Limiting Conditions

This appraisal is subject to the following limiting conditions.

1. The legal description and area dimensions furnished the appraiser is assumed to be correct. No survey of the boundaries of the property was completed.
2. No responsibility for matters legal in character is assumed, nor is any opinion as to title rendered, which is assumed to be marketable. All existing liens, encumbrances, and assessments have been disregarded, except where noted, and the property is appraised as though free and clear, under responsible ownership and competent management. It is specifically noted the appraisal assumes the property will be competently managed, leased and maintained by financially sound owners over a reasonable period of ownership.
3. Unless otherwise noted herein, it is assumed that there are no encroachments, zoning, or restrictive violations existing in the subject property.
4. No opinion is intended to be expressed on matters which require legal expertise or specialized investigation or knowledge beyond that customarily employed by real estate appraisers.
5. The exhibits in this report are included to assist the reader in visualizing the property. No survey of the property has been made and no responsibility in connection with such matters is assumed.
6. The distribution or allocation, if any, of the total valuation of this report between land and improvements applies only under the existing program of utilization. The separate valuations for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used. Any value estimates provided in the report apply to the entire property, and any proration or division of the total into fractional interests will invalidate the value estimate, unless such proration or division of interests has been set forth in the report.
7. The statements of value and all conclusions shall apply as of the date shown herein.
8. No responsibility for economic or physical factors is assumed which may affect the opinions herein stated, which may be present or occur at some date after the date of value.
9. An inspection, as far as possible, by observation, the land has been made; however, it was impossible to personally inspect conditions beneath the soil; therefore, no representations are made as to these matters unless specifically considered in the appraisal. Further, no opinion is expressed as to the value of sub-surface oil, gas, or mineral rights, or whether the property is subject to surface entry for the exploration or removal of such materials, except as is expressly stated.
10. This appraisal is predicated on the assumption that the existence of hazardous material, which may or may not be present in, on or near the property, was not observed by the appraiser, unless otherwise stated. The appraiser has no knowledge of the existence of such materials in, on or near the property. The appraiser, however, is not qualified to detect such substances, and assumes no responsibility for such conditions, or for engineering or other inspections which might be required to discover such factors. The presence of asbestos or other potentially hazardous materials may affect the value of the property. The value estimate herein is predicated on the assumption that there is no such material on or in the property that would cause a loss in value. No responsibility is assumed for any such condition, or for any expertise or knowledge required to discover them.
11. No engineering survey has been made by us. Except as specifically stated, data relative to size and area were taken from sources considered reliable. Furthermore, no warranty is implied with regard to physical or structural or operational deficiencies which are not disclosed to the appraiser and noted herein.
12. The appraiser assumes no responsibility for determining if the property requires environmental approval by the appropriate governing agencies, nor if it is in violation thereof, unless otherwise noted herein. The appraiser assumes that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless noncompliance is stated, defined and considered in the appraisal report. The appraiser assumes that all required licenses, certificates of occupancy, consents or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

13. Information, estimates, and opinions contained in this report are obtained from sources considered reliable and where feasible, has been verified. However, no liability can be assumed for information supplied by others.
14. The right to make such adjustments to the valuation herein reported is reserved, as may be required by the consideration of additional data or more reliable data that may become available.
15. All projections of income and expenses in this report are estimates of current market expectations, not predictions of the future. No warranty or representation is made that these projections will materialize. Where Discounted Cash Flow Analyses have been completed, the discount rates utilized to bring forecast future revenues back to estimates of present value, reflect both the appraiser's market investigations of yield anticipations and judgement as to the risks and uncertainties in the subject property and the consequential rates of return required to attract an investor under such risk conditions.
16. The appraiser may not be required to give testimony or to appear in court or any governmental or other hearing by reason of this appraisal, unless prior arrangements have been made.
17. The appraiser has no present or contemplated future interest in the property which is not specifically disclosed in this report.
18. This report shall be used for its intended purpose only and by the parties to whom it is addressed as of the current date of valuation. Possession of this report does not carry with it the right of publication, or duplication. One of the signatories of this appraisal is a member of the Appraisal Institute. The Bylaws and Regulations of the Institute require each member or candidate to control the use and distribution of each appraisal signed by such member or candidate. Therefore, except as hereinafter provided, the party for whom this appraisal was prepared may distribute copies of this report, in its entirety, to such third parties as may be selected by the party for whom this report was prepared; however, selected portions of this appraisal shall not be given to third parties without the prior written consent of the signatories of this report. Neither all nor any part of the contents of this report shall be conveyed to the public through advertising, public relations, news, sales, or other media without the written consent or approval of the author. This applies particularly to value conclusions, the identity of the appraiser or firm with which is connected, and any reference to the Appraisal Institute, or MAI designation.
19. Unreinforced masonry buildings (UMBs) are known to be hazardous in earthquakes. With the approval of Senate Bill 547 in 1986, the California Legislature enacted the Unreinforced Masonry Law. This act requires cities and counties in Seismic Zone 4 to inventory UMBs, to notify their owners that their buildings are potentially hazardous and to develop programs to mitigate this hazard.

    As of the date of valuation, the subject property is not included on the list of unreinforced masonry brick (UMB) buildings in Sausalito. It is assumed no such conditions impact the utility, occupancy, marketability and value of the subject property.

    Secondly, no studies have been completed to determine the property's "PML," Probable Maximum Loss, during a seismic event. Should such a study be made available, the appraiser reserves the right to make appropriate adjustments to value.

21. Information regarding any earthquake and flood hazard zones for the subject property was provided by outside sources. Accurately reading flood hazard and earthquake maps, as well as tracking constant changes in the zone designations, is a specialized skill and outside the scope of the services provided by this appraisal assignment. No responsibility is assumed by the appraisers in the misinterpretation of these maps. It is strongly recommended that any lending institution reverify earthquake and flood hazard locations for any property for which they are providing a mortgage loan.
22. Unless otherwise noted in the body of the report, it is assumed that the property is structurally sound; that all building systems (mechanical/electrical, HVAC, elevators) are, or will be upon completion, in good working order with no major deferred maintenance or repair required; that the roof and exterior are in good condition and free from intrusion by the elements; that the property is seismically sound and that the continued use of the structure would not require any seismic bracing or seismic upgrading; that there are no potential asbestos, toxic waste or other types of environmental problems; that the property has been engineered in such a manner that it will withstand any known

elements such as windstorm, hurricane, tornado, flooding, or similar natural occurrences; and that the improvements, as currently constituted, conform to all applicable local, state and federal building codes and ordinances. Clifford Advisory, LLC, has not retained independent structural, mechanical, electrical, or civil engineers in connection with this appraisal, and therefore, makes no representations relative to building condition. No such problems were brought to the attention of Clifford Advisory, LLC, by ownership or management. Unless otherwise noted, Clifford Advisory, LLC, inspected less than 100% of the entire exterior and interior portions of the improvements. Unless otherwise noted, Clifford Advisory, LLC, was not furnished any engineering reports by the owners and/or by the party retaining this appraisal. If questions in these areas are critical to the decision process of the reader, the advice of competent engineering consultants should be obtained and relied upon. If engineering consultants retained should report negative factors, of a material nature, or if such are later discovered, relative to building condition, such negative information could have a substantial negative impact on the values reported in this appraisal. Accordingly, if negative findings are reported by engineering consultants, Clifford Advisory, LLC, reserves the right to amend the values reported herein.

E. Useful Definitions

1. *Definition of Market Value (USPAP)*

Market Value is the major focus of most real property appraisal assignments. Both economic and legal definitions of market value have been developed and refined. A current economic definition agreed upon by federal financial institutions in the United States of America is:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in the definition is the consummation of a sale of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated.
2. Both parties are well informed or well advised, and each acting in what they consider their own best interest.
3. A reasonable time is allowed for exposure in the open market.
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto.
5. The price represents a normal consideration for the property sold unaffected by special financing or creative financing or sales concessions granted by anyone associated with the sale.

(Source: Office of the Comptroller of the Currency Under 12 CFR, Part 34, Subpart C-Appraisals, 34.42 definitions [f].)

2. *Definition of Market Rent*

Market rent is defined as the rental income that a property would most probably command in the open market.

3. *Property Rights Appraised*

The primary purpose of the appraisal is to estimate the Market Rental Value of the Fee Simple Interest in the subject property as described herein.

Fee Simple is defined by the Appraisal Institute as an absolute fee; a fee without limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power, and taxation. An inheritable estate.

