

LEASE AND FACILITIES AGREEMENT  
between  
CITY AND COUNTY OF SAN FRANCISCO

as Landlord  
and  
THE MEXICAN MUSEUM  
as Tenant  
\_\_\_\_\_, 2015

## TABLE OF CONTENTS

	<u>Page</u>
1. <b>BASIC LEASE INFORMATION</b> .....	2
2. <b>DEFINITIONS</b> .....	4
3. <b>PREMISES</b> .....	4
3.1. <b>Leased Premises</b> .....	4
3.2. <b>Rentable Area</b> .....	4
3.3. <b>As Is Condition of Premises</b> .....	4
3.4. <b>Tenant Parking Passes</b> .....	5
3.5. <b>Common Areas</b> .....	6
4. <b>TERM</b> .....	6
4.1. <b>Commencement Date and Expiration Date</b> .....	6
4.2. <b>Effective Date</b> .....	6
4.3. <b>Extension Option(s)</b> .....	6
5. <b>INITIAL TENANT IMPROVEMENTS</b> .....	7
5.1. <b>Early Access</b> .....	7
5.2. <b>Initial Tenant Improvements</b> .....	7
5.3. <b>Title to Improvements</b> .....	8
5.4. <b>Tenant's Personal Property</b> .....	8
6. <b>TAXES, ASSESSMENTS AND OTHER EXPENSES</b> .....	8
6.1. <b>Taxes and Assessments, Licenses, Permit Fees and Liens</b> .....	8
6.2. <b>Tenant's CAM Payments</b> .....	9
7. <b>PERSONAL PROPERTY</b> .....	9
7.1. <b>Tenant's Personal Property</b> .....	9
8. <b>USES; MUSEUM MANAGEMENT AND OPERATIONS</b> .....	9
8.1. <b>Permitted Uses</b> .....	9
8.2. <b>Advertising and Signs</b> .....	10
8.3. <b>Limitations on Uses by Tenant</b> .....	10
8.4. <b>Museum Name; Use of Marks</b> .....	10
8.5. <b>Covenant to Protect Adjacent Facilities</b> .....	11
8.6. <b>Trespassing</b> .....	11

8.7.	<b>Museum Professional Standards and Reporting Requirements.</b>	11
9.	<b>GENERAL OPERATIONS AND CONDITION OF PREMISES</b>	14
9.1.	<b>Tenant's Operation, Maintenance and Repair Obligations.</b>	14
10.	<b>FISCAL DUTIES, REPORTING REQUIREMENTS, AND RELATED MATTERS</b>	16
10.1.	<b>General Attendance Figures and Admission Revenues.</b>	16
10.2.	<b>Use of Revenues.</b>	16
10.3.	<b>[RESERVED.]</b>	16
10.4.	<b>Books and Records.</b>	16
10.5.	<b>Inspection and Audit.</b>	16
10.6.	<b>Endowment.</b>	17
10.7.	<b>Required Operating Reserve</b>	17
10.8.	<b>Survival of Obligations</b>	17
11.	<b>ALTERATIONS</b>	17
11.1.	<b>Tenant's Alterations</b>	17
12.	<b>UTILITIES</b>	19
12.1.	<b>Utilities</b>	19
12.2.	<b>Antennae and Telecommunications Dishes</b>	19
12.3.	<b>Other Services</b>	19
12.4.	<b>Floor Load</b>	19
13.	<b>LIENS</b>	19
13.1.	<b>13.1 Liens</b>	19
13.2.	<b>13.2 Mechanics' Liens</b>	20
14.	<b>COMPLIANCE WITH LAWS</b>	20
14.1.	<b>Tenant's Obligation to Comply</b>	20
14.2.	<b>Regulatory Approvals</b>	20
14.3.	<b>Compliance with Insurance</b>	21
14.4.	<b>Rules and Regulations</b>	21
14.5.	<b>Security Deposit</b>	21
14.6.	<b>Surrender of Premises</b>	21
15.	<b>FINANCING; ENCUMBRANCES; SUBORDINATION</b>	21
15.1.	<b>No Encumbrances by Tenant</b>	22
16.	<b>DAMAGE OR DESTRUCTION GENERAL</b>	22
16.1.	<b>Destruction Due to Risk Covered by Insurance</b>	22

16.2.	<b>Destruction Due to Risk Not Covered by Insurance.....</b>	<b>22</b>
17.	<b>ASSIGNMENT AND SUBLETTING .....</b>	<b>22</b>
17.1.	<b>Restriction on Assignment and Subletting .....</b>	<b>22</b>
17.2.	<b>Notice of Proposed Transfer .....</b>	<b>23</b>
17.3.	<b>Conditions.....</b>	<b>23</b>
17.4.	<b>Effect of Transfer.....</b>	<b>24</b>
17.5.	<b>Indemnity for Relocation Benefits.....</b>	<b>24</b>
18.	<b>DEFAULT; REMEDIES.....</b>	<b>24</b>
18.1.	<b>Events of Default .....</b>	<b>24</b>
18.2.	<b>Remedies .....</b>	<b>25</b>
18.3.	<b>City's Right to Cure Tenant's Defaults .....</b>	<b>26</b>
19.	<b>WAIVER OF CLAIMS .....</b>	<b>27</b>
19.1.	<b>Waiver of Claims.....</b>	<b>27</b>
20.	<b>INSURANCE.....</b>	<b>27</b>
20.1.	<b>Tenant's Insurance.....</b>	<b>28</b>
20.2.	<b>General Requirements.....</b>	<b>28</b>
20.3.	<b>Proof of Insurance.....</b>	<b>29</b>
20.4.	<b>Review of Insurance Requirements.....</b>	<b>29</b>
20.5.	<b>Lapse of Insurance.....</b>	<b>29</b>
20.6.	<b>Tenant's Personal Property .....</b>	<b>30</b>
20.7.	<b>City's Insurance .....</b>	<b>30</b>
20.8.	<b>Waiver of Subrogation .....</b>	<b>30</b>
20.9.	<b>Contractors' Insurance.....</b>	<b>30</b>
20.10.	<b>Fine Arts Insurance .....</b>	<b>30</b>
21.	<b>ACCESS BY CITY .....</b>	<b>30</b>
21.1.	<b>Access to Premises by City .....</b>	<b>30</b>
21.2.	<b>Adjacent Facilities.....</b>	<b>31</b>
22.	<b>ESTOPPEL CERTIFICATES.....</b>	<b>31</b>
23.	<b>APPROVALS BY CITY.....</b>	<b>31</b>
23.1.	<b>Approvals by City.....</b>	<b>31</b>
24.	<b>TENANT’S PURCHASE OPTION.....</b>	<b>31</b>
25.	<b>SURRENDER.....</b>	<b>31</b>
25.1.	<b>Surrender of the Premises.....</b>	<b>31</b>

25.2.	<b>Automatic Reversion</b>	32
25.3.	<b>Termination Without Further Notice.</b>	32
26.	<b>HOLDOVER</b>	32
26.1.	<b>Holding Over</b>	32
27.	<b>HAZARDOUS MATERIALS</b>	32
27.1.	<b>Hazardous Materials Compliance</b>	32
27.2.	<b>City's Approval of Remediation</b>	33
28.	<b>REPRESENTATIONS AND WARRANTIES</b>	33
28.1.	<b>Representations and Warranties of Tenant</b>	33
29.	<b>SPECIAL PROVISIONS</b>	34
29.1.	<b>Public Transit Information</b>	34
29.2.	<b>Non-Liability of City Officials, Employees and Agents</b>	34
29.3.	<b>Wages and Working Conditions</b>	34
29.4.	<b>Non-Discrimination in City Contracts and Benefits Ordinance</b>	34
29.5.	<b>Subleases and Other Subcontracts</b>	35
29.6.	<b>Non-Discrimination in Benefits</b>	35
29.7.	<b>HRC Form</b>	35
29.8.	<b>Incorporation of Administrative Code Provisions by Reference</b>	35
29.9.	<b>No Relocation Assistance; Waiver of Claims</b>	35
29.10.	<b>MacBride Principles - Northern Ireland</b>	35
29.11.	<b>Tropical Hardwood and Virgin Redwood Ban</b>	36
29.12.	<b>Pesticide Prohibition</b>	36
29.13.	<b>First Source Hiring Ordinance</b>	36
29.14.	<b>Sunshine Ordinance</b>	36
29.15.	<b>Conflicts of Interest</b>	36
29.16.	<b>Charter Provisions</b>	36
30.	<b>30. GENERAL PROVISIONS</b>	37
30.1.	<b>Notices</b>	37
30.2.	<b>No Implied Waiver</b>	37
30.3.	<b>No Accord or Satisfaction</b>	37
30.4.	<b>Amendments</b>	37
30.5.	<b>Time of Performance</b>	38
30.6.	<b>Joint and Several Obligations</b>	38

30.7. Interpretation of Lease .....	38
30.8. Successors and Assigns .....	38
30.9. Brokers .....	39
30.10. Severability .....	39
30.11. Entire Agreement .....	39
30.12. Attorney's Fees and Costs .....	39
30.13. Recordation .....	39
30.14. Extensions by City .....	39
30.15. Cumulative Remedies .....	39
30.16. Further Assurances .....	39
30.17. Transition Procedures .....	40
30.18. Survival of Indemnities .....	40
30.19. Relationship of Parties .....	40
30.20. Additional Indemnification Obligations .....	40
30.21. Non-Liability of Officials, Employees and Agents of City or Any Other Indemnified Parties .....	41
30.22. Non-Liability of Tenant's Members, Officers, Directors, Shareholders, Agents and Employees .....	42
30.23. No Third Party Beneficiaries .....	42
30.24. Counterparts .....	42

## **EXHIBITS AND APPENDICIES**

### **EXHIBITS**

- A-1 Legal Description
- A-2 Site Map
- B. Memorandum Confirming Commencement Date
- C. Grant Agreement dated December 14, 2010 and Amendments thereto
- D. Permit to Enter Agreement with Developer, TMM and City
- E. Reserved per Section 8.1 (b)
- F. Mexican Museum Endowment Investment and Use of Funds Policy [subject to the terms and conditions as included in the 706 Mission PSA, section 8.2 (f) including a written agreement between TMM and OCII]

### **APPENDICIES**

- A. Definitions

## **LEASE AND FACILITIES AGREEMENT THE PARTIES**

THIS LEASE AND FACILITIES AGREEMENT (this "Lease") dated to be effective as of \_\_\_\_\_, 2015 ("Effective Date"), is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its CITY ADMINISTRATOR (including the Department of Real Estate) (collectively, "City" or "Landlord"), and The MEXICAN MUSEUM, a nonprofit public benefit corporation organized and existing under the laws of the State of California ("Tenant").

### **THIS LEASE IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES**

This Lease is being entered into by the Landlord and Tenant for the Premises, as defined in Section 1 below.

The Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, hereafter the Office of Community Investment and Infrastructure ("OCII") entered into a Purchase and Sale Agreement with 706 Mission Street Co, LLC, a Delaware limited liability company, dated July 16, 2013 (the "PSA"), for certain real property commonly known as Former Redevelopment Agency disposition parcel CB-1-MM (Assessor's Block 3706, a portion of Lot 277) located at the north side of Mission Street between Third and Fourth Streets, San Francisco, California, ("CB-1-MM"), and (2) certain other real property commonly known as the Jessie Square Garage (Assessor's Block 3706, Lot 275 and portions of Lot 277) (together the "Disposition Property"), which Disposition Property included the Premises.

Pursuant to the PSA, the Developer agreed to either lease the Premises directly to the Tenant or transfer fee title of the Premises to the City as long as the City agreed to enter into a lease for the Premises with the Tenant for the operation of the Mexican Museum. Additionally, pursuant to the PSA, the Developer agreed to construct the core and shell of the Premises (the "Core and Shell Obligations") and upon completion of the Core and Shell Obligations, the Developer shall convey to the City the Premises as a condominium unit or parcel which property is a portion of Floors 1 through 4 of the Developer's project. Pursuant to that certain Resolution No. 87-93, as adopted by the Former Redevelopment Agency on May 19, 1993, the executive director of the Former Redevelopment Agency was directed to seek legislative approval for the use of bonds secured by future hotel tax receipts in order to assist The Mexican Museum to develop a permanent home in the Project Area (the "Hotel Tax Bonds").

Consistent with that certain Resolution No. 87-93 and subsequent San Francisco Board of Supervisors legislative actions and the support of four former mayoral administrations, as well as the current administration of Mayor Edwin Lee, OCII and Developer acknowledged in the PSA that The Mexican Museum will now be requesting the re-authorization, allocation and disbursement of supplemental funding from the City and County of San Francisco, in the sum of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00), through, and subject to the approval and authorization of, the San Francisco Board of Supervisors and Mayor's Office to be used for the Cultural Component's space furniture, fixtures and equipment and tenant improvements for the Core and Shell of the Cultural Component or for other related uses and under such terms and conditions as may be specified by the Board of Supervisors and Mayor's Office. Furthermore, in the PSA, OCII and Developer agreed to be supportive of the request for additional funding, provided that such support shall be at no out-of-pocket cost to Successor Agency or Developer.

OCII, as successor to the Former Agency, and the Tenant are parties to that certain Grant Agreement dated December 14, 2010 (the "Grant Agreement"). The Grant Agreement requires OCII to disburse through a series of grant disbursement agreements totaling approximately \$10.5 million of funding for predevelopment and planning activities and the design and construction of tenant improvements for the Premises (the "TI Obligations"), under certain terms and conditions. Thus, this Agreement recognizes the Developer's Core and Shell Obligations and the Tenant's TI Obligations pursuant to the terms of the PSA and the Grant Agreement.

The City and Tenant have negotiated and agreed upon the terms and conditions upon which City will lease the Premises to Tenant, and the Parties now desire to enter into this Lease upon all of the terms and conditions hereof.

All initially capitalized terms used herein are defined in Appendix A attached hereto shall 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 Section 1 and any more specific provision of this Lease, the more specific provision shall control.

Landlord:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through the City Administrator or his or her designee at the Department of Real Estate.
Tenant:	THE MEXICAN MUSEUM, a California nonprofit public benefit corporation
Premises:	That certain condominium unit or parcel that is a portion of Floors 1 through 4 of the Project, located at 706 Mission Street in the City and County of San Francisco, California, more particularly described in <u>Exhibit A-1</u> attached hereto and shown on the map attached hereto as <u>Exhibit A-2</u> , together with all Improvements now or hereafter located thereon and all easements and appurtenant rights thereto, excluding therefrom and reserving unto City, its successors and assigns, the Reserved Rights relating to the Premises as described in Appendix A attached hereto and incorporated herein by reference. [NOTE: If this Lease is



	entered into prior to recordation of the condominium map for the Project, add language that definition of Premises will be revised to conform with the recorded condominium map after recordation.]
Rentable Area (Section 3.2):	Approximately 48,000 net square feet over four (4) floors
Commencement Date (Section 4.2):	The date upon which Landlord delivers exclusive possession of the Premises to Tenant or upon which Landlord would have so delivered the Premises but for a Tenant delay.
Term:	See Section 4.
Extension Options (Section 4.4):	Provided the Lease is then in effect and not in default, and the museum has been in continuous operation over the Lease term, City grants to Tenant one (1) option to extend the Term of this Lease as to the entire Premises only (the "Extension Option") for an additional thirty-three (33) years (the "Extension Term").
Base Rent:	\$1.00 for Term of Lease.
Rent Adjustment Date:	None
Use (Section 8):	The Premises shall be used as a Museum open to the public in accordance with the terms and conditions of this Lease and applicable Laws.
Initial Tenant Improvements:	See Section 5.
Utilities:	See Section 12.
Notice Address of City (Section 30.1):  and to:	<p>Real Estate Division City and County of San Francisco 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: John Updike Director of Real Estate Fax No.: (415) 552-9216 Email: john.updike@sfgov.org</p> <p>Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Team Leader, Real Estate, Finance and Special Projects Team Fax No.: (415) 554-4755</p>

Key Contact for City:	John Updike, Director of Real Estate
Telephone No.:	(415) 554-9850
Alternate Contact for Landlord:	Josh Keene, Project Manager
Telephone No.:	(415) 554-9850
Notice Address of Tenant (Section 30.1):	The Mexican Museum c/o Andrew M. Kluger, Chairman Olga Milan-Howells Alfredo Pedroza Co-Chairs, Building Committee Fort Mason Center Building D San Francisco, California  with copies to: The Marquez Law Group 20 California Street, 7th Floor San Francisco, CA 94111 Attn: Victor Marquez, Esq. General Counsel, The Mexican Museum Facsimile: (415) 677-9798
Key Contact for Tenant:	Victor Marquez, Counsel for Tenant Greg Johnson, Project Manager
Telephone No.:	(415) 314-7831 (415) 987-7141
Alternate Con for Tenant:	Andrew M. Kluger, Board Chair or designee
Telephone No.:	(415) 302-7691
Security Deposit:	See Section 14.4
Tenant's Share of Operating Expenses:	See Section 6.2
Brokers (Section 30.9):	None
Other Noteworthy Terms:	None

## 2. DEFINITIONS

For purposes of this Lease, initially capitalized terms shall have the meanings ascribed to them in Appendix A attached hereto and incorporated herein by reference.

## 3. PREMISES

**3.1. Leased Premises.** Subject to the terms, covenants and conditions of this Lease, City leases to Tenant and Tenant leases from City, the Premises.

**3.2. Rentable Area.** Approximately 48,000 net square feet over four (4) floors, as shown on the Site Map, Exhibit A-2.

### 3.3. As Is Condition of Premises.

(a) **Inspection of Premises.** Tenant represents and warrants that Tenant shall conduct a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises, including, without limitation: (i) the quality, nature, adequacy and physical condition of the Premises, and all other physical and functional aspects of the Premises; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental conditions of the Premises (including Hazardous Materials conditions); (iii) the suitability of the Premises as a Museum; (iv) the zoning, land use regulations and other Laws governing use of or construction on the Premises; and (v) all other matters of material significance affecting the Premises and use thereof under this Lease. Tenant is fully aware of the

needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

**(b) As Is; Disclaimer of Representations.** Tenant acknowledges and agrees that the Premises are being leased by City to Tenant, and Tenant hereby accepts the Premises in their existing state and condition, "**AS IS, WITH ALL FAULTS**" and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Tenant acknowledges and agrees that neither City, nor any of the other Indemnified Parties, nor any Agent of any of them, has made, and hereby disclaims, any representation or warranty, express or implied, of any kind with respect to the condition of the Premises, including the Developer warranties which shall be conveyed to Tenant by City at the time of commencement of this lease. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements, leases, and other title matters affecting the Premises, or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City nor any of its Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature, or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements on the Premises if required for Tenant'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.

As part of its agreement to accept the Premises in its "As Is With All Faults" condition, Tenant, on behalf of itself and its successors and assigns, hereby waives any right to recover from, and forever releases, acquits and discharges, the Indemnified Parties of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Tenant may now have or that may arise on account of or in any way connected with: (i) the physical, geotechnical or environmental condition of the Premises, including, without limitation, any Hazardous Materials, in, on, under, above or about the Premises, (including, but not limited to, soils and groundwater conditions) or the physical condition of the new Museum once the Project is complete, (ii) any Laws applicable thereto, including, without limitation, Hazardous Materials Laws.

In connection with the foregoing release, the Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Tenant's Initials: \_\_\_\_\_

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

**3.4. Tenant Parking Passes.** Commencing on the Commencement Date, the City anticipates that it shall receive from the parking operator for the Project the following parking rights, which it shall pass through to the Tenant, at a competitive rate consistent with rents paid by other area museums: ten (10) (or such lesser number as may be requested by Tenant from time to time) unreserved parking passes on a monthly basis throughout the Term as requested by Tenant, which parking passes may be used only for passenger cars or minivans and shall pertain

to the public parking area of Jessie Square Garage, in accordance with the Regulatory Approvals and the Master Declaration. Additional parking for Tenant in the Jessie Square Garage shall be coordinated between the parking operator for the Project and Tenant on mutually agreeable terms and conditions.

**3.5. Common Areas.** All common areas shall be subject to the exclusive control and management of Developer (and, once formed, the Master Association) provided that Tenant shall have (i) the right to use and secure the loading dock as needed for receipt and sending of all Tenant related deliveries and the corridors and elevators connecting the loading dock to the Premises and (ii) the right to use any connecting areas providing access between the Project lobby and the Premises for ingress to and egress from the Premises, all in accordance with the Master Declaration. Additionally, the use and operation of the adjacent Jessie Square Plaza is governed by the Yerba Buena Gardens Amended and Restated Construction, Operation and Reciprocal Easement Agreement and Agreement Creating Liens, dated March 31, 1998 and amended October 28, 1998 (the "REA"), and any uses of the Jessie Square Plaza by the Tenant will be consistent with the terms of the REA.

**4. TERM OF LEASE.** The Premises are leased for a term of occupancy (the "Term") commencing on the Commencement Date as defined below. The Term of this Lease shall end on the Expiration Date defined below, unless sooner terminated or extended pursuant to the provisions of this Lease.

**4.1. Commencement Date and Expiration Date.** The Term of occupancy of this Lease shall commence on the first day of the first full month following the date upon which Landlord delivers exclusive possession of the Premises to Tenant or upon which Landlord would have so delivered the Premises but for a Tenant delay (the "Commencement Date"); provided, however, the terms and conditions of this Lease otherwise shall be effective as of the Effective Date (as defined in Section 4.3, below). The "Expiration Date" shall be the earlier to occur of: (i) the date sixty-six (66) years from the Commencement Date unless further extended pursuant to Section 4.4 below, or (ii) the date as of which this Lease is terminated pursuant to the provisions hereof. Tenant shall execute and deliver to City a memorandum confirming the Commencement Date substantially in the form attached hereto as Exhibit B, but Tenant's failure to do so shall not affect the commencement of the Term.

**4.2. Effective Date.** This Lease shall become effective on the later of (i) the date the City, in its sole and absolute discretion, approves this Lease, in accordance with all applicable Laws, and (ii) the date on which the Parties hereto have executed and delivered this Lease (the "Effective Date").

**4.3. Extension Option(s).**

(a) Tenant, provided that Tenant has complied with the terms and conditions of the Lease, shall have the right to extend the Term of this Lease for the additional terms specified in the Basic Lease Information (the "Extension Options"). Such Extension Options shall be on all of the terms and conditions contained in this Lease.

(b) Tenant may exercise an Extension Option, if at all, by giving written notice to Landlord no later than twelve (12) months and not more than eighteen (36) months prior to expiration of the then expiring Term. Tenant acknowledges and agrees that Tenant's notice of its intent to exercise an Extension Option shall be subject to enactment of a resolution by the City's Board of Supervisors and the Mayor, in their respective sole and absolute discretion, approving and authorizing the same, within ninety (180) days after the date such notice of exercise is given, and if such authorizing resolution approving the exercise of an Extension Option is not issued and received by Landlord within such ninety (180) day period, then Tenant's exercise of the Extension Option shall be final and automatically go into effect .

(c) The Extension Options are personal to Tenant and may not be assigned, voluntarily or involuntarily, separate from or as part of the Lease. At City's option, all rights of

City under this Section shall terminate and be of no force or effect if any of the following individual events occur or any combination thereof occur: (1) Tenant is in monetary or other material default beyond any applicable cure period on the date City receives a notice exercising an Extension Option; and/or (2) Tenant has assigned its rights and obligations under all or part of the Lease or Tenant has subleased all or part of the Premises in a transfer (except as otherwise permitted under this Lease) without the City's prior written consent); and/or (3) Tenant has failed to exercise properly an Extension Option in a timely manner in accordance with the provisions of this Section; and/or (4) if the Lease has been terminated early, pursuant to the terms and provisions of the Lease. Time is of the essence with respect to each and every time period described in this Section 4.4.

## **5. INITIAL TENANT IMPROVEMENTS**

**5.1. Early Access.** Prior to the commencement date, Landlord and Tenant agree to enter into a Permit to Enter Agreement with the Developer which shall set forth all of the terms and conditions necessary to enable Tenant to have early access to the Premises for the purpose of Tenant commencing construction of the initial tenant improvements consistent with the architectural design to be approved by all pertinent parties, including the City and Developer. The Permit to Enter Agreement, shall grant Tenant early non-exclusive access to the Premises approximately 12-15 months prior to the projected date for issuance of the Temporary Certificate of Occupancy for the Core and Shell of the Cultural Component; provided, however, that pursuant to the Permit to Enter Agreement, Developer will not be required to grant such early access if Developer determines in good faith that the same might delay or interfere with Developer's construction of the Project or increase the cost of the Developer's construction of the Project.

**5.2. Initial Tenant Improvements.** Tenant shall be solely responsible for financing the build-out of all tenant improvements and other improvements related to the Mexican Museum in accordance with the City approved plans and specifications, other than the Core and Shell of the Premises, which will be delivered to Tenant, at the sole expense of the Developer, in accordance with the PSA, and in compliance with (1) the requirements of the Americans with Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabilities Laws") and (2) standards applicable to comparable museum/cultural facilities including HVAC and MEP systems standards for such facilities. Tenant shall provide notice to Developer and Landlord at least 60 days prior to beginning the tenant improvements to the core and shell consistent with the terms and conditions of the prospective Permit to Enter Agreement. City shall not be responsible for and shall not bear any of the cost of construction of the Core and Shell of the Premises.

**(a)** Tenant shall construct all tenant improvements in compliance with the Disabilities Laws and in compliance with all requirements under the Grant Agreement (attached as Exhibit C), as such Grant Agreement may be amended from time to time and any other grant agreements funding and governing the tenant improvements buildout, between the Successor Agency and Tenant for construction of tenant improvements. In addition to any other City or OCII review and approval requirements, Tenant shall submit the design for the Museum space to the Landlord for review, consultation and approval, in consultation with Landlord's selected City representatives or local experts at the following stages: (i) the conceptual design stage; (ii) the schematic design stage; (iii) the design development stage; and, (iv) the construction document stage. The Landlord shall notify Tenant at least six (6) months in advance of the specific percentage of completion required for each of the above-listed review stages. The Landlord's approval of any Tenant Improvements shall not be unreasonably withheld or delayed. Unless otherwise agreed by the parties in writing, if the Landlord disapproves of any proposed improvement, or delays approval for more than 30 business days, Tenant may appeal the Landlord's decision or delay to a mutually approved independent expert with experience in

museum design and construction or other area appropriate to the disputed improvement to resolve the issue with a written determination within 30 days. The determination of the independent expert shall be binding on the parties. If Landlord is not able to fully approve the design at any review stage, the Landlord shall provide the Tenant with specific comments and suggested revisions. The tenant improvements shall be substantially completed within twenty-four (24) months of the issuance of the Temporary Certificate of Occupancy for the Core and Shell and if not completed in such time period the Landlord shall have the right to evaluate the state of the construction of the tenant improvements and determine whether or not to pursue an alternate tenant for the Premises after it provides written notice to the Tenant and a cure period of thirty (30) days or such longer cure period as may be otherwise agreed to by the City upon written request by Tenant. City shall not be responsible for and shall not bear any of the cost of construction of any such tenant or other improvements related to the Premises. City and Tenant shall reasonably cooperate to ensure that the Tenant's construction of Improvements does not unreasonably interfere with the construction of the rest of the Project. Pursuant to the Permit to Enter Agreement, Developer and City shall reasonably cooperate to ensure that the Developer's construction does not unreasonably interfere with the construction of the Tenant's spaces.

**5.3. Title to Improvements.** Except for Tenant's Personal Property (as described in the next section), or as may be specifically provided to the contrary in the approved Plans, all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Tenant Improvements and any Alterations, shall be and remain City's property. Tenant may not remove any such property at any time during or after the Term unless City so requests as further provided in Section 24 (Surrender) below.

**5.4. Tenant's Personal Property.** All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Tenant, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Tenant's Personal Property") shall be and remain Tenant's property. Tenant may remove its Personal Property at any time during the Term, subject to the provisions of Section 24 (Surrender of Premises) below. Tenant shall pay any taxes or other impositions levied or assessed upon Tenant's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

## **6. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **6.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Tenant shall pay to City in monthly installments the Premises' pro rata share of taxes, if any, applicable to the Project for each year ("Tenant's Tax Payment") as may be imposed by Developer or the Master Association pursuant to the Master Declaration. To the extent that (i) Tenant is exempt from the payment of any taxes and (ii) the taxes that would otherwise be payable by City are actually reduced by such exemption, Tenant shall be entitled to the full benefit of such reduction as a reduction in Tenant's Tax Payment. Tenant shall be responsible for any applicable occupancy or rent tax now in effect or hereafter enacted.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Tenant recognizes and agrees that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest, if any. Tenant further recognizes and agrees that any Sublease or Assignment permitted under this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder in accordance with applicable Laws. Tenant shall be responsible for obtaining a Certificate of Exemption from the California Board of Equalization and the San Francisco Assessor to obtain any potential waiver from payment of real and personal property taxes.

(c) **No Tax Liens.** Tenant shall not allow or suffer a lien for any taxes payable by Tenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without promptly discharging the same.

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

**6.2. Tenant's CAM Payments.** Tenant shall pay to Landlord in monthly installments the Premises' pro rata share of operating expenses applicable to the Project each year ("CAM Payment") as may be imposed by Developer or the Master Association pursuant to the Master Declaration.

## **7. PERSONAL PROPERTY**

**7.1. Tenant's Personal Property.** All of Tenant's Personal Property shall be and remain the property of Tenant and may be removed by it subject to the provisions of Section 25 [Surrender] hereof; provided, however, Tenant acknowledges and agrees that Tenant's Personal Property specifically shall exclude all of the City's Personal Property, if any. All of Tenant's Personal Property shall be removed by Tenant on or prior to the date of termination of this Lease or of any extension thereof. Prior to the commencement of operation, a list of trade fixtures to be included in Tenant's Personal Property shall be submitted in writing to the Director of Real Estate by Tenant.

## **8. USES; MUSEUM MANAGEMENT AND OPERATIONS**

### **8.1. Permitted Uses.**

(a) **Museum.** Subject to the terms and conditions of this Lease, the Premises shall be operated continuously for the benefit of the public as a publicly accessible, world class museum of the art and culture of the Hispanic peoples of the Americas and uses incidental thereto, exhibiting a combination of permanent collection items as well as rotating special exhibitions, as well as arts and culture programming. For purposes of this Lease, the term "world class" shall refer to the highest professional standards in operations, programming, collections, governance, and facilities. The Tenant shall comply with all applicable laws and museum professional standards, including those under the American Alliance of Museums (AAM) and the Association of Art Museum Directors (AAMD). In addition, within 7 years of the Tenant's occupancy of the Premises under this Lease, the Tenant shall obtain, and once obtained maintain during the Term of the Lease, ongoing accreditation by the American Alliance of Museums. Upon or before execution of the Lease, the Tenant shall provide Landlord with a copy of the I.R.S. determination letter confirming the tenants tax exempt status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code. By June 30th of each year of this Lease Term, the Tenant shall also file a copy of its annual I.R.S. Form 990 with the Landlord, together with copies of all of the Museum's governance documents, as may be amended from time to time, including, but not limited to, the Museum's collection management and ethics policies and any other policies required by the American Alliance of Museums, Association of Art Museum Directors, or Internal Revenue Service. The Tenant shall operate the museum for exclusively charitable and public purposes. Notwithstanding the above, the Tenant, as long as it does so in accordance with applicable laws and regulations governing charitable organizations, may operate a museum retail shop and a permitted café for the convenience of museum visitors, with rights to use part of the Premises for events and catering functions, including the ancillary uses set forth in Section 8.1(b).

(b) **Agreement with the Arts Commission.** Where the City determines that a supplemental agreement between the City, through the Arts Commission, and the Mexican Museum is necessary to further articulate how the Mexican Museum will manage the Premises and collaborate with the City over the term of the Lease, the Arts Commission and the Mexican Museum shall enter into a separate Agreement which shall be attached to this Agreement as

Exhibit E and incorporated herein by reference. (The name and nature of the Agreement is to be determined by and between the parties.)

(c) **Approval of Director of Real Estate.** Except as expressly set forth in this Lease, all of the Tenant's activities in the Premises shall be subject to the approval of the Director of Real Estate or his or her designee, and such rules and regulations as may be imposed by the City from time to time. All revenues generated from such activities shall be governed by Section 10, below.

(d) **Retail Operations; Facility Rentals.** With respect to the operation of museum retail stores and other related retail activities, fundraising events and short-term facility rentals at the Premises approved by the Mexican Museum's Board of Trustees and the City, the parties agree that the Tenant will conform with customary and professional museum practices and ensure that the Tenant's activities will not conflict or interfere with the Tenant's charitable and educational activities in the Premises. In addition, Tenant shall be able to license the Premises for private events or functions during non-business hours on a short-term basis, upon term and conditions approved by the City, consistent with the City's standard form of permit and subject to the City's public safety, insurance, and indemnification requirements, as approved by the City Risk Manager, and any other state law requirements concerning service of food or beverages, provided that such private events and functions do not interfere with or impede the primary purpose of operating a museum for the public benefit.

(e) **No Change to Charter.** Nothing contained in this Section 8.1 shall be construed to amend, alter or modify any obligations of the Parties under the Charter or any other applicable Law, including the City's Administrative Code. In the event of any conflict between the terms of this Lease and the terms of the Charter or Administrative Code, the terms of the Charter or Administrative Code, as applicable, shall govern. The Lease shall not provide to the Tenant a contractual right or remedy to enforce City obligations under the Charter.