4. *Valuation Methodology - Definitions*

There are three major approaches to the valuation of real property—the Cost Approach, the Sales Comparison Approach, and the Income Approach. The type and age of a property and the quantity and quality of data that can be obtained affect the utility of each approach for any given appraisal task.

The Income Approach is based upon the economic principle that the value of an income producing property is the present worth of anticipated future benefits; which are comprised of the annual income stream (cash flow or net income) and the reversion benefits (resale value). The net operating income is estimated by deducting from the gross annual income and appropriate allowance for vacancy and operating expenses. The net income can be converted into a present value estimate using a capitalization process. There are various methods of capitalization that are based upon inherent assumptions concerning the pattern of the income stream, as well as the quantity, quality and durability of the income stream.

The Direct Capitalization Method applies an overall capitalization rate to a single year net operating income (NOI). By dividing the estimated NOI by an appropriate capitalization rate, the value estimate by the Income Approach is derived. This is appropriate where the income stream, either actual or estimated, is generated by rental rates at or near the fair market level.

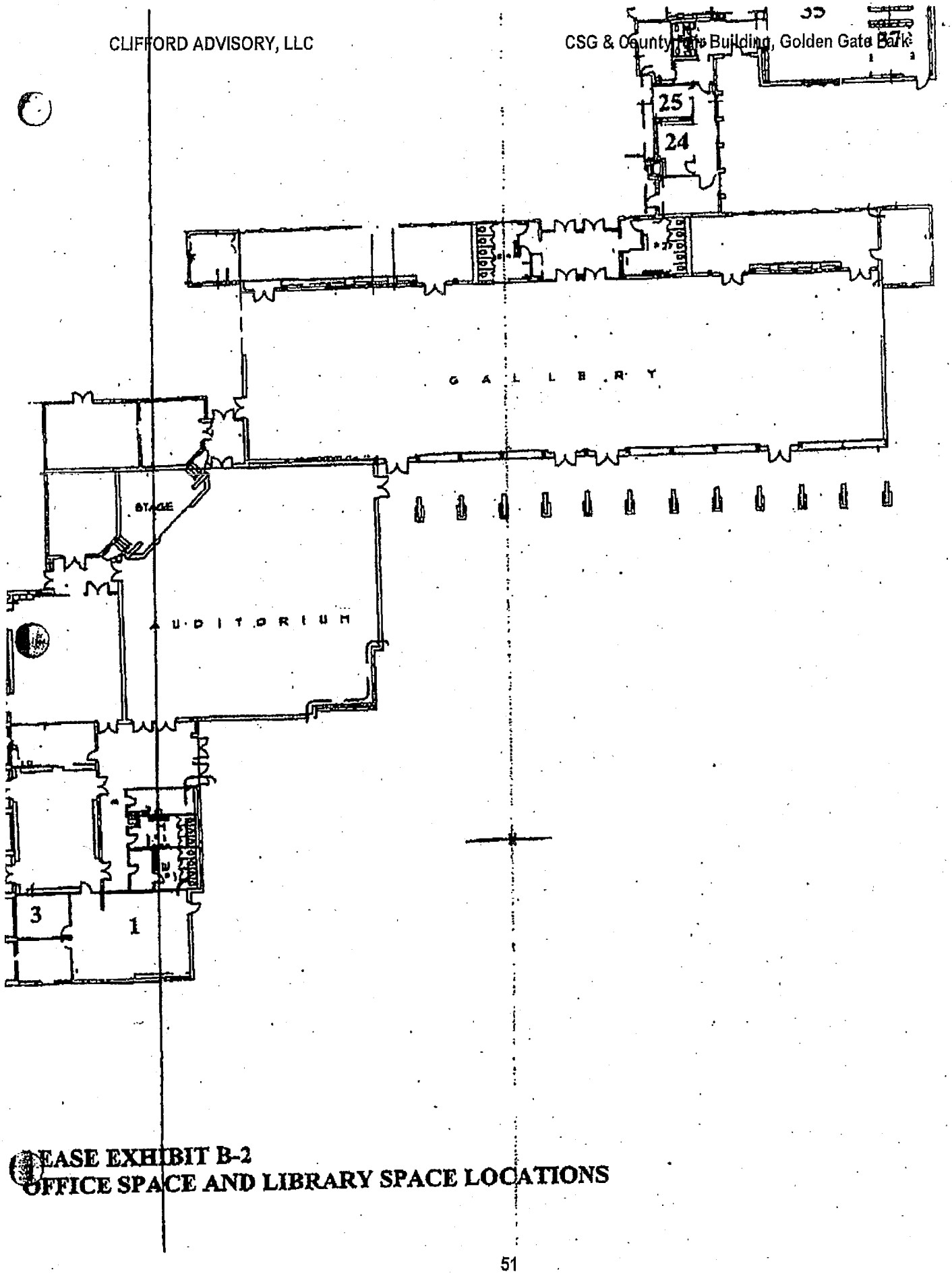
When the pattern of the anticipated income stream is irregular due to an absorption or stabilization period for a new project, or due to existing leases that terminates during a future period, the Discounted Cash Flow Analysis is considered to be a valid and appropriate method. The Discounted Cash Flow Analysis is a method to estimate the present worth of the future income stream by discounting each successive period of anticipated cash flow or net income by an appropriate discount rate. This technique is also known as the Yield Capitalization Method. The indicated Market Value utilizing this method is the sum of the present worth of each projected annual net income stream (before depreciation and taxes); and the present worth of the reversion, or potential resale benefits.

The Cost Approach utilizes a method in which the value of the property is derived by estimating the reproduction or replacement costs new of the improvements, deducting therefrom depreciation due to all causes attributable to the improvements, and then adding the Market Value of the land. This method is based on the theory of substitution which implies that a knowledgeable buyer will pay no more for the real property than the cost of producing a comparable property of similar utility.

The Sales Comparison Approach is a method of comparing recent sales of similar properties to the subject property. This approach is based on the principle that the prudent investor would pay no more for a property than the cost of acquiring a satisfactory alternative property that possesses physical, economic and financial comparability. The value of a particular property tends to coincide to the value indicated by the actions of informed buyers and sellers in the marketplace for similar properties.

San Francisco Botanical Garden Society – New Lease and Management Agreement
Premises to Be Leased to SFBGS

1. **County Fair Building and Library Building**
   - Now
     - Everything covered by 2002 lease
     - Three rooms that SFBGS also has been using (Rooms 23 and 30 in the Library Building, Room 21 in the County Fair Building). Note that Room 21 is for storage.
   - Future (To be specified in New Lease, dependent on future developments but to be appraised now)
     - Room 2 in the County Fair Building – after the Nursery: Center for Sustainable Gardening is built. (RPD will use other space in the County Fair Building for on-site information/reservations.)
     - Room 14 in the County Fair Building – for IT server closet (main portions of SFBGS phone system is currently located in this room; minimum point of entry for phone lines and City's T-1 line located in adjacent boiler room). Exclusive access not required, but limited access is. (Stage lighting and sound is located in this room.) Room would have to continue to have limited access it has now. SFBGS would want to place some kind of security or cage around the servers. Electrical requirements, other possible adjustments to the room and costs to be assessed.
     - Room 22 in the County Fair Building – for offices so that SFBGS will not have to rent office space off site; this is part of the space that would be converted to SFBGS office space under the Botanical Garden Master Plan. Engineering study required to assess feasibility and cost.
2. **Existing Nursery Facilities**
   - Now
     - Everything covered by 2002 lease
   - Future
     - Existing nursery to be demolished once Nursery: Center for Sustainable Gardening is completed.
3. **Nursery: Center for Sustainable Gardening**
   - Categories of space
     - <u>Exclusive use by SFBGS</u> – Work space for curatorial/plant collections management staff; 2 storage closets for volunteers located in the Commons; storage and lockers for Youth Education Program on exterior of building
     - <u>Predominant use by SFBGS</u> – Commons area of Headhouse
     - <u>50/50 use by SFBGS and RPD</u> – Greenhouse (including Propagation and Quarantine Areas), Shadehouse, Growing Grounds, Storage Room, and Tool Storage & Fertilizer Room
     - <u>Exclusive use by RPD</u> – Work spaces for Section Supervisor and Nursery Manager
     - <u>Common Areas inside the Headhouse</u> – Interior Bathrooms, Kitchen, Hallway, Janitorial, Electrical
     - <u>Public Areas during Nursery Working Hours</u> – Learning Court, Exterior Bathrooms
   - To be leased to SFBGS as Premises
     - Exclusive use
     - Predominant use
     - 50/50 use