**8.2. Advertising and Signs.** Tenant shall not allow the placement, construction or maintenance of any sign, advertisement, awning, canopy, banner or other exterior decoration of or on the Premises without obtaining the City's prior written consent, both during the design of the museum and beyond the opening of the museum. Any sign that Tenant or its subtenants are permitted to place, construct or maintain on the Premises shall comply with all Laws relating thereto, including, but not limited to, City's Sign Guidelines and all building permit requirements, and Tenant shall obtain all Regulatory Approvals required by such Laws. City makes no representation with respect to Tenant's ability to obtain such Regulatory Approval. Tenant at its sole cost and expense, and at the City's request, shall remove all signs placed by it on the Premises at the expiration or earlier termination by either party of this Lease.

### **8.3. Limitations on Uses by Tenant.**

(a) **Prohibited Activities.** Without limiting the generality of Section 8.1 [Permitted Uses] above, Tenant shall not conduct or permit on the Premises any Prohibited Activities (as defined in Appendix A attached hereto) without the prior written consent of the City.

**8.4. Museum Name; Use of Marks.** Except as specifically provided below, Tenant shall use the name "The Mexican Museum" as the name of the museum facilities located on the Premises. Any other reference to or naming of the Mexican Museum, in connection with advertising or promotional materials or otherwise, shall require the prior consent of both the City and Tenant. Without limiting the foregoing, neither Party may use the logos, trademarks, trade names, emblems, insignia, slogans, or commercial symbols (collectively "Marks") of the other Party without the other Party's prior written consent. For purposes herein, the City's Marks shall include the Seal of the City and Tenant's marks shall include the names "The Mexican Museum." Upon the Expiration Date or any earlier termination of this Lease, Tenant shall have no further



rights to any use of the City Marks that may have been approved during the Term of this Lease and City shall have no right to any use of Tenant's Marks that may have been approved during the Term of this Lease.

**8.5. Covenant to Protect Adjacent Facilities.** At all times during the Term of this Lease, Tenant shall perform its management and operation obligations in a manner that does not cause any damage to the Adjacent Facilities. If Tenant or any of its Agents materially damages, injures or disturbs, or if Tenant has actual knowledge of any of Tenant's Invitees materially damaging, injuring or disturbing, any of the Adjacent Facilities, or any portion of the Adjacent Facilities, Tenant shall immediately notify City of that occurrence. City may, without the obligation to do so and without limiting any of its other rights hereunder, take or cause others to take all reasonable actions it reasonably deems proper to repair the portion of the Adjacent Facilities damaged, injured or disturbed by Tenant or its Agents at Tenant's sole expense. Where time permits, the City shall use reasonable efforts to provide the Tenant with prior notice of repairs. But in no event shall the City be responsible for the ultimate costs of the repairs of damages caused by Tenant.

**8.6. Trespassing.** As far as reasonably possible given the Parties' respective obligations hereunder by the exercise at all times of reasonable diligence and care, Tenant shall protect the Premises from trespass during operating hours.

**8.7. Museum Professional Standards and Reporting Requirements.** In addition to any other reporting requirements under this Lease, Tenant shall provide the following to Landlord:

(a) **Disclosure of Financial Information.** Tenant shall maintain and make available to the City an annually updated packet of financial information concerning the Tenant. The packet shall include, at a minimum: (1) the nonprofit organization's current annual budget and annual report; (2) its most recently filed State and federal tax returns except to the extent those returns are privileged; (3) the most current annual audited financial statements; and (4) any other financial audits of such organization performed by or for the City and any performance evaluations of such organization performed by or for the City pursuant to this Lease, to the extent that such financial audits and performance evaluations (i) are in the Tenant's possession, and (ii) relate to the Tenant's performance of this Lease with the City within the preceding two years. Tenant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement.

(b) **Regular Reports to Landlord.** In addition to any records required under 8.7(a) or under any other provisions of this Lease, Tenant shall provide to the Director of Real Estate, in a prompt and timely manner, financial, operational and other reports, as requested by the Director of Real Estate in form and substance satisfactory to the Director of Real Estate. Such reports, including any copies, shall be submitted either electronically or on recycled paper and printed on double-sided pages, to the maximum extent possible. In addition, upon request of the Director of Real Estate, Tenant shall provide a detailed written report listing operating hours, all programs, exhibitions, events, and activities presented using any portion of the Premises, Mexican Museum collections, or that are otherwise part of traveling exhibitions or programs in which the Mexican Museum is participating in any capacity.

(c) **Core Documents.** If requested by City, on or before the date of this Agreement, Tenant shall provide to City the names of its current officers and directors and certified copies of its Articles of Incorporation and Bylaws as well as satisfactory evidence of its valid nonprofit status under Section 501(c)(3) of the Internal Revenue Code and as described in [Section 8.1]. In addition, upon execution of this Lease and thereafter upon request by the City, the Tenant shall provide the City with current copies, of the following documents that the American Alliance of Museums has determined are "core documents" because they are

“fundamental for basic professional museum operations and embody core museum values and practices.” The content of such documents shall be consistent with the requirements of the American Alliance of Museums. (See <http://www.aam-us.org/resources/assessment-programs/core-documents/documents>).

- Mission Statement
- Institutional Code of Ethics
- Strategic Institutional Plan
- Disaster Preparedness/Emergency Response/ Plan
- Collections Management Policy

**(d) Notification of Anticipated Defaults, Defaults, or Changes in Circumstances.** Tenant shall notify City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained under this Lease to be false or misleading at any time during the term of this Agreement. Where the Tenant provides the City with written notice of an anticipated default or actual default, the Tenant shall be entitled to one additional ninety (90) day period to prevent or cure the default.

**(e) Financial Statements.** Without limiting any other requirement under this Lease, within ninety (90) days following the end of each Fiscal Year, Tenant shall deliver to the Director of Real Estate an unaudited balance sheet and the related statement of income and cash flows for such Fiscal Year, all in reasonable detail acceptable to City, certified by an appropriate financial officer of Tenant as accurately presenting the financial position of Tenant. If requested by City, Tenant shall also deliver to City, no later than one hundred eighty (180) days following the end of any Fiscal Year, an audited balance sheet and the related statement of income and cash flows for such Fiscal Year, certified by a City-approved, reputable and independent accounting firm as accurately presenting the financial position of Tenant. Any City-requested audited financial statements shall be prepared using generally accepted accounting principles. The audited financial statements must be audited by an independent auditor whose relationship with the Tenant must satisfy the Government Auditing Standards issued by the Comptroller General of the United States or is otherwise acceptable to the City Controller. The Tenant shall also provide the City with the most current fiscal year's Internal Revenue Service Form 990 for the Tenant.

**(f) Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. Tenant acknowledges and agrees that it is a "contractor" under and is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any contractor, subgrantee or consultant who submits a false claim shall be liable to City for three times the amount of damages which City sustains because of the false claim. A contractor, subgrantee or consultant who submits a false claim shall also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those

penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A contractor, subgrantee or consultant will be deemed to have submitted a false claim to City if the contractor, subgrantee or consultant: (a) knowingly presents or causes to be presented to an officer or employee of City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by City; (c) conspires to defraud City by getting a false claim allowed or paid by City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

**(g) Public Access, Attendance, Membership and Related Records.** The Museum on the Premises must be accessible to the general public on a regular basis, and the public must be made aware that such is the case through signs on the Premises and through the internet on the Museum's website and other appropriate websites, social media sites, or applications. For the avoidance of doubt, and unless otherwise approved by the City or in cases of City wide emergency or natural disaster beyond the control of the Tenant ("Force Majeure"), the Museum shall be regularly open to the public not less than 30 regularly scheduled hours per week, with not more than one weekday closed, for not less than 35 weeks of every calendar year during the term of this Lease unless Museum notifies City in writing of changed circumstances or special circumstances causing the Museum to close for a temporary period due to Force Majeure. The Premises must be identifiable as a museum with the public being made aware of the use and hours by signs approved by the Director of Cultural Affairs and advertising in print and digital media. In addition, the Tenant shall keep and provide the Director of Real Estate, upon request, with records of annual attendance, special exhibition attendance, and membership.

**(h) Educational Function.** The Tenant shall provide regular educational programs to individuals of all age ranges and shall keep and provide the City with records documenting the substance, frequency, and audiences served by such programs on an annual basis. In addition The Tenant shall provide free access to public and private nonprofit school groups as determined by the Museum's Board of Trustees, consistent with the practices of other major museums in San Francisco. The Tenant shall also make active efforts to encourage scholarship regarding its collections and exhibitions. The Tenant shall provide information or reports regarding its educational programs on an annual basis to the Landlord, upon the Landlord's written request.

**(i) Access to Meetings and Opening Events.** Tenant shall provide the City with the right to send a City representative to attend and observe up to 2 meetings of the Tenant's Board of Trustees each year. Tenant shall also provide the City Administrator's designated representatives, and the Director of Cultural Affairs, with access to view exhibitions, events, facilities, publications, and programs as requested by the City in order to ensure compliance with the terms of this Lease.

**(j) Biennial Museum Report.** Every two (2) years for the first ten (10) years of the Lease, and thereafter upon written request from the Landlord or the Clerk of the Board of Supervisors, the Tenant shall provide a written report to the Landlord and the Board of Supervisors that provides an overview of the Museum's performance since the prior report. The Report shall address the following list of topics, or other topics mutually agreed in writing by the Director of Real Estate, or other City Administrator designee, and the Museum.

The Tenant's Fiscal Health; Audited Financial Statements; Disclosure of Earned Revenues and Contributed Income/Outside Funding

- Quality of Visitor and Public Experience
- Fulfillment of Educational Mandate
- Institutional Reputation both within San Francisco and Beyond

- Management Priorities and Achievements
- Caliber and Qualifications of Staff
- Standards of Governance
- Scope and Quality of Collection
- Contributions to Scholarship
- Contributions to Art Conservation and Appreciation
- Quality of Exhibitions
- Facilities' Contribution to Core Mission

## 9. GENERAL OPERATIONS AND CONDITION OF PREMISES

### 9.1. Tenant's Operation, Maintenance and Repair Obligations.

(a) **Operating Standards.** Subject to the terms and conditions of any applicable Museum Management Plan, each Party hereto shall perform its respective obligations thereunder with respect to the Premises, in a world class manner and, in connection therewith, shall provide the public with good quality products and efficient and courteous service. Tenant shall be responsible for all costs associated with ensuring that the Premises are suitable for domestic and international exhibitions, including those that would be insured through the Federal Indemnity program.

(b) **No Right to Repair and Deduct.** Tenant expressly waives the benefit of any existing or future Law or judicial or administrative decision that would otherwise permit Tenant to make repairs or replacements at City's expense because of City's failure to keep the Premises (including, without limitation, streets and other infrastructure within the Premises) or any adjoining property or any part thereof in good order, condition or repair, or to abate or reduce any of Tenant'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, Tenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any obligations of City for tenability of the Premises and any right of Tenant to make repairs or replacements and deduct the cost thereof from rent.

(c) **Tenant Cleaning.** Tenant shall cause the Premises to be cleaned daily and shall cause the inside and outside of all window surfaces to be cleaned as necessary (except exterior windows at levels 2, 3 and 4 of the Historic building, which cleaning shall be coordinated with Developer for use of Project's building maintenance unit equipment), but no less frequently than twice per year. Tenant shall cause all glass doors in the Premises to be cleaned daily to remove dirt and fingerprints from both sides of such doors. Tenant shall cause all glass storefronts in the Premises to be cleaned at least weekly or as often as necessary to remove dirt and fingerprints from both sides of such storefronts. Tenant shall provide for all other janitorial services to the Premises and shall cause the Premises to be cleaned daily in a fashion comparable with other first-class cultural institutions in the Yerba Buena area of San Francisco and consistent with standards to be mutually agreed upon between the parties, included herein as Exhibit G.

### (d) Maintenance and Repair Obligations.

(i) **Developer's Obligations under the Master Declaration.** Landlord and Tenant anticipate that the Master Declaration will provide that Developer (or the Master Association) shall be responsible for the following repair, replacement and maintenance obligations: (i) maintenance and repair of the exterior walls, roof and primary structural portions of the Project (including load bearing walls and columns, the exterior of demising walls for the Project, and foundations, but excluding cleaning of exterior glass at Tower levels 1 through 4 and ground level Historic); (ii) repair and maintenance of the common area elevators and

common area building systems for mechanical (including boilers and cooling towers stubbed to Premises), electrical (main panel to sub panels in Premises), HVAC condensing water (stubbed to the Premises, and provided that Tenant shall be responsible for repair, replacement and maintenance of any HVAC system, units and/or equipment that exclusively serve the Premises), plumbing and fire and life safety systems (stubbed to the Premises), and all controls appurtenant thereto (collectively, "Building Systems"); and (iii) repair, replacement and maintenance of Common Area. Pursuant to the Master Declaration, Developer (or the Master Association) shall maintain and operate all portions of the Project and the Premises that are Developer's obligations under this Section 9.1(d)(i) in good working order and first class condition and appearance. Notwithstanding the foregoing, Tenant shall be responsible for Tenant's Share of all costs incurred by Developer (or the Master Association) in connection with the foregoing obligations, which shall be payable by Tenant as additional rent hereunder in accordance with the Master Declaration. Developer's and the Master Association's obligations under the Master Declaration as described in this Section 9.1(d)(i) with respect to any particular repair, replacement or maintenance requirement with respect to the Premises (other than general maintenance of the Common Area in the ordinary course of business and areas outside the Premises) shall not commence until Tenant notifies Developer (and, once formed the Master Association) in writing of any circumstances that Tenant believes may trigger Developer's or the Master Association's obligations. Pursuant to the Master Declaration, Developer (or the Master Association) shall conduct any such repair, replacement and maintenance in a manner which minimizes, to the extent commercially reasonable, Developer's (and the Master Association's) interference with Tenant's use of, and business operations at, the Premises.

**(ii) Tenant's Obligations.** Tenant shall maintain, repair and replace, at its sole cost and expense, all portions of the Premises that are not obligations of Developer or the Master Association under the Master Declaration as described in Section 9.1(d)(i) in good working order and first class condition and appearance, including, without limitation, any building systems, units and/or equipment that exclusively serve the Premises, including but not limited to mechanical, HVAC, plumbing, electrical, fire protection, sprinkler, life safety, telecom, security and other systems; the interior portion of the Premises; the Tenant Improvements, including but not limited to all interior improvements, finishes, fixtures and equipment; any Alterations; any Signs installed by Tenant; and any additional tenant improvements, alterations or additions installed by or on behalf of Tenant within or about the Premises. Tenant shall keep the interior and exterior of the Premises in good repair and working order; in a clean, secure, safe and sanitary condition; and in a condition comparable to that of other first-class cultural institutions in the Yerba Buena area of San Francisco, and shall perform daily and pay for all cleaning costs associated with on-going operations of the premises under this Lease and the sidewalks in front of the Premises up to ten (10) feet from the perimeter of the Premises or to the extent Tenant's Alterations, signage or installations (if any and to the extent allowed pursuant to this Lease) are located outside of such perimeter (provided that Tenant shall not be responsible for general maintenance, other than such cleaning, within such exterior perimeter of the Premises except to the extent that Tenant's Alterations, signage or installations (if any and to the extent allowed pursuant to this Lease) are located within such perimeter. Tenant shall be responsible at its own cost and expense for both interior and exterior cleaning of the windows of the Premises (except exterior windows at levels 2, 3 and 4 of the Historic building, which cleaning shall be coordinated with Developer and the Master Association for use of Project's building maintenance unit equipment), and for cleaning and maintenance of the elevators within the Premises. Tenant shall be responsible for trash removal from and other janitorial services in the Premises during the times and in the manner that such removal and services are customarily performed in comparable projects in the immediate area. Tenant shall be responsible for the expense of installation, operation, and maintenance of its telephone and other communications cabling from the main point of entry into the Project, point of entry into the Premises, and throughout the Premises. Tenant's obligations under this Section 9.1(d)(i) include, without limitation, the replacement, repair and maintenance, at Tenant's sole cost and expense,

of any portions of the Premises that are not Developer's or the Master Association's express responsibility under the Master Declaration as described in Section 9.1(d)(i).

(e) **Tenant's Repairs.** Tenant shall maintain, at no expense to City, the Premises (including, without limitation, the floors, interior plumbing, electrical wiring, fixtures and equipment) in good repair and working order and in a clean, secure, safe and sanitary condition. Tenant shall promptly make all repairs and replacements: (a) at no cost to the City, (b) by licensed contractors or qualified mechanics approved by City, (c) so that the same shall be at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (e) in accordance with any applicable Building Rules and Regulations (as defined in Section 14.4 (Rules and Regulations)) and all applicable laws, rules and regulations. If the cost of any such repairs or replacement is in excess of One Hundred Thousand Dollars (\$100,000) and is due to acts or omissions of Tenant, its Agents or Invitees, then Tenant shall pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at City's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

## **10. FISCAL DUTIES, REPORTING REQUIREMENTS, AND RELATED MATTERS**

### **10.1. General Attendance Figures and Admission Revenues.**

All Admission Revenues generated from Tenant's activities under this Lease shall, subject to Section 10.2, below, be the property of Tenant but must first be used to pay any financial obligations to the City under this Lease.