LEASE EXHIBIT B-2
OFFICE SPACE AND LIBRARY SPACE LOCATIONS

Helen Crocker Russell Library of Horticulture

in San Francisco Botanical Garden at Strybing Arboretum

Orientation to the Library

www.sfbotanicalgarden.org

Welcome to the
Helen Crocker Russell Library of Horticulture

LIBRARIANS: Barbara M. Pitschel, Head Librarian <bpitschel@sfbotanicalgarden.org>
Jane Glasby, Associate Librarian <jglasby@sfbotanicalgarden.org>
Brandy Kuhl, Associate Librarian <bkuhl@sfbotanicalgarden.org>
Assisted by an able staff of 40 volunteers
Email address: <library@sfbotanicalgarden.org>
Phone: (415) 661-1316 extension 403

LIBRARY ONLINE CATALOG — (IRIS—Internet-Retrievable Information System)
<http://www.sfbotanicalgarden.org/library/index.html> provides web access to:

- 24,000 books
- 25,000 article citations
- 2,500 botanical images

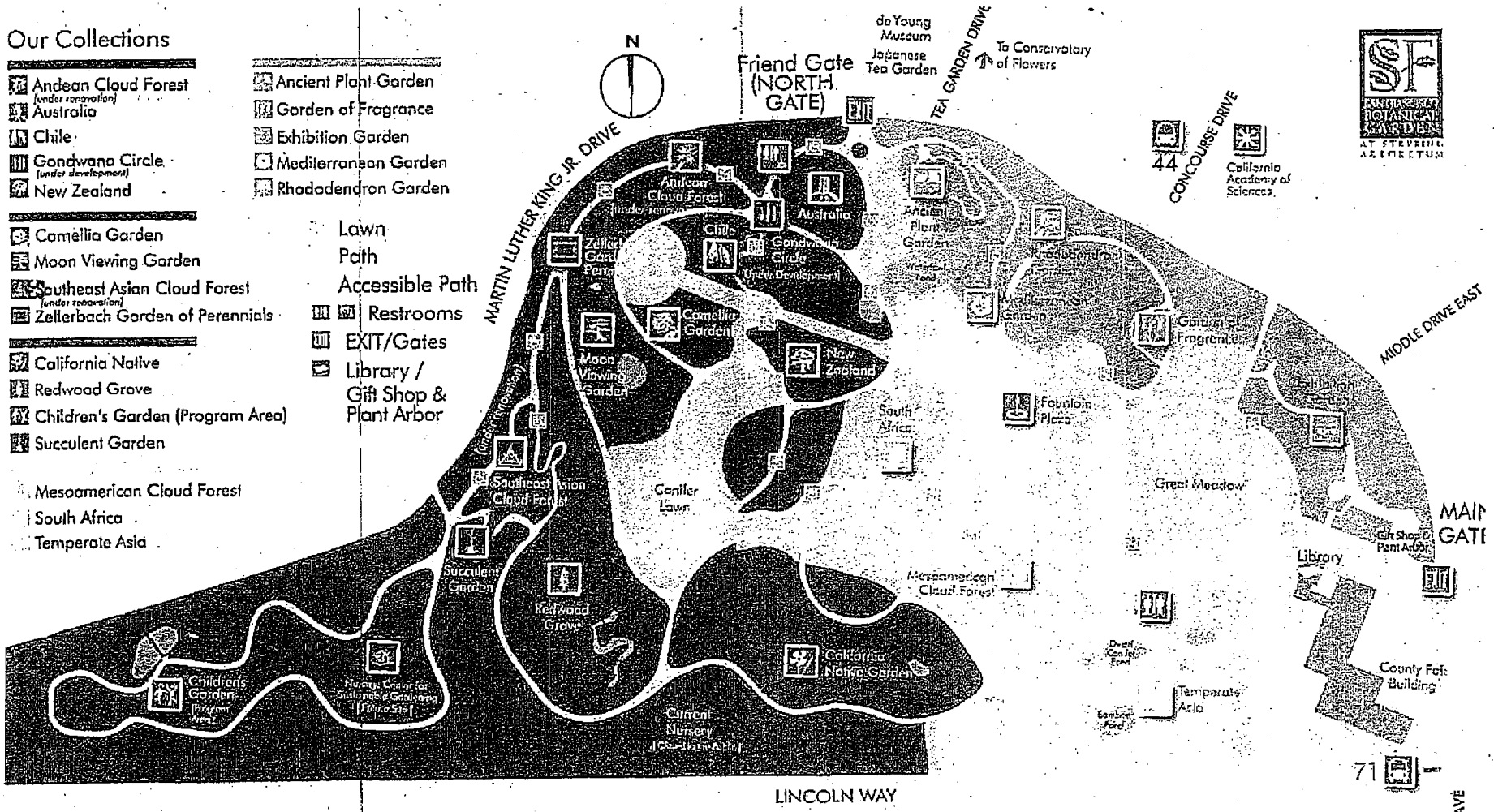
SUBJECTS:
Horticulture
This includes material in many related areas, for example:
All aspects of gardens and gardening
Specific kinds of Plants
Botany (limited holdings; California Academy of Sciences has a much more extensive collection)
Agriculture (small-scale; including organic farming, soils, fertilizers, compost)
Forestry (local, information on wood, etc.)
Natural History
Mediterranean Climates
Plant Hunters/Plant Introduction
Botanical Art, Illustration & Crafts
Plant Lore
Flower Arrangement
Medical Botany
Ethnobotany & Economic Plants
Plant Pests & Diseases
Ecological Restoration

HISTORY:
The Library was opened in 1972. The Library and all education programs (lectures, classes, docent program, tours, interpretative publications), as well as the development of special gardens are under the auspices of the San Francisco Botanical Garden Society. The day-to-day maintenance of the San Francisco Botanical Garden at Strybing Arboretum comes under the jurisdiction of San Francisco's Recreation & Park Department.

HOURS:
7 days a week, 10am – 4pm
Closed major holidays
Reference only, books do not circulate (The advantage of this system is that the books are here when you want to use them) Photocopiers (black & white, color) are available

Our Collections

- Andean Cloud Forest (under renovation)
- Australia
- Chile
- Gondwana Circle (under development)
- New Zealand
- Camellia Garden
- Moon Viewing Garden
- Southeast Asian Cloud Forest (under renovation)
- Zellerbach Garden of Perennials
- California Native
- Redwood Grove
- Children's Garden (Program Area)
- Succulent Garden
- Mesoamerican Cloud Forest
- South Africa
- Temperate Asia
- Ancient Plant Garden
- Garden of Fragrance
- Exhibition Garden
- Mediterranean Garden
- Rhododendron Garden
- Lawn
- Path
- Accessible Path
- Restrooms
- EXIT/Gates
- Library / Gift Shop & Plant Arbor



WELCOME to San Francisco Botanical Garden where you can explore 55 acres of gardens with over 50,000 plants from around the world. You'll discover incredible rarities from Asia, Australia, New Zealand, Central and South America, and South Africa, plus our award-winning California Native Plant Garden complete with a century-old redwood forest. Get ready to experience one of the most diverse botanical gardens on earth!

AGREEMENT FOR DESIGN AND CONSTRUCTION OF THE NURSERY AND CENTER FOR SUSTAINABLE GARDENING

This Agreement for Design and Construction of the Nursery and Center for Sustainable Gardening ("Agreement") is entered as of _____, 2012 (the "Effective Date"), by and between San Francisco Botanical Garden Society at Strybing Arboretum ("SFBGS"), a California non-profit public benefit corporation, and the City and County of San Francisco (the "City"), acting by and through its Recreation and Park Department ("RPD").

RECITALS

A. The City owns, operates and maintains the San Francisco Botanical Garden (the "Garden") located in Golden Gate Park in the City and County of San Francisco, and SFBGS is devoted to supporting, promoting, and enhancing the use, appreciation, and stature of the Garden.

B. SFBGS has proposed to construct a Nursery: Center for Sustainable Gardening on a site (the "Property") within the western end of the Garden (the "Nursery"), as shown on Exhibit A, attached hereto.

C. SFBGS has retained Fernau & Hartman Architects to prepare a conceptual plan (the "Conceptual Plan") for the Nursery.

D. This agreement incorporates by reference the Conceptual Plan.

E. On September 15, 2008, the Civic Design Review Committee of the San Francisco Arts Commission approved Phase 1 (Schematic Design) review for the Nursery. On March 16, 2009, the Civic Design Review Committee approved Phase 2 (Design Development) review for the Nursery. Phase 3 (Construction Documents) approval by the Civic Design Review Committee shall be required prior to commencement of construction of the Nursery.

F. On November 20, 2008, the City and County of San Francisco Recreation and Park Commission (the "Commission") approved the Conceptual Plan. On March ____, 2012, the Commission adopted a Mitigated Negative Declaration for the Nursery, approved this Agreement, and recommended that the Board of Supervisors accept a gift from SFBGS currently valued at approximately Fourteen Million Dollars ($14,000,000.00) for implementation of the Conceptual Plan. The improvements to be accepted as part of such gift shall include, but not necessarily be limited to: a new, LEED-Platinum-targeted nursery structure that includes a greenhouse, shade house, and headhouse (including staff work space); support space; public restrooms; outdoor nursery space; and an outdoor Learning Court. As specified in the Conceptual Plan, the Nursery is designed so that the headhouse portion of the facility may be expanded by up to approximately 1,320 square feet at a later date, as programmatic needs and funds allow. Acceptance of the gift from SFBGS is conditioned upon acceptance by the Board of Supervisors.

G. This Agreement specifies the respective responsibilities of the City and SFBGS

regarding the terms under which construction of the Nursery may occur at the Property. The parties desire by this Agreement to specify those terms and to provide a procedure and requirements for the completion and acceptance of the improvements to be constructed by SFBGS.

NOW, THEREFORE, the parties agree as follows:

1. This Agreement shall expire on the date upon which RPD executes a letter accepting the Improvements (as defined below) as discussed in Section 15 below, or upon such earlier date as either party terminates this Agreement in accordance with Section 12 or Section 18 below.

2. The City confirms that SFBGS is authorized to act on a voluntary basis as the authorized representative of RPD as such term is used in California Business and Professions Code Section 7040(a) and further confirms that such status is a condition to SFBGS entering into this Agreement.

3. SFBGS, in its capacity as authorized representative, will provide to RPD the following:

(a) Three sets of plans for the improvements to be constructed by SFBGS (the "Improvements"), which shall be consistent with the Conceptual Plan approved by the Commission on November 20, 2008, and the plans approved by the Civic Design Committee as of the applicable date, one set each at 90% completion of schematic design, 90% completion of design development, and 100% completion of construction documents. The 100% construction documents set shall be signed by a licensed landscape architect and architect and applicable engineers as per industry standards. Each set of plans shall be reviewed by RPD, and the 100% construction documents set shall be subject to the approval of RPD's Capital Projects Division.

(b) All labor, materials, and project and construction management services necessary for construction of the Improvements pursuant to the approved plans and specifications.

(c) Payment for the services of a Project Manager and other members of RPD's Capital Division, pursuant to Section 4.d, below.

4. RPD will provide the following:

(a) Coordination of all required City reviews, approvals and permits including, but not limited to, disabled access, CEQA review, RPD staff and City approvals and building permits. SFBGS shall cooperate with RPD and provide such reasonable assistance as requested by RPD.

(b) The facilitation of any required community meetings and public notification processes.

(c) Exclusive use of the Property as staging space during construction so that the contractors shall be able to mobilize and store materials and equipment necessary for the

construction of the Improvements, pursuant to a standard RPD permit in the form attached hereto as Exhibit B.

(d) Services of a Project Manager and other members of RPD's Capital Division, equal to the amount of $58,960, which shall include, but not necessarily be limited to:

i. Facilitation of entitlement process including environmental review and Department of Building Inspection permit process.

ii. Facilitation of Recreation and Park Commission review and approval.

iii. Facilitation of Art Commission review and approval.

iv. Facilitation of Board of Supervisors review and approval.

v. Facilitation of Recreation and Park staff review and approval.

vi. Facilitation of Department of Public Works, Disability Access Coordinator review and approval.

vii. Facilitation of public meetings and field public inquiries.

viii. Minor facilitation during construction.

5. SFBGS shall not be responsible for the following, which, to the extent required, shall be the responsibility of RPD and the City:

(a) Adequate fire protection water lines to service any fire hydrants that may be required in or pass through the Property.

(b) Any improvements specified in the Conceptual Plan other than the Improvements, as set forth in Section 3.(a), above.

(c) Utilities including natural gas, electricity, water and sewer and waste disposal necessary for the construction of the Improvements and the handling and or disposing of any hazardous materials present at the Property, whether as a result of the construction of the Improvements or already existing at the Property; provided, further, that the City's handling and or disposing of such hazardous materials shall comply with all applicable laws and regulations.

(d) Access rights to the Property to SFBGS and its consultants, contractors and all other subcontractors performing work related to the Improvements.

(e) Security for the Nursery, except for the construction area shown in the construction documents, and only during the construction of the improvements, which responsibility shall be by SFBGS.

6. The City and RPD acknowledge that during construction, public access to areas of the Garden under construction, including, but not necessarily limited to, the Property and

surrounding graded areas, may be restricted or prohibited. Emergency access for fire and police protection will be maintained. Pedestrian traffic will be redirected around the construction zone.

7. SFBGS will select a contractor or contractors (the "Contractor") to construct the Improvements. The Contractor will contract with SFBGS for the fabrication and installation of the Improvements in accordance with the approved plans and specifications. The parties understand and agree that SFBGS may delegate through written contract any of its responsibilities under Sections 2 and 3 of this Agreement to consultants or licensed contractors.

8. SFBGS agrees that in any contract it enters into for the construction of the Improvements it shall require: (1) the Contractor to indemnify the City; (2) the City shall be named as a third-party beneficiary, including, without limitation, of all warranties of the work and of all required performance bonds, (3) the Contractor and its subcontractors to pay its workers the prevailing rate of wage for the craft or classification of work performed; and (4) the Contractor to either a) carry performance and payment bonds identifying SFBGS and the City as joint obligees, or b) provide equivalent assurances (for instance, the use of SubGuard® coverage) to SFBGS and the City, subject to prior approval by SFBGS and the City.

9. SFBGS will be fully responsible for all payments to consultants and Contractor and all other subcontractors performing work related to the Improvements at no cost to the City, except as noted above. SFBGS shall provide evidence satisfactory to the City of the acknowledgment of the Contractor and all other contractors and all subcontractors, that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Improvements except as noted above. SFBGS shall withhold funds from payment to its construction contractor upon receipt of a stop notice, in conformance with Civil Code section 3186.

10. SFBGS will use reasonable efforts to conduct periodic on-site construction inspections to ensure that construction of the Improvements is in accordance with the plans and specifications; provided, however, that SFBGS expressly disclaims all warranties as to the compliance of as-constructed Improvements with Conceptual Plans or the plans approved by the Civic Design Committee. RPD may at its discretion review or observe construction activities.

11. If SFBGS becomes aware that any portion of the Property is damaged or threatened by any of the activities of SFBGS or anyone acting by or through SFBGS hereunder, with the exception of any disturbance of the Property necessary to construct the Improvements, SFBGS shall promptly notify RPD of such damage or threat by email or hand delivery. SFBGS shall remedy any and all such damage or threat and restore the Property to its previous condition subject to RPD's approval. RPD shall have the right from time to time to inspect the repair work undertaken by SFBGS, its employees, or agents upon reasonable notice. RPD may, but shall not be obligated to, remedy such damage or threat at SFBGS's sole cost, (i) if SFBGS does not cure such damage or threat of damage within written notice of default from RPD, where such damage or threat of damage is of a nature that can be cured within such sixty (60) days period, or (ii) if the damage or threat of damage is not of a nature which can be cured within such sixty (60) day period or the parties otherwise stipulate to a longer time period,

SFBGS does not within such sixty (60) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. The parties understand and agree that the Improvements shall not include the handling and or disposing of hazardous materials.

12. SFBGS shall cause its Contractors to maintain at all times during any construction activities on the Property insurance described in the certificate attached hereto as Exhibit C and to name the City and County of San Francisco, its officers, employees and agents as additional insureds, except with regard to workers' compensation insurance. SFBGS's compliance with the provisions of this Section shall in no way relieve or decrease SFBGS's indemnification obligations under this Agreement or any of SFBGS's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, upon the lapse of any required insurance coverage, RPD shall have the right to terminate this Agreement upon seven (7) days' prior written notice to SFBGS. SFBGS shall be responsible, at its expense, for separately insuring SFBGS's personal property.