**10.2. Use of Revenues.** No Supplemental Financial Obligation by City. All of Tenants revenues shall be used only to support the Mexican Museum's charitable purposes and related operating expenses, and for no other purpose whatsoever. Notwithstanding anything to the contrary contained herein, this Lease shall not create a debt of City, and does not require the City to distribute or pay any City funds to the Tenant.

### **10.3. [RESERVED.]**

**10.4. Books and Records.** Tenant shall keep, and make available to the City, accurate books and records according to generally accepted accounting principles consistently applied. "Books and Records" means all of Tenant's books, records, and accounting reports or statements relating to this Lease and the operation and maintenance of the Premises, including, without limitation, cash journals, rent rolls, general ledgers, income statements, bank statements, income tax schedules, relating to the Premises, and any other bookkeeping documents Tenant utilizes in its business operations for the Premises, including the reports described in Section 10.4 above. If Tenant operates all or any portion of the Premises through a subtenant or Agent, Tenant shall require such subtenant or Agent to adhere to the foregoing requirements regarding books, records, accounting principles and the like.

**10.5. Inspection and Audit.** City, or any City auditor or any auditor or representative designated by City, shall be entitled from time to time during the Term upon thirty (30) days' written notice as well as within three (3) years after the Expiration Date or other termination of this Lease, to inspect, examine, copy and audit all of Tenant's Books and Records, including any records or reports required under this Lease. The primary purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's fiscal health and operational impact on the community and to verify that the form and method of Tenant's record keeping provide

adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City, and City's Agents in making the examination. City shall also be entitled at City's option and expense, once during each 2year period of the Lease and once after the Expiration Date or other termination of this Lease, to cause an independent audit to be performed by a certified public accountant designated by City. Any audit shall be conducted during usual business hours at the Premises.

**10.6. Endowment.** Tenant shall use the \$5 Million dollars contributed to Tenant from Developer pursuant to the PSA ("Endowment Payment") exclusively for use as an operating endowment for the Cultural Component to help support the Cultural Component's ongoing operations, and in accordance with all applicable contractual and professional standards. Only the interest earned on the Endowment Payment shall be available for expenditure by the Tenant. Pursuant to the terms of the PSA, the Tenant shall enter into a written agreement with OCII to create the endowment (the "Endowment Agreement"). Subsequently, the Board of Trustees of the Museum shall adopt a policy for the management and investment of the endowment principal and funds consistent with the Endowment Agreement and this section and shall provide Landlord with a copy of the adopted policy.

**10.7. Required Operating Reserve.** Tenant shall maintain an operating reserve to cover all museum operating expenses for the periods specified below, and shall provide a written bank statement evidencing this reserve to the City, as follows:

(a) Upon the public opening of the Museum, the Tenant shall have a minimum of a 6 month operating reserve.

(b) 3 years following the public opening of the Museum, the Tenant shall have a minimum of a 9 month operating reserve

(c) 5 years following the public opening of the Museum, and at all times thereafter, the Tenant shall have a minimum of a 12 month operating reserve.

Failure to maintain the required level of operating reserve shall be an Event of Default. The museum operating reserves required under this Lease shall go into effect at the commencement of the lease and shall be reflected in the Tenant's audited financial statements and Form 990 filings thereafter in perpetuity. For purposes of this section, museum "operating expenses" shall include all costs of operating the museum, including but not limited to, museum-related activities, management and staffing expenses, exhibition expenses, facility expenses, collection storage/conservation related expenses, educational program expenses, school program expenses, visitor services expenses, administrative expenses, maintenance/physical plant expenses, costs of generating earned revenue, equipment, furnishing, and supply expenses, website and other technology related expenses, training expenses, security expenses, insurance expenses, utility (including electricity & water) expenses, as well as other general expenses provided under this Lease or otherwise incurred by the Tenant.

This Lease shall not create a debt to the City, and does not require the City to distribute or pay any City funds to the Tenant. Accordingly, the required operating reserves described under this section shall consist entirely of funds other than City funds.

**10.8. Survival of Obligations.** Without limiting any other provisions of this Lease, the Parties' obligations contained in this Section 10 [Fiscal Duties, Reporting Duties, and Related Matters], including, without limitation, Tenant's payment and reporting obligations, shall survive the Expiration Date or any earlier termination of this Lease.

## **11. ALTERATIONS**

### **11.1. Tenant's Alterations**

#### **(a) General**

Tenant shall not make or permit any alterations to the Premises or to the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Building ("Building Systems"), and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the Premises, without in each instance (i) the City's prior written consent, and (b) the prior written consent of the Master Association, to the extent required under the Master Declaration, and other consents that may be required under the Master Declaration. All Alterations shall be done at Tenant's expense in accordance with the requirements of the Master Declaration and also in accordance with plans and specifications approved by City, only by duly licensed and bonded contractors or mechanics approved by City, and subject to any conditions that City may reasonably impose. With respect to any Alterations which would be visible from the exterior of the Building, Tenant, shall obtain the prior written approval of Landlord and, to the extent required by the Master Declaration, the Master Association. If the cost of any Alterations is in excess of Five Thousand Dollars (\$5,000), then Tenant shall pay to City an administrative fee equal to ten percent (10%) of the total "hard" costs of the work to compensate City for the costs of review.

**(b) Asbestos**

Without limiting Section 25.2 (No Hazardous Materials) below, in the event that asbestos-containing materials ("ACM") are determined to exist in or about the Premises, Tenant shall ensure that all Alterations and any asbestos related work, as defined in California Health & Safety Code Section 25914.1(b), is performed in compliance with all laws relating to asbestos, including but not limited to California Occupational Safety and Health (OSHA) regulations found in Title 8 of the California Code of Regulations, Sections 1502 and 1529. Additionally, Tenant shall distribute notifications to all employees and contractors as required pursuant to California Health & Safety Code Section 25915 et seq. informing them of the existence of ACM and that moving, drilling, boring, or otherwise disturbing ACM may present a health risk and should not be attempted by an unqualified employee. No Alterations affecting ACM-containing areas or any asbestos related work shall be performed without City's prior written consent in each instance.

**(c) Tenant's Improvements or Alterations that Disturb or Remove Lead Based Paint.**

Tenant, on behalf of itself and its Agents or Invitees, shall comply with all requirements of the San Francisco Building Code, Section 3407, and all other applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, the California and United States Occupational Health and Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Tenant and its Agents or Invitees shall give to City and, to the extent required by the Master Declaration, to the Master Association, three (3) business days prior written notice of any disturbance or removal of exterior lead-based or presumed lead-based paint. Further, Tenant and its Agents or Invitees, when disturbing or removing exterior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978, is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section,



lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

## **12. UTILITIES**

**12.1. Utilities.** Tenant shall be separately metered for electric service (which separate metering system shall be designed by Developer in the construction of the Core and Shell as specified in the PSA) and shall contract with and pay the public utility company directly for all electric service to the Premises. Tenant shall be separately metered for domestic water service (as distinguished from condensing water used in the operation of the HVAC system, the cost of which shall be included in operating expenses under this Lease and pursuant to the Master Declaration) and shall pay the public utility company directly for all domestic water service to the Premises. Tenant shall be separately metered for gas service and shall pay the public utility company directly for all gas service to the Premises. The Parties agree that any and all utility Improvements (whether now existing or hereafter installed) shall be deemed part of City's real property, and not personal property or trade fixtures of Tenant, regardless of how or when they were acquired or installed. Neither the City nor the Commission shall be liable for any failure or interruption of any utility service furnished to the Premises. Tenant agrees, with respect to any public utility services provided to the Premises by City, that no act or omission of City in its capacity as provider of public utility services, shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease.

**12.2. Antennae and Telecommunications Dishes.** No antennae or telecommunications dish or other similar facilities may be installed on the Premises without the prior written approval of the Director of Real Estate, which approval may be withheld in Director of Real Estate's sole and absolute discretion. Any wireless telecommunications system shall be subject to the Director of Real Estate's approval pursuant to the City's adopted policy on the siting and requirements for wireless telecommunications systems. In any event, no such antennae shall interfere with City's emergency and non-emergency communications facilities or the transmission facilities of City.

**12.3. Other Services.** Tenant shall pay directly to providers for all telephone, janitorial and trash disposal services.

**12.4. Floor Load.** Without City's prior written consent, which City may give or refuse in its sole discretion, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Premises. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to the City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with Section 7.1 (Tenant's Alterations), to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural supports will be occasioned thereby.

## **13. LIENS**

**13.1. Liens.** Tenant shall not create or permit the attachment of, and shall promptly following notice, discharge at no cost to City, any lien, security interest, or encumbrance on the Premises or Tenant's leasehold estate, other than (i) this Lease, other permitted Subleases and Permitted Title Exceptions existing as of the Effective Date and not caused or suffered to arise by Tenant or Tenant's use and occupancy of the Premises, (ii) liens for non-delinquent Impositions (excluding Impositions which may be separately assessed against the interests of subtenants), except only for Impositions being contested as permitted by Section 6, and (iii) liens of mechanics, material suppliers or vendors, or rights thereto, for sums which under the terms of the related contracts are not at the time due or which are being contested as permitted by Section

6. The provisions of this Section do not apply to liens created by Tenant on Tenant's Personal Property.

**13.2. Mechanics' Liens.** Tenants shall keep the Premises, Tenant's leasehold estate and all of City's property (real and/or personal) free (including, without limitation, the Project Facilities) from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. In the event Tenant does not cause a lien to be released of record by payment or posting of a proper bond within thirty (30) days following the imposition of any such lien, 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 and Costs) shall be payable to City by Tenant 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. Tenant 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, Tenant shall have the right, upon posting of an adequate bond or other security acceptable to the City, to contest any such lien, and in such case City shall not seek to satisfy or discharge such lien unless Tenant has failed to do so within ten (10) days after final determination of the validity thereof. Tenant shall Indemnify City, the other Indemnified Parties, the Project and the Premises against any and all Losses arising out of such contest.

#### **14. COMPLIANCE WITH LAWS**

**14.1. Tenant's Obligation to Comply.** Tenant shall perform its obligations under this Lease, and any other agreement with the City, and conduct its use and operation of the Premises in strict compliance at all times with all present or future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, including, 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 Laws relating to seismic repair, reinforcement or retrofitting, and all Environmental Laws, including, without limitation, all Laws with respect to asbestos and underground or above-ground storage tanks containing Hazardous Materials, and the Master Declaration. Once the Master Declaration is prepared and delivered to Tenant, Tenant shall confirm in writing Tenant's receipt thereof and Tenant's agreement to comply with all provisions of the Master Declaration that are applicable to the operations of the Tenant within the Premises and the Project.

##### **14.2. Regulatory Approvals.**

(a) **Responsible Party.** Tenant understands and agrees that Tenant's use and operation of the Premises under this Lease may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall not seek any Regulatory Approval without first obtaining the written consent of the Director of Real Estate. Such approval shall not be unreasonably withheld.

(b) **City Acting as Owner of Real Property.** Tenant further understands and agrees that City, acting by and through the Department of Real Estate 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 Tenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises, or to comply with applicable City laws, procedures, or other contractual requirements. By entering into this Lease, City is in no way modifying or limiting Tenant'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.

**14.3. Compliance with Insurance.** Tenant 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. Tenant shall faithfully observe, at its expense, any and all 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.

**14.4. Rules and Regulations.** In addition to any requirements that may be set forth in the Master Declaration, Tenant shall faithfully comply with the rules and regulations as shall be promulgated by City (Building Rules and Regulations) and all modifications thereof and additions thereto that City may from time to time put into effect (the "Rules and Regulations"). In the event of any conflict between any provision of this Lease and any provision of the Rules and Regulations, this Lease shall control.

**14.5. Security Deposit.** Tenant shall submit an initial security deposit of Five Hundred Thousand Dollars (\$500,000) at the time of the opening of the Museum (the "Security Deposit"). The Security Deposit shall be increased to One Million Dollars (\$1,000,000) after operating for three (3) years and shall then be increased to Two Million Dollars after operating for five (5) years.

**14.6. Surrender of Premises.** Upon the Expiration Date or other termination of the Term of this Lease, Tenant shall peaceably quit and surrender to City the Premises together with the Tenant Improvements and all Alterations approved by City in good order and condition, except for normal wear and tear after Tenant having made the last necessary repair required on its part under this Lease, and further except for any portion of the Premises condemned and any damage and destruction for which Tenant is not responsible hereunder. The Premises shall be surrendered free and clear of all liens and encumbrances other than liens and encumbrances existing as of the date of this Lease and any other encumbrances created by City. Immediately before the Expiration Date or other termination of this Lease, Tenant shall remove all of Tenant's Personal Property as provided in this Lease, and repair any damage resulting from the removal; provided, City in its sole discretion shall have the right to reserve ownership of any telecommunications equipment, wire, cabling and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. If such removal is not completed at the expiration or other termination of this Lease, City may remove the same at Tenant's expense. Notwithstanding anything to the contrary in this Lease, City can elect at any time prior to the Expiration Date or within five (5) days after termination of this Lease, to require Tenant to remove, at Tenant's sole expense, all or part of the Tenant Improvements, Alterations or other improvements or equipment constructed or installed by or at the expense of Tenant including, but not limited to, any telecommunications equipment, wires, cabling and/or conduit installed in the Premises or any other portion of the Building by or on behalf of Tenant. Tenant shall promptly remove such items and shall repair, at no cost to the City, any damage to the Premises or the Building resulting from such removal, or if Tenant fails to repair, City may do so, at Tenant's expense. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining in the Premises after the Expiration Date or sooner termination of this Lease may, at City's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by law.

Concurrently with the surrender of the Premises, Tenant shall, if requested by City, execute, acknowledge and deliver to City a quitclaim deed to the Premises and any other instrument reasonably requested by City to evidence or otherwise effect the termination of Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Tenant Improvements or other improvements or equipment which remain part of the Premises. The terms of this Section shall survive the expiration or sooner termination of this Lease.

## **15. FINANCING; ENCUMBRANCES; SUBORDINATION**

**15.1. No Encumbrances by Tenant.** Tenant shall not under any circumstances whatsoever Encumber in any manner the Premises, the Adjacent Facilities, City's fee estate in the Premises or any adjoining property, City's interest under this Lease, Tenant's leasehold interest under this Lease, or any portion thereof.

(a) Restrictions on Financing. Without limiting the foregoing, Tenant shall not:

(i) engage in any financing or other transactions creating any mortgage, deed of trust or similar security interest upon Tenant's leasehold estate in the Premises or Tenant's interest in the Improvements under this Lease without obtaining the prior written consent of the City's Board of Supervisors, in its sole and absolute discretion; or

(ii) place or suffer to be placed upon Tenant's leasehold estate in the Premises or interest in the Improvements hereunder any lien or other encumbrances without obtaining the City's prior written consent, in its sole and absolute discretion; provided however any mechanics' liens shall be governed by Section 13.2 above.

(b) No Subordination of Fee Interest. Under no circumstance whatsoever shall Tenant place or suffer to be placed any lien or encumbrance on City's fee interest in the Premises or any other real property of City in connection with any financing permitted hereunder, or otherwise. City shall not subordinate its interest in Premises, nor its right to receive any rent, if applicable, to any Encumbrancer of Tenant.

(c) Violation of Covenant. Any Encumbrance by Tenant shall be deemed to be a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

**16. DAMAGE OR DESTRUCTION GENERAL.** If at any time during the Term any Damage or destruction occurs to all or any portion of the Premises, including the Improvements thereon, the rights and obligations of the Parties shall be governed by Sections 1932(2) and 1933(4) of the California Civil Code, as such sections may from time to time be amended, replaced, or restated, and any other applicable Law.

**16.1. Destruction Due to Risk Covered by Insurance.** If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall apply the proceeds of such insurance as instructed in writing by the City. Such destruction, in and of itself, shall not terminate this Lease.

**16.2. Destruction Due to Risk Not Covered by Insurance.** If during the Term of this Lease, there is any Damage to or destruction of the Premises, including the Improvements thereon from a risk not required to be covered by the insurance described in this Lease, rendering the Premises totally or partially inaccessible or unusable, Tenant shall, to the extent feasible, continue to operate the Premises in substantially the same manner as they were being operated immediately before destruction; provided, however, in the event of Major Damage (as defined below) Tenant may elect to terminate this Lease by providing to the other party written notice thereof within sixty (60) days of the date of such Major Damage. As used herein, the term "Major Damage" means Damage to or destruction of greater than twenty-five percent (25%) of the usable square footage of the Premises or Improvements.