13. In the event of any stoppage in the construction work of more than one hundred twenty (120) days, SFBGS shall in consultation with RPD take all reasonable steps to cure such stoppage, which may include, without limitation, contracting for performance of necessary services from another contractor. If for any reason the Improvements cannot be fully executed to completion in accordance with the approved plans and specifications, SFBGS agrees to restore the Property to a condition suitable for public use.

14. During the Construction Period (as defined below), SFBGS shall indemnify and save harmless the City, its officers, agents and employees from any and all loss, expense, damage, injury, liability and claims thereof for injury to or death of a person, including employees and agents of SFBGS, or loss of or damage to property, resulting directly or indirectly from any activity conducted on or use of the Property, the access rights or the Park by SFBGS or its agents and contractors under this Agreement, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except and to the extent where such loss, damage, injury, liability or claim is the result of the gross negligence or willful misconduct of the City, its officers, agents or employees. In addition to SFBGS's obligation to indemnify the City, SFBGS specifically acknowledges and agrees that it has an obligation to defend the City from any claim that actually or potentially falls within this indemnification provision. After the issuance by RPD of the Acceptance Letter pursuant to Section 15 of this Agreement, the City shall indemnify and save harmless SFBGS and its officers, agents and employees from any and all loss, expense, damage, injury, liability, and claims thereof for injury to or death of a person or loss of or damage to property, resulting directly or indirectly from the physical condition of the Improvements, which indemnification obligations shall survive expiration of this Agreement. SFBGS's indemnity obligations described in this Section shall survive expiration of this Agreement with regard to claims arising during the Construction Period. The "Construction Period" shall commence with any physical alteration of the Property and shall end with issuance by RPD of the Acceptance Letter pursuant to Section 15 of this Agreement and, with respect to the portion of the Property described therein, upon the issuance by RPD of a Partial Completion Acceptance Letter pursuant to Section 16 of this Agreement, but which period shall not include any hiatus between construction phases during which time all construction materials are removed from the Property

and no physical work or alterations are conducted on the Property.

15. Upon written notice from SFBGS that the Improvements are complete, in accordance with the approved plans and specifications, and that all necessary regulatory approvals have been obtained, and upon submission to the City of the waivers and releases and assignments required under Section 17 of this Agreement, RPD shall, within ten (10) working days of such notice, perform a final inspection. Upon RPD's inspection and decision to accept the work, RPD will, no later than seven (7) days from such decision to accept the work, prepare a letter of final acceptance (the "Acceptance Letter") addressed to SFBGS. If, within fourteen (14) days after the date of RPD's final inspection, RPD has failed to provide to SFBGS either (i) the Acceptance Letter or (ii) written notification of any additional work to be completed with respect to the Improvements, then RPD shall be presumed to have accepted the Improvements. Upon SFBGS's receipt of the Acceptance Letter or RPD's deemed acceptance of the Improvements, SFBGS shall immediately remove all of its construction materials and construction equipment from the Property and shall repair, at SFBGS's cost, any damage to the Property caused by such removal or caused by SFBGS's construction activities on the Property as permitted hereunder, and shall, with the exception of the land underneath the Improvements and subject to the Plans and any Improvements accepted (or deemed accepted) by RPD, restore the Property to its condition prior to construction of the Improvements.

16. Prior to completion of all Improvements, the parties may determine that a portion of the Improvements are complete in accordance with the approved plans and specifications and are in a condition suitable for use by RPD. Upon RPD's inspection and determination to accept the work, RPD shall, no later than seven (7) days from such decision to accept the work, prepare a letter of partial completion acceptance (the "Partial Acceptance Letter") addressed to SFBGS. Such letter shall clearly describe that portion of the Improvements deemed completed by SFBGS and RPD and accepted by RPD. Upon receipt of the Partial Acceptance Letter, SFBGS shall immediately remove all of its construction materials and construction equipment from that portion of the Property described in the Partial Acceptance Letter and shall repair, at SFBGS's cost, any damage to the Property caused by such removal or caused by SFBGS's construction activities on that portion of the Property as permitted hereunder, and shall, with the exception of the land underneath the Improvements and subject to the Plans, restore that portion of the Property to its condition prior to construction of the Improvements. From and after the date of any such Partial Acceptance Letter, SFBGS shall have no further obligations hereunder with respect to the portion of the Property described in the Partial Acceptance Letter, except as specifically provided in this Section 16.

17. SFBGS shall deliver the Improvements free of all liens, easements or claims and shall provide RPD fully executed waivers and releases from the Contractor and all other contractors and subcontractors of all claims against the City, its employees, and agents. Upon delivery of the Improvements, either upon final acceptance as described in Section 15 or partial acceptance as described in Section 16, SFBGS shall assign to the City any rights it may have as against third parties with respect to any defects in design or construction of the Improvements and obligations of design professionals to maintain professional liability insurance. In no event shall SFBGS have any liability to the City for the condition of the Improvements, or any latent defects therein, from and after the date of the Acceptance Letter or any Partial Acceptance Letters with regard to the work and those portions of the Improvements described therein.

18. Any failure to perform or comply with any of the terms, covenants, obligations, conditions, or representations made under this Agreement by any of the parties hereto shall constitute an event of default ("Event of Default"), provided that SFBGS shall have a period of thirty (30) days from the date of written notice from RPD of such failure within which to cure such default under this Agreement, or if such default is not capable of cure within such thirty-day period, SFBGS shall have a reasonable period of time to complete such cure if SFBGS promptly undertakes action to cure such default within such thirty-day period and uses its best efforts to complete such cure within sixty (60) days after receipt of notice of default. Upon the occurrence of an Event of Default by SFBGS and SFBGS's subsequent failure to cure such Event of Default within the time periods described above, City shall have the right, in its sole discretion, to seek enforcement of the terms and conditions of this Agreement, to terminate this Agreement, or to exercise any of its rights or remedies available at law or in equity. Upon the occurrence of an Event of Default by RPD or City and RPD's or City's subsequent failure to cure such Event of Default within the time periods described above, SFBGS shall have the right, in its sole discretion, to seek enforcement of the terms and conditions of this Agreement, to terminate this Agreement, or to exercise any of its rights or remedies available at law or in equity. Notwithstanding anything to the contrary in this Agreement, SFBGS may terminate this Agreement with no liability or further obligation to the City or RPD at any time prior to the commencement of the construction of the Improvements if SFBGS's Board of Trustees determines that completion of the Improvements in infeasible.

19. SFBGS shall provide a complete set of "as built" plans in electronic format to RPD upon completion of the components as defined in Section 1.F. as delivered from the Contractor to SFBGS..

20. RPD will be responsible for maintenance of the Improvements after execution of the Acceptance Letter by RPD while the Property is under the management or jurisdiction of RPD. RPD agrees to maintain the Improvements, which maintenance shall include, but not be limited to, periodic removal of litter and debris, removal of trash from receptacles, restoration and maintenance of landscaping, irrigation, building structure, finishes and Mechanical, Engineering, and Plumbing systems (MEP), and the regular maintenance of lawn areas and pruning of shrubs and trees.

22. Miscellaneous.

(a) This Agreement may be amended or modified only in writing signed by RPD and SFBGS.

(b) This Agreement (including the Exhibits hereto, which are incorporated herein by reference) contains the entire understanding between the parties as of the date of this Agreement, and all prior written or oral negotiations, discussions, understandings, and agreements are merged herein.

(c) No party to this Agreement shall be liable to the other parties for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure is caused by events beyond the reasonable control of such party, including, without limitation, fire, flood, explosion, war, strike, embargo, government decree, act of God or

omissions of carriers, consultants, contractors, subcontractors or suppliers and other similar events or causes.

(d) All actions described herein, including, but not limited to, the construction of the Improvements on the Property as permitted herein, are subject to and must be conducted and accomplished in accordance with the applicable requirements of the City's charter, its municipal code and applicable state and federal laws, building codes, and regulations.

(e) Except as expressly provided to the contrary, all approvals, consents, and determinations to be made by the City hereunder may be made by the Director of the Garden or his or her designee in his or her reasonable discretion.

(f) This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of California, without giving effect to its conflicts of laws principles.