## **17. ASSIGNMENT AND SUBLETTING**

**17.1. Restriction on Assignment and Subletting.** Tenants, its successors and any permitted assigns shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Tenant), 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 (except pursuant to third party contracts or subcontracts entered into by Tenant in the ordinary course of business using sound business judgment, for the performance of Tenant's obligations and/or duties under any annual Management Plan), or sublet or license any portion of the Premises or any permitted Improvements thereon (collectively, "Sublease"), or cause or permit any other Transfer, including a Significant Change, without (a) the prior written consent of the Director of Real Estate in each instance, which the Director of Real Estate may withhold in his or her sole and absolute discretion, and (b) the prior written consent of the Commission in the case of a proposed Assignment, Sublease or Transfer of the Tenant's entire interest under this Lease or in the case of a proposed merger between Tenant and another entity. Neither this Lease nor any interest therein nor any estate created thereby shall pass by operation of law or otherwise to any trustee, custodian or receiver in bankruptcy of Tenant or any assignee for the assignment of the benefit of creditors of Tenant. City has entered into this Lease with Tenant in reliance on Tenant's identity and the special skills of Tenant in its ability to conduct the Uses and perform the obligations hereunder, and the foregoing prohibition on Assignment and Subletting is expressly agreed to by Tenant as an inducement to City to enter into this Lease.

The foregoing notwithstanding, Tenant shall have the right to sublet up to twenty(20) percent of the Premises, including the retail store and restaurant space (terms to be consistent throughout the document), subject to and consistent with all applicable recorded restrictions, with Landlord's [City's] prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall have the right to: (i) mortgage, pledge, or encumber its leasehold estate under the Lease; and (ii) assign or otherwise transfer its interest in the Lease to the City.

**17.2. Notice of Proposed Transfer.** If Tenant desires to enter into a Transfer, then it shall give written notice (a "Notice of Proposed Transfer") to the Director of Real Estate of its intention to do so. The Notice of Proposed Transfer shall identify the Transferee and state the terms and conditions under which Tenant is willing to enter into such proposed Transfer, including a draft copy of the proposed Assignment of Sublease agreement or, in the event of a Significant Change, documentation related to such Significant Change. Tenant shall provide the Director of Real Estate with all documentation then available related to the proposed Transfer (with copies of final executed documentation to be supplied on or before the effective date thereof), sufficient information to permit the Director of Real Estate to determine the identity and character of the proposed Transferee, financial statements for the proposed Transferee and such additional information regarding the proposed Transfer as the Director of Real Estate may reasonably request.

**17.3. Conditions.** Any Transfer is further subject to the satisfaction of the following conditions precedent:

(a) **Assumption of Tenant's Obligations.** Any proposed Transferee, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of City, must expressly assume all of the obligations of Tenant under this Lease (including, without limitation, the covenants contained in Section 9.1 [Tenant's Operation, Maintenance and Repair Obligations] hereof) and any other agreements or documents entered into by and between City and Tenant relating to the Premises or the Project, and must agree to be subject to all of the conditions and restrictions to which Tenant is subject;

(b) **Acceptable Transferee.** The proposed Transferee has demonstrated to Director of Real Estate's (in consultation with the Commission) reasonable satisfaction (i) that it will use the Premises in the same manner as Tenant under this Lease and has or will obtain all permits, licenses and approvals necessary to operate the Premises lawfully; (ii) that it will not materially adversely affect implementation of the Mexican Museum in accordance with the terms of this Lease; (iii) that it has at least substantially the same amount of experience and qualifications related to implementation of the Mexican Museum; and (iv) that it is reputable and

capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned; and

(c) **Approval of Transfer Documents.** The Director of Real Estate (in consultation with the City Attorney's Office) shall have approved, in his or her sole discretion, the form and content of all instruments and other legal documents involved in effecting the Transfer (the "Transfer Documents"), and executed copies of all such Transfer Documents shall have been delivered to the Director.

**17.4. Effect of Transfer.** No Transfer by Tenant nor any consent by the City shall relieve Tenant, of any obligation to be performed by Tenant under this Lease. Any Transfer that is not in compliance with this Article shall be void and, at the City's option, shall constitute a material Event of Default by Tenant under this Lease. The acceptance of any rent or other payments by or on behalf of City from a proposed Transferee shall not constitute consent to such Transfer by City or a recognition of any Transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Article.

**17.5. Indemnity for Relocation Benefits.** Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant 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") hereunder:

### **(a) Tenant Defaults.**

(i) Any failure by Tenant to perform or comply with any covenant, condition or representation made under this Lease, or under any other contract or grant agreement with the Landlord or any other City agency or OCII relating to or otherwise arising out of the funding or operations of the Mexican Museum (whether attached to this Lease or independent of this Lease) , including but not limited to any failure to use the Premises in accordance with the Permitted Uses under Section 8.1, , provided Tenant shall have a period of forty-five (45) days from the date of written notice of such failure from City within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, Tenant shall have a reasonable period as determined by the Landlord to complete such cure if Tenant promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion;

(ii) Tenant permits or suffers a Transfer of this Lease or any interest therein to occur in violation of this Lease, or sublets all or any portion of the Premises or Improvements in violation of this Lease, provided Tenant shall have a period of thirty (30) days from the date of written notice from City within which to cure any default hereunder; or

(iii) The appointment of a receiver to take possession of all or substantially all of the assets of Tenant, or an assignment by Tenant for the benefit of creditors, or any action taken or suffered by Tenant 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 ninety (90) days.

(iv) Any failure to maintain, or timely pay premiums for, any insurance, including fine arts insurance and general liability insurance, required to be maintained by Tenant under this Lease as well as any failure to maintain the City as an additional insured under the insurance required under this lease or failure to provide the City with endorsements evidencing such ongoing coverage.

(v) Tenant engaging in or allowing any use not permitted hereunder or engaging in any activity prohibited by Section 8.3 or any other provision in this Lease, and such activity continues without cure for more than fifteen (15) days after written notice from City specifying the nature of such violation or failure, or if such cure cannot reasonably be completed within such fifteen (15) day period, if Tenant does not commence such cure within such fifteen (15) day period, or having so commenced, does not prosecute such cure with diligence and dispatch to completion.

(vi) Tenant fails to maintain a public museum with regular public exhibitions and public programs as specified under this Agreement, or fails to provide audited financial statements that demonstrate, using industry standards, that The Mexican Museum is fiscally sound with net income or endowment returns sufficient to cover Tenant's financial obligations.

(vii) Tenant fails to maintain its tax exempt status as a charitable organization under Section 501(c)(3) of the Internal Revenue Code and as a non-for profit corporation under applicable California law.

(viii) Tenant fails to obtain accreditation by the American Alliance of Museums within 7 years of the date of Tenant's occupancy under the Lease, and fails to maintain such accreditation during the term of the Lease.

(ix) Tenant fails to maintain operating reserves at the levels provided in Section 10.7 of this Lease starting at the time of the Lease and then as reflected in audited financial statements and then as reflected in audited financial statement and Form 990 thereafter, excluding any grant funding from state or local government sources, in reserve at all times and provide City with ongoing evidence of the same.

(x) Tenant fails to provide the City with any records, financial statements, or other documentation regarding its operations and assets under this Agreement.

(xi) Any of Tenant's officers or employees engage in unlawful conduct or violation of fiduciary or ethical duties, except that the Board of Trustees shall be able to act in their governance capacity to remedy the situation and take action against said officer or employee to remedy the situation, provided that such remedies and actions are reported to the Landlord in writing within five (5) days of Board action.

(xii) Tenant improperly uses Endowment or other restricted funds.

(xiii) The California Attorney General issues any order finding the Tenant in violation of its legal obligations, or otherwise recommending remedial action to ensure compliance with Tenant's duties as charitable trustees under California law, except that Tenant shall have a reasonable period to cure the findings as determined by the City in its sole and absolute discretion.

**(b) City Defaults.**

(i) Any failure by City to perform or comply with any covenant, condition or representation made under this Lease, provided City shall have a period of forty-five (45) days from the date of written notice of such failure from Tenant within which to cure such default under this Lease, or, if such default is not capable of cure within such forty-five (45)-day period, City shall have a reasonable period to complete such cure if City promptly undertakes action to cure such default within such forty-five (45)-day period and thereafter diligently prosecutes the same to completion.

**18.2. Remedies.** Upon the occurrence and during the continuance of an Event of Default beyond any applicable cure period, the non-defaulting party shall have the following rights and remedies:

**(a) City Remedies**

(i) The right to terminate this Lease, upon written notice provided to Tenant, in which event Tenant shall immediately surrender possession of the Premises. .

(ii) In addition to the other remedies provided in this Lease, City shall be entitled at any time after an Event of Default or threatened Default by Tenant to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. City, in its discretion, shall also have the right to require a performance plan with which Tenant must comply in order to cure a Default. In addition, after the occurrence of any Event of Default, City shall be entitled to collect damages or to seek any other equitable relief which may be appropriate to the circumstances of such Event of Default.

(iii) City shall give a copy of each notice City gives to Tenant from time to time of the occurrence of a default or Event of Default, to any Credit Provider and Liquidity Provider that has given to City written notice and requesting that copies of any and all notices of default under the Lease to Tenant by City be sent to a specified address of said Credit Provider or Liquidity Provider. Copies of such notice shall be given to such Credit Provider and Liquidity Provider at the same time as notices are given to Tenant by City, addressed to such Credit Provider and Liquidity Provider (as applicable) at the address last furnished to City. City's delay or failure to give such notice to a Credit Provider or Liquidity Provider shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Credit Provider or Liquidity Provider for cure.

(iv) In the case of any notice of default given by City to Tenant and any Credit Provider or Liquidity Provider in accordance with Section 18.2(a)(iii) above, the Credit Provider and the Liquidity Provider shall have the right (but no obligation) for a period of thirty (30) days after the expiration of the Tenant's cure period under this Lease to remedy or cause to be remedied a default or Event of Default by Tenant, and City shall accept such performance by or at the instance of the Credit Provider and the Liquidity Provider as if the same had been made by Tenant; provided however, if the Credit Provider and the Liquidity Provider does not remedy the Event of Default by Tenant within such time period, City immediately may proceed to exercise its remedies under the Lease.

**(b) Tenant Remedies.**

In addition to the other remedies provided in this Lease, Tenant shall be entitled at any time after an Event of Default by City to seek injunctive relief or an order for specific performance, where appropriate to the circumstances of such Default. In addition, after the occurrence of any Event of Default by City, Tenant shall be entitled to any other equitable relief where appropriate and where such relief does not impose personal liability on City or its Agents; provided, however, (1) in no event shall Tenant be entitled to recover or obtain from City or its Agents any damages (including, without limitation, any consequential, incidental, punitive or other damages directly or proximately arising out of a default by City hereunder) or Losses other than Tenant's actual damages incurred as a result of a City Default, (2) Tenant agrees that, notwithstanding anything to the contrary herein or pursuant to any applicable Laws, Tenant's remedies hereunder shall constitute Tenant's sole and absolute right and remedy for a Default by City hereunder, and (3) Tenant shall have no remedy of self-help.

**18.3. City's Right to Cure Tenant's Defaults.** If an Event of Default by Tenant occurs, then City, in the discretion of the Director of Real Estate, may at any time thereafter with ten (10) days prior oral or written notice (except in the event of an emergency as determined by City), remedy such Event of Default for Tenant's account and at Tenant's expense. Tenant shall pay to City, promptly upon demand, all sums expended by City, or other costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable Attorneys' Fees and Costs, in remedying or attempting to remedy such Event of Default. Tenant's obligations to repay sums paid by City under this Section shall survive the termination of this Lease. Nothing herein shall imply any duty of City to do any act that Tenant is obligated to perform under any



provision of this Lease, and City's cure or attempted cure of Tenant's Event of Default shall not constitute a waiver of Tenant's Event of Default or any rights or remedies of City on account of such Event of Default.

## **19. WAIVER OF CLAIMS**

**19.1. Waiver of Claims.** Tenant covenants and agrees that City shall not be responsible for or liable to Tenant or any of its Agents for, and, to the fullest extent allowed by Law, Tenant 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, indirect, special, incidental and consequential damages, (including, without limitation damages for loss of use of facilities or equipment, loss of revenues, loss of profits or loss of goodwill) 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, including, without limitation, all claims arising from the joint or concurrent negligence of City or its Agents. Notwithstanding the foregoing, nothing herein shall relieve City from Losses caused directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages. Without limiting the foregoing:

(a) Tenant expressly acknowledges and agrees that the amount payable by Tenant hereunder does not take into account any potential liability of City for any consequential, incidental or punitive damages including, but not limited to, lost profits and arising out of disruption to the Improvements or Tenant's uses hereunder. City would not be willing to enter into this Lease in the absence of a complete waiver of liability for consequential, incidental or punitive damages due to the acts or omissions of City or its Agents, and Tenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Tenant or other waivers contained in this Lease and as a material part of the consideration for this Lease, Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against City for consequential, incidental and punitive damages (including, without limitation, lost profits) and covenants not to sue for such damages, City, the Commission, their respective 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 Tenant 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 set forth in this Section 19.1, Tenant 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 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Tenant's Initials: \_\_\_\_\_

Tenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Tenant 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.

## **20. INSURANCE**

**20.1. Tenant's Insurance.** In addition to any insurance requirements that Tenant is required to comply with pursuant to the Master Declaration, Tenant shall maintain or cause to be maintained throughout the Term of this Lease, insurance in the following amounts and coverages:

Property insurance for the Premises and the permitted Improvements, on an all-risk form, including coverage for earthquake (if available at commercially reasonable premiums), insuring Tenant's property and all alterations and Improvements to the Premises, for the full insurable value thereof or replacement cost. Such insurance shall include Tenant and City as named insureds as their respective interests may appear.

(a) Boiler and Machinery insurance, comprehensive form, covering damage to or loss or destruction of pressure vessels, heating and air conditioning systems, electrical apparatus and similar property in an amount not less than, including Tenant and City as named insureds as their respective interests may appear, with any deductible not to exceed each accident.

(b) Commercial general liability insurance on an occurrence basis against claims for personal injury, death and/or property damage, minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than \$5,000,000.00 per occurrence, \$5,000,000.00 annual aggregate, naming the City, City's Agents, and other Indemnified Parties as specified, as an additional insured.

(c) At all times during any period of construction of the Tenant improvements or any alterations or Subsequent Construction, Comprehensive Builder's Risk insurance, on an all-risk basis and on a one hundred percent (100%) of the completed value form including a "Permission to Complete and Occupy" endorsement, for full replacement value covering the interest of City and Tenant (and their respective contractors and subcontractors) for any Improvement, Alteration or Subsequent Construction and with respect to any design, architectural, engineering, or electrical work, Professional Liability/Errors and Omissions Insurance appropriate to the work being done in an amount not less than \$1,000,000, including materials in transit and storage off-site. Tenant may require its contractor or consultant to maintain the coverage required hereunder.

(d) Workers' compensation insurance in statutory amounts with Employer's Liability coverage limits of not less than One Million Dollars (\$1,000,000) each accident.

(e) Comprehensive or 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, Non-Owned and Hired auto coverage, as applicable.

(f) Business Interruption insurance written on an "actual loss sustained" form in an amount sufficient to cover rents until the Premises are re-opened for the Permitted Use.

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

**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 the Landlord.

(a) Should any of the required insurance be provided under a claims-made form, Tenant shall maintain such coverage continuously throughout the Term of this Lease 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 General Liability and Automobile Liability Insurance policies shall be endorsed to provide the following:

(i) Name Tenant 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.

(ii) 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.

Upon Tenant's request and subject to the prior written consent of the Director of Real Estate and the City's Risk Manager, in their respective sole and absolute discretion, insurance coverage required to be maintained by Tenant under Sections 20.1(a) and 20.1(b) of this Lease may be maintained, at the Tenant's sole cost and expense, as part of or in conjunction with any other insurance coverage carried by the City, subject to such coverages being commercially available. In such event, the insurance policies shall name the City and County of San Francisco, its officers, agents and employees as the insured and the Tenant as an additional insured/loss payee. Tenant covenants to pay in full its share of any costs or expenses related to obtaining and/or maintaining such insurance coverage at least ten (10) days in advance of the date any such payments are due. All other insurance coverage required to be maintained by the Tenant under Section 20.1 shall be maintained separately by the Tenant, at Tenant's sole cost and expense.

**20.3. Proof of Insurance.** Tenant shall deliver to the Director of Real Estate and City's Risk Manager certificates of insurance and copies of additional insured policy endorsements in form and with insurers satisfactory to the Director of Real Estate and City's Risk Manager, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon City's request, and Tenant shall provide the Director of Real Estate and City's Risk Manager with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. In the event Tenant shall fail to procure such insurance, or to deliver such policies or certificates, the Director of Real Estate may, at his or her option, procure the same for the account of Tenant, and the costs thereof shall be paid Landlord within fifteen (15) days after delivery to Tenant of bills therefor.

**20.4. Review of Insurance Requirements.** Tenant and City, including without limitation, the City's Risk Manager, 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 amount or coverage materially greater than the amount or coverage then being carried by Tenant with respect to risks comparable to those associated with the Premises, then, at the Director of Real Estate's and/or City's Risk Manager's option, Tenant shall increase at its sole cost the amounts or coverages carried by Tenant conform to such general commercial practice.

**20.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Lease, this Lease shall terminate immediately except for a cure period, at the Director of Real Estate's election (in consultation with the City Attorney's Office), made in his/her sole and absolute discretion by delivery of written notice to Tenant, upon the lapse of any required insurance

coverage (including fine arts insurance coverage) or the failure to comply with any of the insurance requirements under the Lease (including coverage amounts, scope, and endorsements naming the City and County of San Francisco as an additional insured), unless Tenant reinstates the required insurance coverage within thirty (30) days after the Director of Real Estate's notice to Tenant and no event shall have occurred which gives rise to any claim related to this Lease.

**20.6. Tenant's Personal Property.** Tenant shall be responsible, at its expense, for separately insuring Tenant's Personal Property.

**20.7. City's Insurance.** Tenant 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. If City lends any of its art collection objects to the Tenant for exhibition, the parties shall provide for insurance of such objects under separate written loan agreement, subject to the approval of the City's Risk Manager.

**20.8. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, City and Tenant (each a "Waiving Party") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises, Improvements, Subsequent Construction, City's Personal Property or Tenant's Personal 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, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Lease or is actually covered by insurance obtained by the Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Building or the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver. .

**20.9. Contractors' Insurance.** Tenant shall provide evidence acceptable to the Landlord that any contractor engaged by Tenant to perform work on the Premises maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the Director of Real Estate and the City's Risk Manager, including, but not limited to, Workers' Compensation Insurance (including Employers' Liability Insurance) and insurance against liability for injury to persons and property arising out of all such contractor's operations, and the use of owned, non-owned or hired automotive equipment in all such operations, and all such policies shall name City and its Agents as additional insureds.

**20.10. Fine Arts Insurance.** Subject to the approval of the City Risk Manager, Tenant shall arrange and pay for commercial fine arts insurance to cover its permanent collections as well as any other objects that may be on the Premises or in Tenant's off-site storage as loans or for temporary exhibitions, for consideration for possible acquisition, or for study or research purposes, for conservation purposes or any other museum purposes. The fine arts insurance policy shall name the City and County of San Francisco as an additional insured on the policy and Tenant shall provide the City with a copy of the policies, endorsement(s), and certificate(s) of insurance evidencing such coverage. Failure to maintain the insurance under this section during the Term of the Lease shall constitute an Event of Default and material breach. In addition, in any loan agreement with individual or institutional lenders, whether for incoming or outgoing loans, such agreements must require that any policies governing such loans shall also name the City and County of San Francisco as an additional insured and comply with the requirements of this section.

## **21. ACCESS BY CITY**

### **21.1. Access to Premises by City.**

(a) Access to Perform City's Obligations and Exercise City's Rights  
Hereunder. City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all reasonable times with no notice whatsoever to perform any obligations and to exercise any rights of City under applicable Law or under this Lease.

(b) **General Access.** City reserves for itself and its designated Agents, the right to enter the Premises and any portion thereof at all times for any purpose.

**21.2. Adjacent Facilities.** Without limiting Section 21.1 [Access to Premises by City] above, City or its Agents 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, in which cases no notice shall be required), to use, install, construct, repair, maintain, operate, replace, inspect, and remove the Adjacent Facilities, including, without limitation, any public utility facilities. City and/or its Agents shall bear the expense of any such activities, unless and to the extent the need is caused by the acts, omissions or negligence of Tenant or its Agents. City and its Agents 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 Tenant's use hereunder.

## **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 any 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 creditor, purchaser or Encumbrancer of its estate. The Director of Real Estate shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

## **23. APPROVALS BY CITY**

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

**24. TENANT'S PURCHASE OPTION.** The Tenant has a Right of First Refusal to purchase the fee interest in the Premises if the City determines that it will transfer the Premises to an entity that is not a public entity and if the Lease is then in effect and not in default and the Mexican Museum has been in continuous operation over the Lease Term. If the Tenant exercises its Right of First Refusal, such purchase may occur at Fair Market Value, which shall be reflective of the cultural use restriction, with a credit of Twenty-Five Million Dollars (\$25,000,000) against the purchase price in consideration for equity contributions toward the development of the Premises that were facilitated by the efforts of the Tenant.

## **25. SURRENDER**

**25.1. Surrender of the Premises.** Upon the Expiration Date or any earlier termination of this Lease, Tenant shall, at its sole cost, remove any and all of Tenant's Personal Property from the Premises; provided, however, the Commission may, at its sole option, elect to permit

Tenant to leave such Alterations, Improvements or Tenant's Personal Property on the Premises. In addition, Tenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items. Tenant's obligations under this Section shall survive the Expiration Date or other termination of this Lease. Any items of Tenant's Personal Property remaining on or about the Premises after the Expiration Date of this Lease may, at the 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.

**25.2. Automatic Reversion.** Upon the Expiration Date or earlier termination of this Lease, the Premises, and any Alterations, Improvements or Tenant's Personal Property which City permits Tenant to leave on the Premises, shall automatically, and without further act or conveyance on the part of Tenant 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, Tenant 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 Tenant's leasehold estate hereunder and to effect such transfer or vesting of title to the Premises and any permitted Improvements, Alterations, Subsequent Construction or Tenant's Personal Property.

**25.3. Termination Without Further Notice.** This Lease shall terminate without further notice on the Expiration Date.

## **26. HOLDOVER**

**26.1. Holding Over.** Any holding over by Tenant after the expiration or termination of this Lease shall not constitute a renewal hereof or give Tenant any rights hereunder or in the Premises, except with the written consent of City. In any such event, at City's option, Tenant shall be (a) a tenant at sufferance, or (b) a month-to-month tenant, with such tenancy terminable by either Party upon thirty (30) days' prior written notice. Such tenancy shall 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 an Event of Default by Tenant 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 by Tenant hereunder, and whether or not such amounts are at a holdover rate or the rate in effect at the end of the Term of the Lease.

## **27. HAZARDOUS MATERIALS**

### **27.1. Hazardous Materials Compliance.**

(a) **Compliance with Laws.** Tenant covenants and agrees that neither Tenant 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 Tenant may store and use such substances in the Premises and any Improvements in such limited amounts as are customarily used for general office purposes (such as copy toner and supplies), art conservation laboratory treatments and purposes (so long as such substances and quantities are in each instance specifically approved in writing by the Director of real Estate), maintenance purposes, and for janitorial purposes; and further provided that such storage and use permitted hereunder shall be at all times in full compliance with all applicable Environmental Laws.

(b) **Notice.** Tenant shall immediately notify City if and when Tenant learns or has reason to believe there has been any Release of Hazardous Materials in, on or about the Premises or any Improvements. Each Party may from time to time request (but no more than four (4) times per year) that the other Party provide information adequate for the requesting Party to determine that any Hazardous Materials permitted hereunder is being handled in compliance with all applicable Environmental Laws, and the Party receiving such a request shall promptly provide all such information. In addition, each Party shall provide the other Party with copies of

all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance with such Party with the terms and provisions of this Section 27) and all communication with any Person relating to Hazardous Materials Claims (other than privileged communications). Without limiting Section 21 [Access by City] hereof, City and its Agents shall have the right to inspect the Premises for Hazardous Materials and compliance with the provisions hereof at all reasonable times upon at least forty-eight (48) hours' advance written notice to Tenant (except in the event of an emergency).

**27.2. City's Approval of Remediation.** Except as required by Law or to respond to an emergency, Tenant shall not undertake any Remediation in response to the presence, handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to the Director of Real Estate for the City's approval, a written Hazardous Materials Remediation plan and the name of the proposed contractor which will perform the work. The City shall approve or disapprove of such Hazardous Materials Remediation plan and the proposed contractor promptly, after receipt thereof. If the City disapproves of any such Hazardous Materials Remediation plan, the City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner so as to minimize any impairment to the Premises. In the event Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (a) in compliance with all applicable Hazardous Materials Laws, (b) to the reasonable satisfaction of the City, and (c) in accordance with the orders and directives of all federal, state and local governmental authorities, including, but not limited to, the Regional Water Quality Control Board and the San Francisco Department of Public Health.

## **28. REPRESENTATIONS AND WARRANTIES**

**28.1. Representations and Warranties of Tenant.** Tenant represents and warrants as follows, as of the date hereof and as of the Commencement Date:

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

(b) **Authority.** Tenant has all requisite power and authority to execute and deliver this Lease and the agreements contemplated by this Lease and to carry out and perform all of the terms and covenants of this Lease and any other agreements contemplated by this Lease.

(c) **No Limitation on Ability to Perform.** Neither Tenant's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of Tenant to enter into and perform all of the terms and covenants of this Lease. Neither Tenant nor any of its members are party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Tenant of this Lease or any of the terms and covenants contained in this Lease. There are no pending or threatened, to the best of Tenant's knowledge and belief, suits or proceedings or undischarged judgments affecting Tenant or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Lease or the business, operations, assets or condition of the Tenant or any of its members.

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

(e) **Defaults.** The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (1) any agreement, document or instrument to which Tenant or any member is a party or by which Tenant's or any member's assets may be bound or affected, (2) to Tenant's knowledge, any Law, statute, ordinance, regulation, or (3) the articles of incorporation or the bylaws of the Tenant, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant or its members other than contemplated by this Lease.

(f) **Meeting Financial Obligations.** Tenant is generally meeting its current liabilities as they mature. Tenant has not filed a petition for relief under any chapter of the U.S. Bankruptcy Code and to the best of Tenant's knowledge and belief, no involuntary petition naming Tenant as debtor has been filed under any chapter of the U.S. Bankruptcy Code

## **29. SPECIAL PROVISIONS**

**29.1. Public Transit Information.** Tenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Tenant 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 Building and encouraging use of such facilities, all at Tenant's sole expense.

**29.2. 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 Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement.

**29.3. Wages and Working Conditions.** Tenant agrees that any person performing labor in the construction of the Tenant Improvements and any Alterations to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, 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 San Francisco County. Tenant shall include in any contract for construction of such Tenant Improvements and Alterations a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Tenant Improvement Work or any Alterations to the Premises.

**29.4. Non-Discrimination in City Contracts and Benefits Ordinance.** Covenant Not to Discriminate. In the performance of this Lease, Tenant agrees not to discriminate against any employee, any City employee working with Tenant, or applicant for employment with Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.



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

**29.6. Non-Discrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, 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.

**29.7. HRC Form.** As a condition to this Lease, Tenant 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. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and (ii) the HRC approved such form.

**29.8. 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 Agreement as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant

**29.9. No Relocation Assistance; Waiver of Claims.** Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully **RELEASES, WAIVES AND DISCHARGES** forever any and all Claims 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.

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

**29.11. Tropical Hardwood and Virgin Redwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Tenant shall not provide any items to the construction of Tenant Improvements or the Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

**29.12. Pesticide Prohibition.** Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to [INSERT NAME OF CITY DEPARTMENT OVERSEEING THE LEASE] an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

[Nothing herein shall prevent Tenant, through the Real Estate Division, from seeking a determination from the Commission on the Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

**29.13. First Source Hiring Ordinance.** The City has adopted a First Source Hiring Ordinance, San Francisco Administrative Code, Chapter 83, which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Upon request when applicable, Tenant shall enter into a First Source Hiring Agreement that meets the requirements of Section 83.9 of the First Source Hiring Ordinance.

**29.14. 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.

**29.15. Conflicts of Interest.** Through its execution of this Lease, Tenant 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 said provisions, and agrees that if Tenant becomes aware of any such fact during the term of this Lease Tenant shall immediately notify the City.

**29.16. Charter Provisions.** This Lease is governed by and subject to the provisions of the Charter of the City and County of San Francisco.

### **30. GENERAL PROVISIONS**

**30.1. 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 certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant (i) at Tenant's address set forth in the Basic Lease Information, if sent prior to Tenant's taking possession of the Premises and (ii) at the Premises if sent on or subsequent to Tenant's taking possession of the Premises, or (iii) at any place where Tenant or any Agent of Tenant may be found if sent subsequent to Tenant'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 Tenant 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 certified mail, one day after the date it is made if sent by commercial overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by facsimile to the telephone 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 facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

**30.2. No Implied Waiver.** No failure by either Party hereto to insist upon the strict performance of any obligation of the other Party 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 delivery or acceptance of any amounts due under this Lease during the continuance of any such breach, and no acceptance of the keys to 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 the applicable Party'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 either Party given in any instance under the terms of this Lease shall not relieve the other Party of any obligation to secure any other consent of the applicable Party in any other or future instance under the terms of this Lease.

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

**30.4. 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 Party waiving any right. Pursuant to the Reimbursement and Indemnification Agreement with the

Credit Provider, the Parties acknowledge that an amendment by Tenant of the Lease requires written consent of the Credit Provider.

### **30.5. Time of Performance.**

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

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

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

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

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

### **30.7. Interpretation of Lease.**

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

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

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

(d) **No Presumption Against Drafter.** This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Lease shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Lease (including, but not limited to, California Civil Code Section 1654).

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

**30.8. Successors and Assigns.** Subject to the provisions of Section 17 [Assignment and Subletting] 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 Tenant and, except as otherwise provided herein, their successors and assigns.

**30.9. 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.

**30.10. 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.

**30.11. Entire Agreement.** This Lease (including the exhibits hereto) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understanding and agreements regarding this Lease. 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. Tenant 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 Tenant by implication or otherwise unless expressly set forth herein.

**30.12. Attorney's Fees and Costs.** In the event that either City or Tenant 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 and Costs.

**30.13. Recordation.** This Lease will not be recorded by either Party, except that Tenant shall have the right to record a Memorandum of Lease.

**30.14. Extensions by City.** Upon the request of Tenant, City in its reasonable discretion may, by written instrument, extend the time for Tenant's performance of any term, covenant or condition of this Lease or permit the curing of any default upon such terms and conditions as it determines appropriate, including, but not limited to, the time within which Tenant must agree to such terms and/or conditions, provided, however, that any such extension or permissive curing of any particular default will not operate to release any of Tenant's obligations nor constitute a waiver of City's rights with respect to any other term, covenant or condition of this Lease or any other default in, or breach of, this Lease or otherwise effect the time of the essence provisions with respect to the extended date or other dates for performance hereunder.

**30.15. 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.

**30.16. Further Assurances.** The Parties hereto agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Lease.

**30.17. Transition Procedures.** Without limiting Section 25 [Surrender] above, upon the expiration of the Term or earlier termination of this Lease, for whatever reason, Tenant and City shall do the following (and the provisions of this Section 30.18 shall survive the expiration or termination of this Lease until they have been fully performed) and, in general, shall cooperate in good faith to effect an orderly transition of the management of the Premises:

(a) **Transfer of Licenses.** Upon the expiration or earlier termination of the Lease, Tenant shall use its best efforts (i) to transfer to City or City's nominee all licenses, operating permits and other governmental authorizations and all contracts which City elects to assume, including contracts with governmental or quasi-governmental entities and management contracts, that may be necessary for the operation of the Premises and completion of any repairs, maintenance, Improvements or Alterations (collectively, "Licenses"), or (ii) if such transfer is prohibited by law or City otherwise elects, to cooperate with City or City's nominee in connection with the processing by City or City's nominee of any applications for, all Licenses; provided, in either case, that the costs and expenses of any such transfer or the processing of any such application shall be paid by City or City's nominee. (The Museum needs to do further research on this clause.)

(b) **Leases and Concessions.** Tenant shall assign to City or City's nominee simultaneously with the termination of this Lease, and the assignee shall assume, all leases, subleases, and concessions agreements in effect with respect to the Premises then in Tenant's possession which City or City's nominee elects to assume.

(c) **Books and Records.** All books and records for the Premises kept by Tenant shall be delivered promptly to City or City's nominee, simultaneously with the termination of this Lease, but such books and records shall thereafter be available to Tenant at all reasonable times for inspection, audit, examination, and transcription for a period of one year and Tenant may retain (on a confidential basis) copies or computer records thereof.

**30.18. Survival of Indemnities.** Termination of this Lease shall not affect the right of either party to enforce any and all indemnities 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.

**30.19. Relationship of Parties.** City is not, and none of the provisions in this Lease shall be deemed to render City, a partner in Tenant's business, or joint venture or member in any joint enterprise with Tenant. 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.

**30.20. Additional Indemnification Obligations.**

**Limitation on City's Liability; Waiver of Claims**

City shall not be responsible for or liable to Tenant, and Tenant hereby assumes the risk of, and waives and releases City and its Agents from all Claims (as defined below) for, any injury, loss or damage to any person or property in or about the Premises by or from any cause whatsoever including, without limitation, (i) any act or omission of persons occupying adjoining premises or any part of the Building adjacent to or connected with the Premises, (ii) theft, (iii) explosion, fire, steam, oil, electricity, water, gas or rain, pollution or contamination, (iv) stopped, leaking or defective Building Systems, (v) Building defects, and (vi) any other acts, omissions or causes. Nothing in this Section shall relieve City from liability caused solely and directly by the gross negligence or willful misconduct of City or its Agents, but City shall not be liable under any circumstances for any consequential, incidental or punitive damages.