22. The parties acknowledge and agree that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City, including the Property. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette of tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or non-profit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY:

The City and County of San Francisco,
a municipal corporation

By: _____ _____
Dated:

General Manager
Recreation and Park Department
501 Stanyan Street
San Francisco, CA 94117

Approved: San Francisco Recreation and Park Commission

By: _____
Commission Secretary

Resolution No. _____

SFBGS:

San Francisco Botanical Garden Society at Strybing Arboretum
a California non-profit public benefit corporation

By: _____ _____

Sue Ann Schiff
Executive Director
9th Avenue at Lincoln Way
Golden Gate Park
San Francisco, CA 94122

Dated:

EXHIBIT A

Site Plan for the Project

EXHIBIT B
Form of Permit
(see attached pages)

EXHIBIT C
INSURANCE

Contractors will maintain in force, during the full term of the contract, insurance in the following amounts and coverage:

A. Workers' Compensation, with Employer's Liability limits not less than $1,000,000 each accident.

B. Comprehensive General Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

C. Business Automobile Liability Insurance with not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage.

D. Professional Liability Insurance with limits not less than $1,000,000 each occurrence with respect to negligent acts and errors and omissions, arising from performance of services under this Agreement.

Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California, All insurance companies shall have a current A.M. Best Rating not less than "A-, VII" and shall be subject to the prior approval of the City.

Comprehensive General Liability and Business Automobile Liability Insurance policies shall be endorsed to provide the following:

A. Name as Additional Insured (except with respect to the professional liability and workers' compensation coverage) the City and County of San Francisco, its Officers, Agents, and Employees.

B. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

DRAFT [Golden Gate Park—Acceptance of Gift of Nursery for Botanical Garden]

Resolution accepting a gift-in-place to the City and County of San Francisco of the San Francisco Botanical Garden Nursery: Center for Sustainable Gardening valued at approximately $14 million and making findings, including environmental findings.

WHEREAS, the City maintains and operates real property located in Golden Gate Park know as the "San Francisco Botanical Garden," which features more than 8,000 different kinds of plants from around the world on 55 acres; and,

WHEREAS, San Francisco Botanical Garden Society (SFBGS) is a non-profit entity that has actively supported the San Francisco Botanical Garden since 1955, operating in partnership with the San Francisco Recreation & Park Department (RPD); and

WHEREAS, the fundamental purpose of the Nursery: Center for Sustainable Gardening (Nursery) is to replace the San Francisco Botanical Garden's existing nursery facilities, which were built many years ago and currently provide extremely substandard working conditions for the dedicated Botanical Garden employees, SFBG employees, and volunteers who spend many hours there each week; and

WHEREAS, through a series of community meetings and other opportunities for public input, a conceptual plan for the Nursery, targeted for LEED Platinum certification, was developed by SFBGS in collaboration with RPD and subsequently approved by the Recreation and Park Commission on November 20, 2008; and

WHEREAS, the Nursery will be located slightly to the west of the existing facilities, at a higher elevation and in an area that is vastly preferable for a nursery due to its improved weather conditions; and

WHEREAS, SFBGS has offered to donate to the City and County of San Francisco the design and construction of the Nursery as a gift-in-place, valued at approximately $14 million; and

WHEREAS, the terms and conditions of SFBGS's gift are as follows: The Nursery will replace the existing nursery and will become the hub of the Botanical Garden's plant propagation and plant collection management. All uses of the Nursery will be to further the mission and purpose of the Botanical Garden, including cultivating support for the Botanical Garden and the bond between people and plants. The Nursery will be jointly used by SFBGS and RPD to support activities similar to those conducted in the existing nursery. In order to better support those activities, the Nursery also will include work space for SFBGS nursery staff, including curatorial and plant collections management staff, and for RPD gardening staff assigned to the Botanical Garden, as well as restrooms with a shower and emergency eyewash station, storage areas, and space for meetings related to nursery and gardening operations and for horticultural reference materials provided by SFBGS. Before construction of the Nursery begins, SFBGS and RPD will enter into a Lease Agreement that incorporates these understandings; and,

WHEREAS, On November 29, 2011, the Planning Department issued a Mitigated Negative Declaration for the San Francisco Botanical Gardens Nursery: Center for Sustainable Gardening project, finding that all environmental impacts associated with the proposed project would be mitigated to less than significant levels through the mitigation measures set forth in the Final Mitigated Negative Declaration (FMND). These mitigation measures are additionally set forth in the Mitigation Monitoring and Reporting Program (MMRP), which is hereby incorporated by reference as though fully set forth herein. The Board of Supervisors has reviewed and considered the FMND and the MMRP, as well as the record as a whole including written and oral comments by the public on this matter. . Copies

of both the FMND and the MMRP are on file with the Clerk of the Board of Supervisors in File No. _____ and are incorporated herein by reference; and

WHEREAS, The Board of Supervisors finds that there is no substantial evidence that the Nursery project will have a significant effect on the environment with the adoption of the mitigation measures contained in the MMRP to avoid potentially significant environmental effects associated with the Project; and

WHEREAS, The Planning Department, Linda Avery, is the custodian of records with respect to the FMND, located in the File for Case No. 2008.0845E, at 1650 Mission Street, Fourth Floor, San Francisco, California; and

WHEREAS, The Board of Supervisors finds that since the FMND was finalized, there have been no substantial changes to the Nursery project and no substantial changes in the circumstances of the Nursery project that would require major revisions to the FMND due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the FMND; and

WHEREAS, The Recreation and Park Commission recommended to the Board of Supervisors to accept the gift-in-place at the March 15, 2012 Recreation and Park Commission Meeting, Resolution No._____, on file with the Clerk of the Board of Supervisors in File No._____, which is hereby incorporated by reference as though fully set forth herein;

now, therefore, be it

RESOLVED, The Board of Supervisors adopts the FMND and the MMRP and imposes all the mitigation measures set forth in the MMRP on the Project as conditions of approval; and be it further

RESOLVED, The Board of Supervisors accepts the gift-in-place valued at approximately $14,000,000 from SFBGS.

CLIFFORD
ADVISORY

Real Estate Valuation ▪ Arbitration

QUALIFICATIONS
OF
JOHN C. CLIFFORD, MAI

Mr. John C. Clifford is a designated member of the Appraisal Institute (MAI) and is qualified by the State of California as a Certified General Appraiser. The following is a brief resume of his background and experience.

Experience

Mr. Clifford is the principal of CLIFFORD ADVISORY, LLC and has provided real estate appraisal, arbitration and consultation services since 1982. He has performed a wide variety of appraisal and valuation consulting assignments.

Based in San Francisco, Mr. Clifford has benefited from the unique opportunity to analyze many complex properties including:

Complex Properties

- **San Francisco Giants AT&T Baseball Stadium**
- **Treasure Island**
- **Mission Bay MXU Development Project**
- **Hamilton Army Air Field (HAAF)**
- **Hunters Point Naval Shipyard**
- **Ferry Building - Embarcadero**
- **Fisherman's Wharf Restaurants**
- **United Airlines Maintenance Facility**

Arbitration

- **400,000 SF - Pacific Bell**
  370 Third Street, SOMA
- **200,000 SF - Heller Ehrman**
  333 Bush Street, Financial District
- **500,000 SF - Nordstroms Centre**
  Union Square District
- **Pier 41 - Fisherman's Wharf**

Valuation property types include major high-rise office and mixed-use retail/office projects, retail projects, biotech facilities, medical office buildings, regional malls, neighborhood shopping centers, hotels and restaurants, industrial and manufacturing buildings and facilities, high-rise and suburban multi-family residential projects, subdivision analysis, special purpose properties, recreational properties, vacant land and open space.

Mr. Clifford has provided litigation support in numerous condemnation valuation assignments, and has testified as a qualified expert witness in the Superior Court of the State of California, U.S. Bankruptcy Court, and before various quasi-judicial and municipal hearings.

Condemnation	Client
• Moscone West Convention Center Site	City of San Francisco
• Transbay Terminal Project Sites	City of San Francisco
• San Francisco Cable Car Line	City of San Francisco
• The Rock	City of San Francisco
• Richmond Parkway	Property Owner
• Golden Gate Ministorage vs. The State of California	Property Owner

Mr. Clifford participated in a landmark inverse condemnation land use case which upheld the use of public agency purchases as comparables following the 1987 revision to the State's evidence code (*City and County of San Francisco v. Golden Gate Heights Inv.* (1993) 14 Cal.App.4th 1203).