**Tenant's Indemnity.** Tenant, on behalf of itself and its successors and assigns, shall Indemnify the each of the Indemnified Parties, including but not limited to, all of its boards,

commissions, departments, agencies and other subdivisions, including, without limitation, its Arts Commission, and all of its and their 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: (a) any accident, injury to or death of a person, including, without limitation, employees of Tenant, or loss of or damage to property (including but not limited to claims arising out of loss or damage to objects or works of fine art on the Premises); howsoever or by whomsoever caused, occurring in or about the Premises; (b) any default by Tenant in the observation or performance of any of the terms, covenants or conditions of this Lease to be observed or performed on Tenant's part; (c) the use or occupancy or manner of use or occupancy of the Premises by Tenant, its Agents or Invitees or any person or entity claiming through or under any of them; (d) the condition of the Premises; (e) any construction or other work undertaken by Tenant on the Premises whether before or during the Term of this Lease; or (f) any acts, omissions or negligence of Tenant, its Agents or Invitees, in, on or about the Premises or the Property; 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 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 and further except only such Claims as are caused exclusively by the willful misconduct or gross negligence 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 Claim. Tenant 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 Tenant by City and continues at all times thereafter. Tenant's obligations under this Section shall survive the termination of the Lease.

Tenant shall also indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by Tenant; (b) a material breach of any representation or warranty of Tenant contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of Tenant or its employees or agents; (d) any property damage caused, directly or indirectly by any act or omission of Tenant or its employees, or agents (including but not limited to claims arising out of loss or damage to objects or works of fine art on the Premises); (e) the use, misuse or failure of any equipment or facility used by Tenant, or by any of its employees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to Tenant by an Indemnified Party; (f) any tax, fee, assessment or other charge for which Tenant is responsible; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. Tenant's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

**30.21. Non-Liability of Officials, Employees and Agents of City or Any Other Indemnified Parties.** No elective or appointive board, commission, member, director, officer, employee or other Agent of City or any other Indemnified Parties shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Tenant, its successors and assigns, or for any obligation of City under this Lease, and Tenant agrees that it will have no recourse with respect to any

obligation or Default under this Lease, or for any amount which may become due Tenant or any successor or for any obligation or claim based upon this Lease, against any such individual.

**30.22. Non-Liability of Tenant's Members, Officers, Directors, Shareholders, Agents and Employees.** No member, officer, director, shareholder, Agent or employee of Tenant will be personally liable to City, or any successor in interest, for any Event of Default by Tenant, and City agrees that it will have no recourse with respect to any obligation of Tenant under this Lease, or for any amount which may become due City or any successor or for any obligation or claim based upon this Lease, against any such individual.

**30.23. No Third Party Beneficiaries.** Except for rights expressly granted in the Lease to any Credit Provider and/or Liquidity Provider, this Lease is for the exclusive benefit of the Parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

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

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, TENANT ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL RESOLUTIONS OF THE COMMISSION AND CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS LEASE AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THIS LEASE SHALL BE NULL AND VOID UNLESS THE COMMISSION, 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 RESOLUTION WILL BE ENACTED, NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

*[SIGNATURES ON FOLLOWING PAGE]*



City and Tenant have executed this Lease in triplicate as of the date first written above.

TENANT: THE MEXICAN MUSEUM,  
a non-profit public benefit corporation

By: \_\_\_\_\_  
ANDREW M. KLUGER  
Its: Chairman, Board of Trustees

APPROVED AS TO FORM:  
THE MARQUEZ LAW GROUP

By: \_\_\_\_\_  
VICTOR M. MARQUEZ  
Its: General Counsel

CITY: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: \_\_\_\_\_  
JOHN UPDIKE  
Director of Property

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

By: \_\_\_\_\_  
Heidi J. Gewertz  
Deputy City Attorney

**EXHIBIT A-1**

**LEGAL DESCRIPTION OF PREMISES**

*[To be Inserted Prior to Final Lease Execution]*

**EXHIBIT A-2**

**SITE MAP**

Floor	Gross GSF Museum	Net NSF Museum	Usable USF Museum
B2	2100	2,000	0
1	3,733	3,556	2,795
2	19,244	14,601	12,845
3	23,307	18,837	16,742
4	3,901	3,837	3,530
	<b>52,285 GSF</b>	<b>42,831 NSF</b>	<b>35,912 USF</b>
L1*-GF Retail	4,800	4,560	4,423
L4*-Terrace	2,500	1,516	1,516

**Notes:**

All SF number are approximate and based on 2011.12.14 concept plans for levels 1,2,3,4, B2

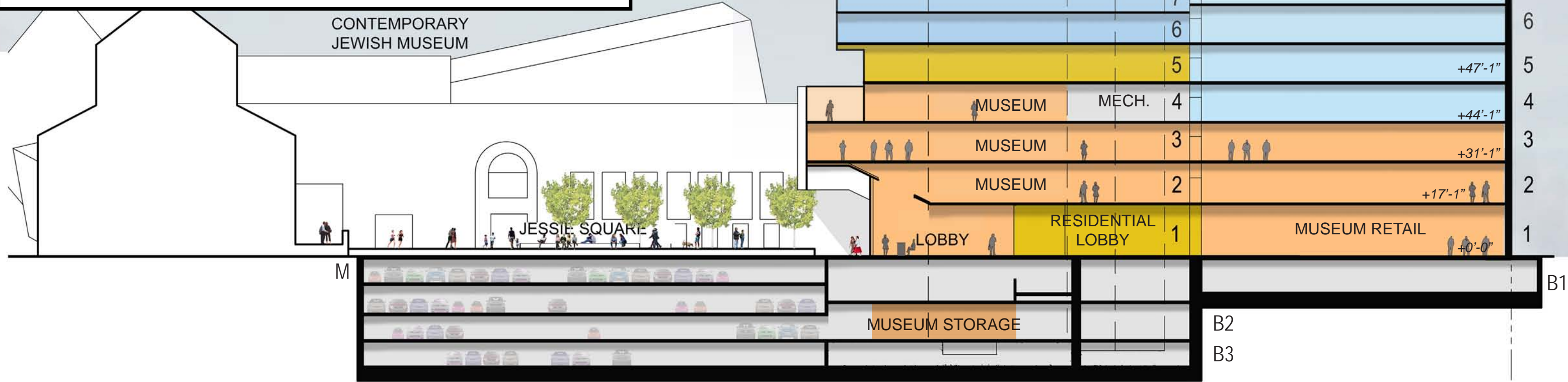
**GSF=** is measured to exterior face of exterior wall  
( currently shown as orange on plans)

**NSF =** GSF less circulation, floor openings, approx. 5% for future Struct/ MEPS

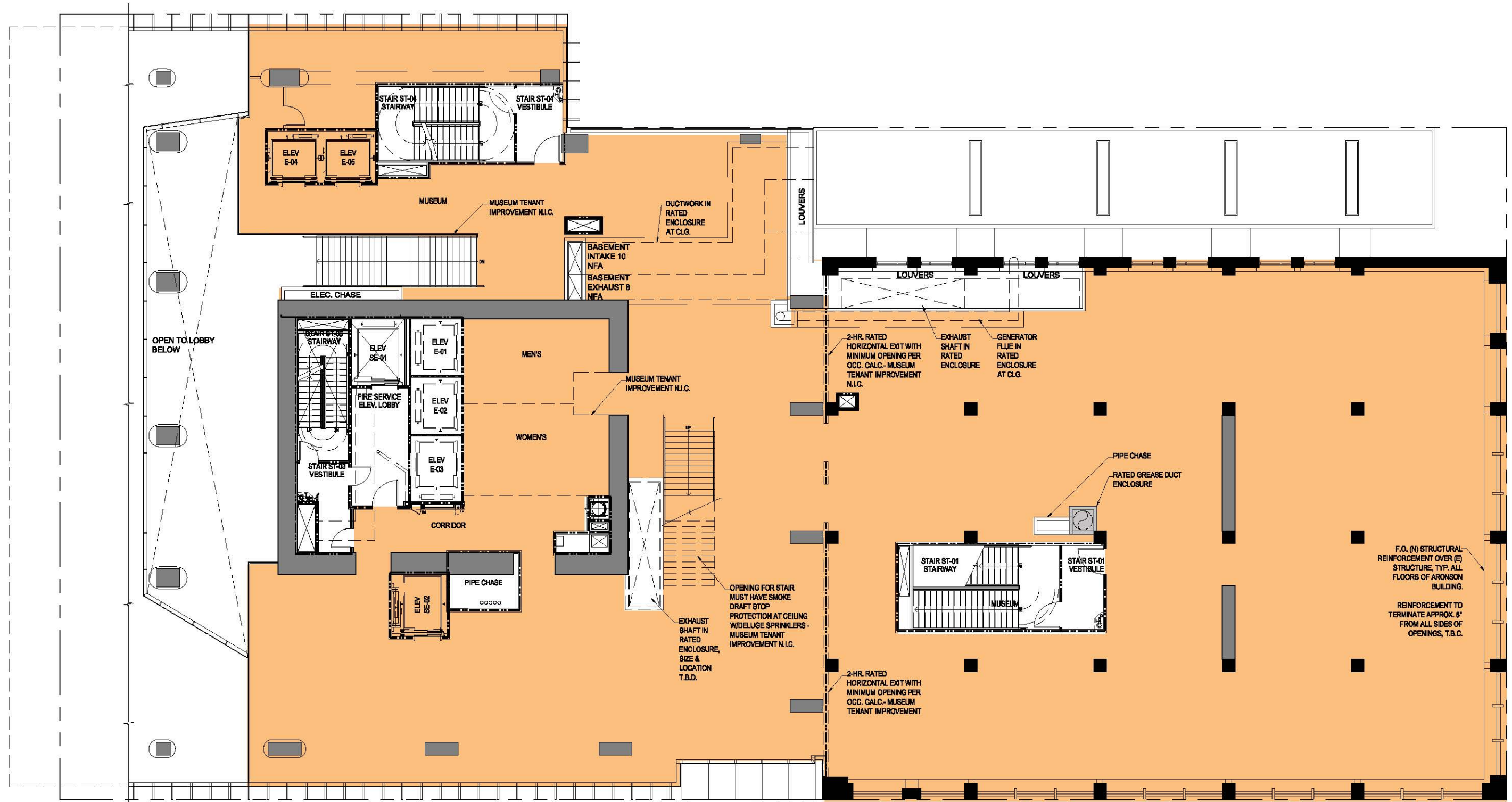
**USF=** NSF less storage, restrooms,security,BOH

L1\*-GF Retail    Ground Floor Retail/Restaurant is **in addition to** GSF, NSF, or USF at this time  
( currently shown as orange hatch on plans)

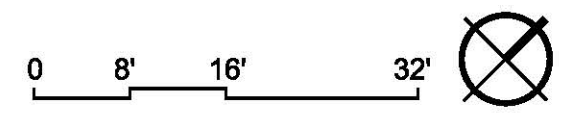
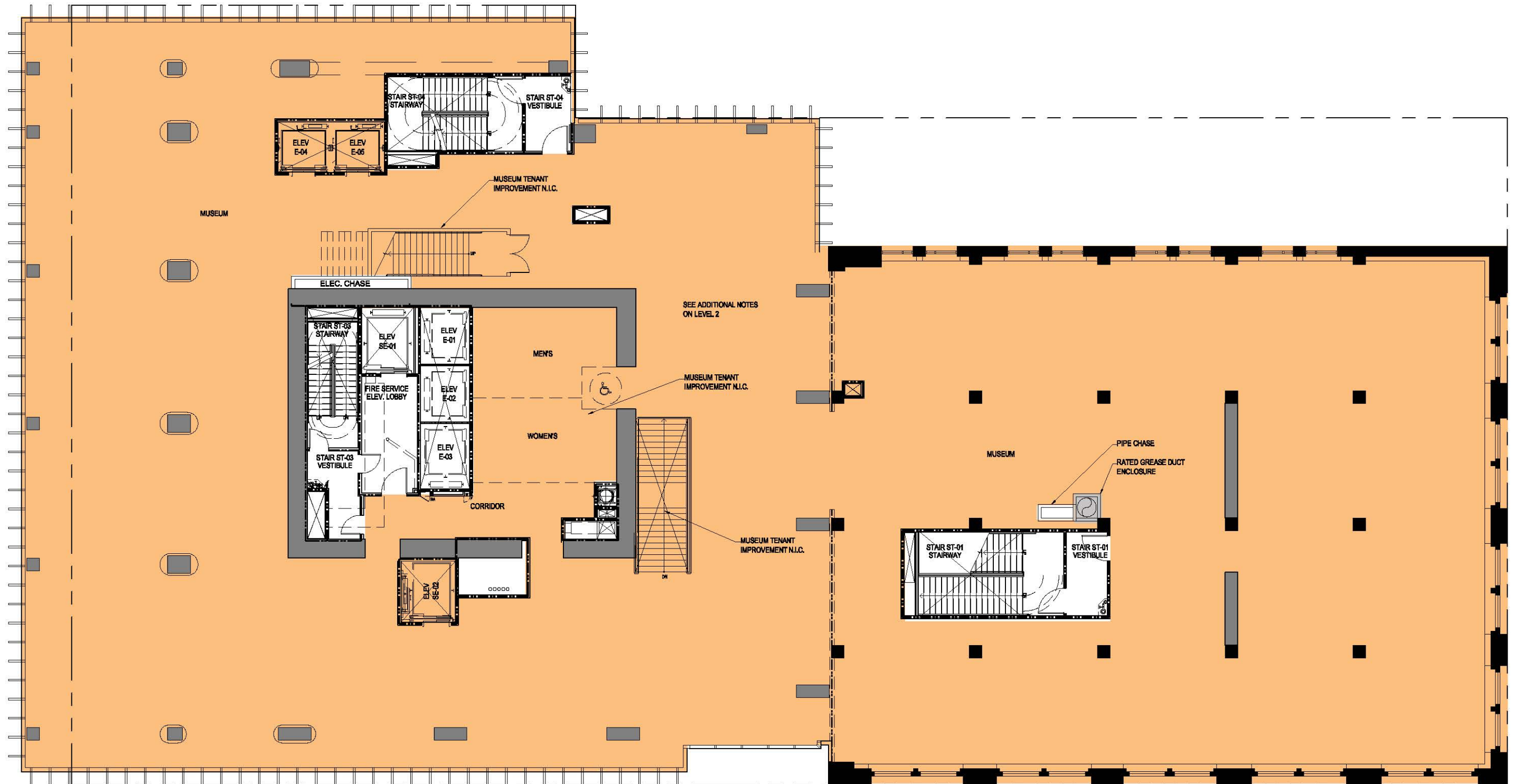
L4\*-Terrace      Level 4 -Terrace is **in addition to** GSF, NSF, or USF at this time  
( currently shown as orange hatch on plans)

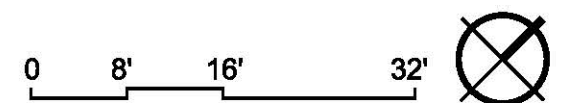
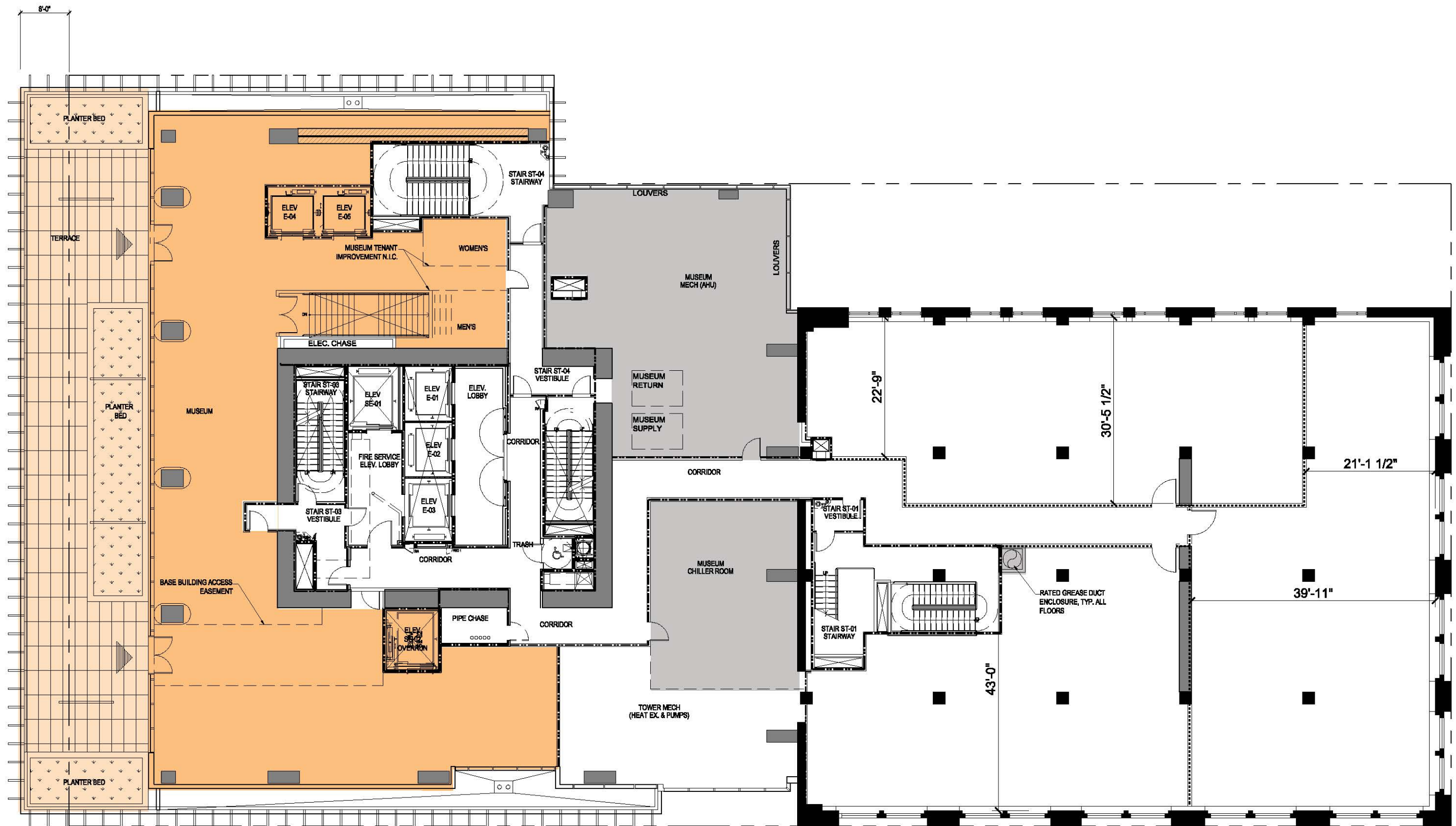