Other major assignments demonstrating the extent of his experience are listed as follows:

- Genentech Research Facility
- Biorad Research Facility
- Port Sonoma-Marin Marina
- Marin County Civic Center
- Sea Cliff Sinkhole Properties
- Hamilton Airfield Reuse Plan
- Wal-Mart Distribution Facility
- Silverado Country Club
- Renaissance Estates Golf & SFR Community
- Fountaingrove Ranch Golf & SFR Community
- Northeast Ridge Subdivision
- Lagoon Valley MXU Golf, SFR, Business Park
- Bel Marin Keys Unit 5
- AT&T Cable Franchise – Possessory Interest

After earning his MAI designation in 1983, he established an appraisal and consulting practice. As his practice and reputation has grown, he now maintains offices in San Francisco and Mill Valley, California.

Development Consulting

Mr. Clifford is a specialist in evaluating real estate economic feasibility, completing land use entitlement processes, and formulating development strategies. He successfully processed tentative and final subdivision maps, secured development financing and acted as project manager in the construction and marketing of the 100-unit Cotati Station project in Sonoma County.

Education and Professional Affiliation

Mr. Clifford graduated from Indiana University in 1974, Bloomington, Indiana, with a Bachelor of Arts degree.

During the years 1979 through 1983, Mr. Clifford completed a curriculum of study in the understanding and application of the theory and practice of appraisal principles. The course subjects include appraisal and economic theory, real property law, finance, and professional ethics, and are presented by the Appraisal Institute, which ultimately awards the MAI (Member of the Appraisal Institute) designation. After satisfying the additional five years of experience requirements, demonstration reports, and successfully completing a Comprehensive Exam, he was awarded the MAI designation in 1983.

Edwin M. Lee, Mayor
Philip A. Ginsburg, General Manager

REQUEST TO USE VACATION, FLOATING HOLIDAY, SICK LEAVE, IN LIEU DAYS OR COMPENSATORY TIME OFF

Please complete this request for time off and give it to your supervisor for approval.
Time off, other than sick leave, must be approved in advance.

Today's Date: _____

Employee's Name: _____
(Please Print)

Class/Title: _____

Assigned Facility: _____ **Division:** _____

	From		Through		Total		
	Date	Time	Date	Time	Days	or	Hours
Vacation							
Floating Holiday							
Sick Time							
In Lieu (For Dates _____)							
Use of Overtime Earned							
Other (_____)							
				Total:		or	
					Days		Hours

By making this request, I certify that I have sufficient applicable credits (vacation, sick leave, holiday in-lieu, floating holidays and compensatory time) and will be using paid leave in an authorized manner pursuant to the applicable MOU and Civil Service Rules.

Employee's Signature: _____

_____ Approved _____ Not Approved **Date:** _____

Supervisor's Signature: _____

For Recreation Division: **Substitutes Needed**

	MON	TUE	WED	THUR	FRI	SAT	SUN
DATE							
VAC HOURS							
SUB HOURS							

Mayor Gavin Newsom
Philip A. Ginsburg, General Manager

DATE: November 29, 2010

TO: Recreation and Park Commission

THRU: Philip A. Ginsburg, General Manager
Dawn Kamalanathan, Capital Program Manager

FROM: Marvin Yee, Landscape Architect

RE: Golden Gate Park Community Garden

Agenda Item Wording:

Discussion and possible action to approve a preliminary concept design that would make available new community garden plots at 780 Frederick Street (Golden Gate Park), the current site of the HANC Recycling Center.

Background / Description:

Overview of RPD's Community Gardens Program

In September 2004, the Recreation and Park Department released its Recreation Assessment Report which revealed that almost half of all San Francisco households have a need for more community gardens, while more than 1 in 5 households feel that community gardens are among the top five important recreation facilities.

According to the study, 47% of households expressed a "need" for more community gardens, ranking community gardens higher than tennis courts (38%), recreation centers (37%), children's playgrounds (32%), and dog play areas (26%). Only walking and biking trails (76%) and pools (52%) obtained higher rankings. Twenty-one percent of all respondents ranked community gardens as one of the top five "most important" recreational needs in the City, choosing from f21 recreational categories.

Community gardens uniquely appeal to both adults for nutritional and recreational fulfillment, and to youth as an environment for education and park stewardship, regardless of cultural, social or economic background.

Indeed the City recognizes the importance and need for more community gardens through its City policy objectives as articulated in both the Sustainability Plan and the Open Space Element of the General Plan. The City's Sustainability Plan calls for "...maximiz([ing] food and

agricultural production within the City itself" (Goal 5) and that "community and rooftop gardens exist in every neighborhood..., allowing sufficient access for all residents" (Objective 5-A). The General Plan calls for expansion of community garden "opportunities throughout the City and directs that "City Departments should fully cooperate with neighborhood organizations and non-profits...to establish, maintain and administer community gardens throughout the City." (Policy 2-12)

These City-wide policy objectives are being addressed through the Recreation and Park Department's continuing planning efforts which have resulted in an increase from 12 community gardens on City-owned properties in 1986 to 35 gardens today. The Department has added 148 garden plots to its total inventory of approximately 1000 plots at these 35 sites since the 2004 study. Despite these efforts, the availability of community garden plots has not kept up with the demand. Approximately 500 persons[1] currently sit on wait lists at these 35 gardens. The wait period is up to 2 years for the gardens in highest demand.

In July 2009 the Mayor issued an Executive Directive on Healthy and Sustainable Food. One of the principles of this Directive includes: "Food production and horticulture education will be encouraged within the City and, to the extent feasible, on City owned land, through urban agriculture including community, backyard, rooftop, and school gardens; edible landscaping, and agricultural incubator projects."

To meet the need for more community garden plots and to advance the Mayor's Executive Directive on Healthy and Sustainable Food, the Recreation and Park Department is proposing to construct at least 40 new garden plots, gardening material supply bins and a tool lending library at 780 Frederick Street, which is currently occupied by the Haight Ashbury Neighborhood Council (HANC) Recycling Center. The 0.66-acre site is situated at the northwest corner of Frederick/Arguello Streets. The site has the potential to host a total of more than 120 plots and/or other garden and agricultural features. Future development phases at the site will be presented to this Commission once additional funding is identified and community input obtained regarding desired programming features. The site is readily accessible via the MUNI 'N' and #71 lines that service the area.

HANC Recycling Center

The Haight Ashbury Neighborhood Council ("HANC"), a non-profit corporation, has operated a recycling center at the proposed location since 1981. The stated purpose of the Center is to provide recycling services to the neighborhood. In addition, the Center offers occasional programming to foster the philosophy of recycling and includes a native plant garden where native plants are propagated and sold. The Center operated under several agreements with the Department and last entered into a five-year lease in June 1996. They have been operating on a month-to-month basis since that lease expired in 2001.

According to the City Attorney and pursuant to state law, the Department may issue a notice to vacate with thirty-day written advance notice. Specific Commission action is not required.

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[1] Based on an inventory of the Community Gardens Program done in June 2008.

The continuing operation of the Center has been a source of neighborhood controversy for many years. Supporters of the recycle center cite the convenience of the facility and feel that recycling contributes to sound environmental management. They note that the Center provides jobs, a native plant nursery, environmental education, recycling and offers legitimate redemption services not just to homeless but to small businesses.

The recycling tonnage collected at HANC accounts for only about one tenth of one percent of San Francisco's total landfill diversion. The San Francisco Department of the Environment is confident that recyclers that use the facility will take their material to another existing site for proper handling including using in-store redemption, bringing bottles and cans with California redemption value to another redemption center, or using the city's robust curbside collection program.

Supporters of the community garden plan cite the strong need and demand for community gardens in the City. Supporters of the community garden plan contend that although HANC once served an important neighborhood purpose, since universal curbside recycling began, it has evolved into a primarily industrial service no longer appropriate for the surrounding neighborhoods or Golden Gate Park. Supporters of the community garden plan note that HANC's CRV redemption program encourages and provides incentive for illegal poaching from curbside recycle bins and city trash cans and enables illegal camping and illicit and unhealthy behavior in Golden Gate Park's eastern end and in neighborhoods in close proximity to the site. Opponents cite neighborhood noise, truck traffic, litter, and public safety concerns as negative impacts related to continuing operations at the site.

Golden Gate Park Community Garden Proposal

In proposing a community garden on the site, the Department is acting in conformance with the Golden Gate Park Master Plan. The Plan considers the recycling center to be "a non-conforming use of Golden Gate Park" and states that the "non-serving activities should eventually be phased out". The Department believes the community garden use meets a more compelling recreational need and will positively impact unhealthy and illicit behavior in Golden Gate Park's eastern end.

In addition to approximately 40 community garden plots, the Recreation and Park Department is proposing to make available common landscape materials (mulch, chips and fines) stocked in holding bins and a gardening-tool lending library – both unique public resources currently not available in San Francisco).

The Recreation and Park Department shall continue the current emphasis on environmentally sustainable practices at the site in its design and programmatic and operating features. The operation of a native plant nursery would continue as part of the materials distribution component. Surplus produce from garden plots would be given away to food bank and/or food pantries.

SF GRO, a community gardening advocacy organization, shall assist the Recreation and Park Department in making the initial garden plot assignments and shall organize the new gardeners. Up to 75% of the garden plots shall be managed under the Community Garden Program, while

the remainder would be made available to "teams" (such as schools, kids programs, community organizations and local businesses, etc.) to increase the programmatic capacity at the site. An existing staff position, assisted by volunteers and community partners, will oversee the day-to-day management and coordination of activities within the site.

Additional Community Engagement

The Department will host a series of public meetings in January 2011 to refine this concept plan. In particular, the Department will solicit feedback on what additional features should be included in future phases of implementation.

The Department intends to form an advisory body of neighborhood representatives and community garden advocates to assist with stewardship, programming and governance at the site and to lead a visioning process for future elements. Such elements may include, but are not limited to, more garden plots, landscape exhibits, a fruit orchard, community spaces for workshops, events and passive gathering. Department staff shall report back to the Recreation and Park Commission with plans for additional phases at the site.

Budget and Timeline

The Recreation and Park Department has identified $250,000 in capital funds to construct Phase 1 improvements, including garden plots, material bins, and facilities for tool lending and native plant nursery.

Construction of Phase 1 is anticipated to take 8-10 weeks and shall be performed by a combination of RPD Structural Maintenance and licensed contractors. The public opening is targeted for March 21, 2011.

Future phases of improvements shall occur as funds and resources are made available.

Supported By:

Mayor Gavin Newsom
690 Stanyan, LLC
Another Planet Entertainment
Ashley Wolff, Garden Coordinator of Good Prospect Community Garden
Barbara Wenger, Executive Director of Community Grows
Buena Vista Neighborhood Association
California Academy of Sciences
Center for Urban Education About Sustainable Agriculture (CUESA)
Chamber of Commerce
Cole Valley Improvement Association
Convention and Visitors Bureau
Friends of Alvord Lake
Hardly Strictly Bluegrass
Haight Ashbury Improvement Association
Golden Gate Park Cultural Collaborative

Impala Running Club
Inner Sunset Park Neighbors
Isabel Wade, Urban Resource Systems
Laborers Union, Local 261
Lynne Newhouse-Segal, President, Friends of Lafayette Park, former Recreation and Park Commissioner
Michael Sullivan, former Recreation and Park Commissioner
National AIDS Memorial Grove
North of Panhandle Neighborhood Association
Oak Woodland Restoration Group
Panhandle Park Stewards
Police Athletic League
Potrero Hill Community Garden
San Francisco Beautiful
San Francisco Botanical Garden Society
San Francisco Garden Resource Organization (SF GRO)
San Francisco Horseshoe Pitching Club
San Francisco Lawn Bowling Association
San Francisco Parks Trust
San Francisco Police Department
San Francisco Police Officers Association
San Francisco Road Runners Club
San Francisco Skateboard Association
Viking Soccer
Viking Micro Soccer
Visitation Valley Greenway

Opposed By:

Assemblyman Tom Ammiano
Haight Ashbury Neighborhood Council
Keep Botanical Free
Nature in the City
San Francisco Urban Agriculture Alliance
San Francisco Tomorrow
Sierra Club, San Francisco Chapter

Recommendation:

RESOLVED, That this Commission does approve a preliminary concept design that would make available new community garden plots at 780 Frederick Street (Golden Gate Park), the current site of the HANC Recycling Center.

Attachments:

Exhibit 'A' – Location Map
Exhibit 'B' – Aerial View
Exhibit 'C' – Proposed Concept Plan

Exhibit 'D' – Excerpt from "Sustainability Plan for San Francisco"
Exhibit 'E' – Mayor's Executive Directive (09-03) on Healthy and Sustainable Food for San Francisco
Exhibit 'F' – Excerpt from the Open Space Element of the S.F. General Plan
Exhibit 'G' – Excerpt from the Golden Gate Park Master Plan (1998)
Exhibit 'H' – Letters to the Editor, S.F. Chronicle, Nov. 25, 2010
Exhibit 'I' – Excerpts from 2004 Recreation Assessment Report

Young, Victor

From: Anita Wood [Anita.Wood@sfgov.org]
Sent: Wednesday, June 12, 2013 4:35 PM
To: Young, Victor
Cc: Kinsey, Nicholas; Gessner, Francesca; Sullivan, Charles
Subject: Botanical Garden Lease - Approval as to form

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Victor -
I want to let you know that I have reviewed the proposed lease for the Botanical Garden that has been submitted to the Board for approval and will be approving it as to form.

Of course, there will still be the usual final edits before the lease is signed - filling in a couple of minor blanks, adding a reference to the legislation, and the like (and the exhibits need to modified to be more clear), so I haven't yet signed the version submitted to the Board Clerk as to form.

Please give me a call if you have any questions.

Note: I will be out on vacation from Friday June 14 through Friday June 21.

Anita L. Wood
Deputy City Attorney
Office of the City Attorney
City and County of San Francisco
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102-4682
415-554-4736 (direct)
415-554-4755 (fax)
EMAIL: anita.wood@sfgov.org

This email may contain privileged or confidential information. If you are not the intended recipient, please reply to this email to inform me of your receipt and then destroy all copies. Thank you.

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 11, 2013

File No. 130537

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On June 4, 2013, Mayor Lee introduced the following proposed legislation:

File No. 130537

Ordinance approving and authorizing a Lease and Management Agreement between the City and the San Francisco Botanical Garden Society for the San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park, with an initial term of 10 years with two ten-year extension options; waiving the non-resident admission fee in Park Code, Section 12.46(d) for certain persons and entities as set forth in the Lease and Management Agreement; ratifying prior acts in connection with this Ordinance; and making environmental findings.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

Victor Young

By: Victor Young, Committee Clerk
Budget and Finance Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning

Categorically Exempt CEQA Class 1 Existing Facilities including leasing.

June 13, 2013

JOY NAVARRETE

130537

OFFICE OF THE MAYOR
SAN FRANCISCO

EDWIN M. LEE
MAYOR

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 MAY 31 PM 1:02

TO: Angela Calvillo, Clerk of the Board of Supervisors

FROM: for Mayor Edwin M. Lee

RE: Lease and Management Agreement – San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park

DATE: May 31, 2013

Attached for introduction to the Board of Supervisors is the ordinance approving and authorizing a Lease and Management Agreement between the City and the San Francisco Botanical Garden Society for the San Francisco Botanical Garden at Strybing Arboretum in Golden Gate Park, with an initial term of ten years with two ten-year extension options; waiving the non-resident admission fee in Park Code Section 12.46(d) for certain persons and entities as set forth in the Lease and Management Agreement; ratifying prior acts in connection with this Ordinance; and making environmental findings.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141

File No. 130537

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*

Name of contractor: San Francisco Botanical Garden Society

Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.***

1. Board of Trustees

Don Baldocchi, Chair
Monica Martin, Vice Chair
Alison Brown, Treasurer
Wendy Tonkin, Secretary

Patricia Alker
Dr. Joseph C. Barbaccia
Jennifer Bowles
Charles M. Davis
Tony Farrell
Renata Gasperi
Cynthia Jamplis
Victoria Johnson
T. Dixon Long
Helen McKenna Ridley
Mary Pitts

Keren Abra, *ex officio*
Dr. Frank Almeda, *ex officio*
Eric Andersen, *ex officio*
Sue Ann Schiff, Executive Director, *ex officio*

2. Sue Ann Schiff, Executive Director

Contractor address: 1199 9th Avenue San Francisco, CA 94122

Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contracts: $

Describe the nature of the contract that was approved: Describe the nature of the contract that was approved: Lease and Management Agreement for certain functions at the San Francisco Botanical Garden.

Comments:

This contract was approved by (check applicable):

☐the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

File No. 130537

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Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

BOARD of SUPERVISORS

City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

June 11, 2013

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Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

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Victor Young

By: Victor Young, Committee Clerk
Budget and Finance Committee

Attachment

c: Monica Pereira, Environmental Planning
Joy Navarrete, Environmental Planning