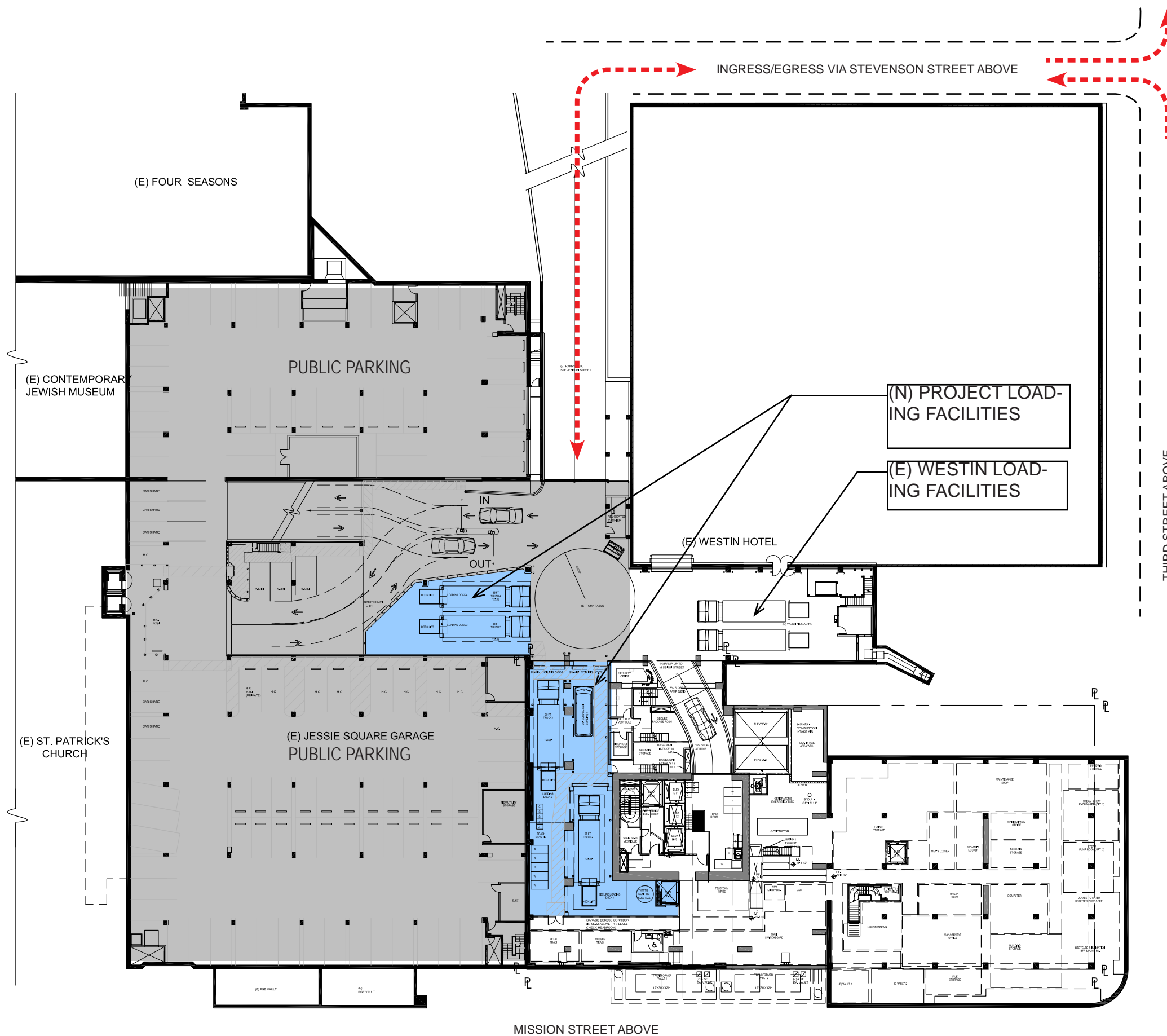


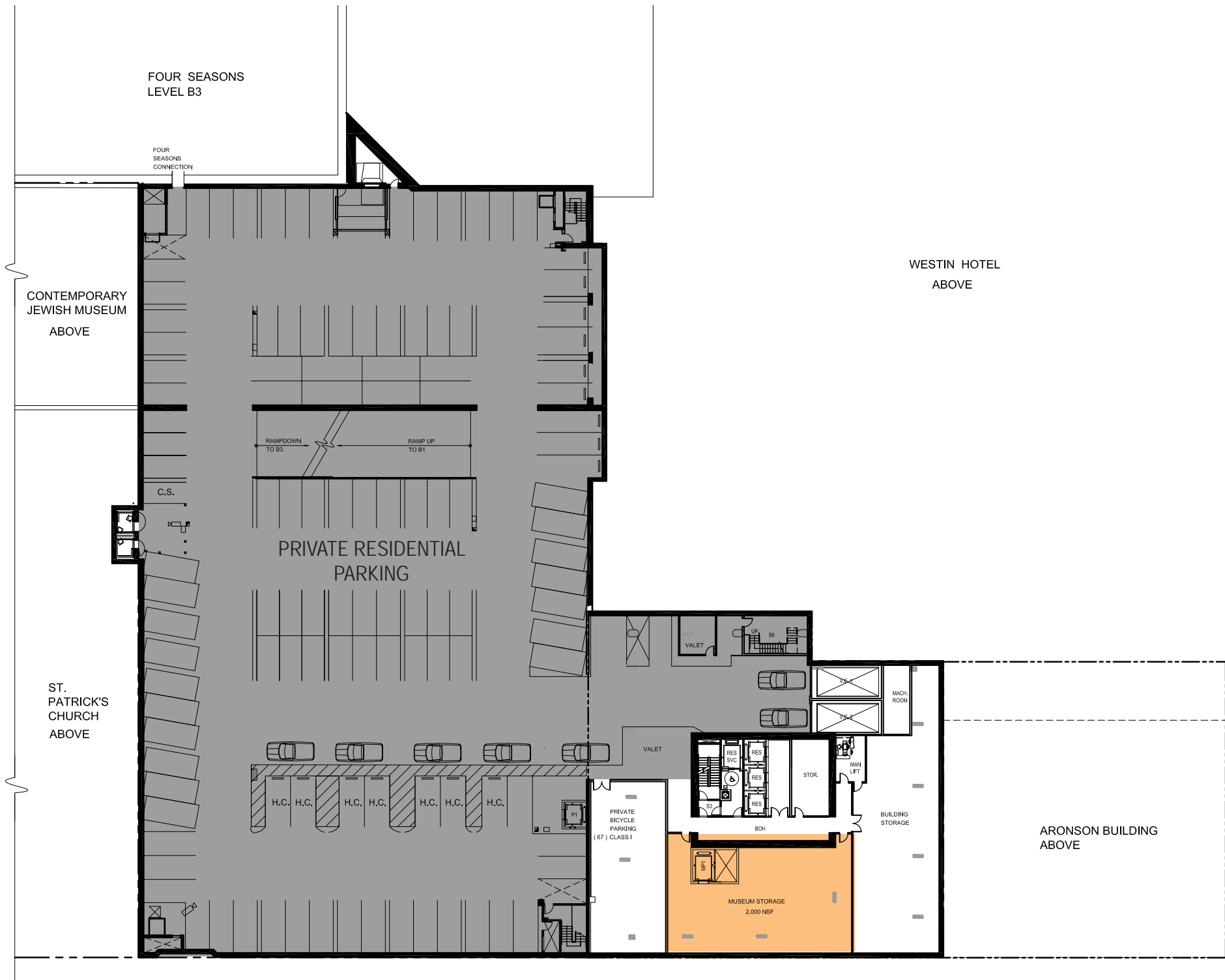












**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

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

RE: Acknowledgement of Commencement Date, Lease between the CITY AND COUNTY OF SAN FRANCISCO (Landlord), and THE MEXICAN MUSEUM (Tenant), for premises known as the Mexican Museum located at 706 Mission Street in San Francisco, CA.

Dear Mr. Updike:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 20\_\_.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

By: \_\_\_\_\_  
John Updike  
Director of Property

Dated: \_\_\_\_\_

**EXHIBIT C**  
**GRANT AGREEMENT**

**ORIGINAL**

**GRANT AGREEMENT**

By and Between

**THE REDEVELOPMENT AGENCY OF THE  
CITY AND COUNTY OF SAN FRANCISCO**

and

**THE MEXICAN MUSEUM,  
a California non-profit corporation**

For the Development of

**CB-1-MM (ASSESSOR'S BLOCK 3706, PORTION OF LOT 277)  
SAN FRANCISCO, CALIFORNIA**

**Dated as of December 14, 2010**

## GRANT AGREEMENT

This Grant Agreement (the “**Agreement**”) dated as of December 14, 2010 (the “**Effective Date**”), by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and existing under the Community Redevelopment Law of the State of California (together with any successor public agency designated by or pursuant to law, the “**Agency**”), and The Mexican Museum, a California non-profit corporation (the “**Grantee**” or the “**Museum**”) (collectively, the “**Parties**”), is entered into based upon the following facts, intentions and understandings of the Parties:

### RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Agency has undertaken a program to redevelop and revitalize blighted areas in the City and County of San Francisco (the “**City**”), and in connection therewith has adopted a redevelopment project area known as the Yerba Buena Center Approved Redevelopment Project Area D-1 (the “**Project Area**”).

B. The Agency, acting through the Board of Supervisors of the City, has by Ordinance No. 98-66 adopted April 25, 1966, approved a Redevelopment Plan for the Project Area, which has been amended 13 times, most recently in December 2009 (as amended, the “**Redevelopment Plan**”). The Redevelopment Plan provides for redevelopment and revitalization of certain lands in the Project Area and the future uses of such land. The Redevelopment Plan also allows the Agency to sell its property in the Project Area for purposes of furthering the goals of the Redevelopment Plan.

C. On June 1, 1993, by Resolution No. 92-93, the Agency approved an Agreement for Disposition of Land for Private Development with the Museum (as amended, the “**LDA**”) for the development of a stand-alone museum on Agency disposition parcel CB-1-MM (Assessor’s Block 3706, a portion of Lot 277), located on the north side of Mission Street between Third and Fourth Streets (the “**Museum Site**”) in the Project Area. The LDA has been amended eight times, most recently on December 7, 2004. Under the Eighth Amendment, the Agency and the Museum agreed to work cooperatively to explore alternatives for the museum space, including the inclusion of the Museum as a museum space in a larger development.

D. In 2006, the property located at 706 Mission Street, on the corner of Mission and Third Streets and immediately adjacent to the Museum Site, was acquired by 706 Mission Street Co LLC, a Delaware limited liability company (the “**Developer**”).

E. On July 15, 2008, by Resolution No. 77-2008, the Agency entered into an exclusive negotiation agreement with the Developer to develop a mixed-use project that spans both the 706 Mission Street property and the Museum Site, as depicted in Attachment A “Site Map”. The proposed project includes: (a) approximately 390,000 net square feet of residential, office and/or hospitality uses in a tower of approximately 550 feet in height, (b) a museum space between approximately 35,000 and 40,000 net square feet fronting Jessie Square (the “**Museum Space**”), (c) a rehabilitated historically important Mercantile Building, (d) additional retail

and/or cultural uses on the ground floor of the Mercantile Building, and (e) the purchase of the Jessie Square Garage for both project-related uses and the public (collectively, the "**Project**").

F. On July 15, 2008, by Resolution No. 78-2008, the Agency also entered into a memorandum of understanding with the Museum to provide grant funding and assistance to the Museum for predevelopment and planning activities related to the Museum's participation in the Project.

G. On May 4, 2010, by Resolution No. 47-2010, the Agency authorized an Amended and Restated Exclusive Negotiation Agreement with the Developer (the "**Developer ENA**") to develop the Project. That same day, by Resolution No. 48-2010, the Agency authorized an Amended and Restated Memorandum of Understanding with the San Francisco Arts Commission (the "**Arts Commission**") and the Museum to provide \$820,000 in grant funds for continued predevelopment and planning work related to the Museum Space (as amended, the "**MOU**").

H. The Parties have agreed that participation in the Project is the best opportunity to develop a museum space for the Museum. Pursuant to the Developer ENA, the Developer will construct the base, core and shell of the Museum Space and convey it back to the Agency at no cost. The Agency will then enter into agreements with the Museum for the long-term use and operation of the Museum Space, and the design and construction of the interior improvements associated with the Museum Space, including all tenant improvements, all fixtures, furniture and equipment, and all exhibit spaces. The Developer ENA also anticipates that the Developer will contribute \$5.0 million to an operating endowment for the Museum Space to help support its ongoing operations.

I. On December 14, 2010, concurrently with its approval of this Agreement, the Agency Commission authorized an exclusive negotiating agreement between the Agency and the Museum for development of the Museum Space ("**Mexican Museum ENA**"). The Mexican Museum ENA does not affect the status of the LDA. Pursuant to the Mexican Museum ENA, the Agency intends to negotiate and enter into necessary agreements leading to the Museum's participation in the Project as the user of the Museum Space. The Museum and the Agency will be responsible for funding predevelopment activities, which include preparation and implementation of the predevelopment plan (as described in Section E of the MOU), operational and organizational planning, design of the Museum Space, hiring museum staff and other consultants, and regulatory approvals ("**Predevelopment Activities**"), as well as the design and construction of the interior of the Museum Space, which includes tenant improvements and related exterior improvements, specialized HVAC/humidity control systems required for exhibit spaces, all fixtures, furniture and equipment, and all exhibit spaces ("**Interior Improvements**"). If the Developer fails to obtain Regulatory Approvals (as defined in the Mexican Museum ENA) for the Project, the Agency agrees to assist the Museum with development of a museum facility, to the extent permitted by law.

J. The Agency is authorized pursuant to CRL and has agreed to grant certain funds to the Museum to cover a substantial portion of the costs for Predevelopment Activities and Interior Improvements related to the Museum Space. The funding sources for this Grant include

a substantial amount of tax-exempt bond proceeds, and must be used consistently with applicable laws, including but not limited to CRL and federal tax laws.

K. The effectiveness of the Redevelopment Plan terminates on January 1, 2011, pursuant to Section 33333.6 of the California Health and Safety Code and Ordinance No. 256-09 adopted by the Board of Supervisors of the City on December 18, 2009. After that time, the Agency will have no authority to act pursuant to the Redevelopment Plan except to pay previously incurred indebtedness, to comply with affordable housing obligations, and to enforce existing covenants, contracts, or other obligations. In particular, land use jurisdiction within the Project Area will revert to the City's Planning Department. Although approval of the design and land use entitlements for the Project will fall under the City's jurisdiction after the Redevelopment Plan expires, the Agency will continue to have the authority, as owner of the Museum Site, to convey the Museum Site, and to approve, as part of the enforcement of the obligations of this Agreement, one or more Grant Disbursement Agreements.

L. The Parties now desire to enter into this Agreement to memorialize their understanding and commitments concerning the matters generally described above.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1 – AMOUNT AND PURPOSE OF GRANT FUNDS**

#### **1.1 Grant Funds.**

Pursuant to the terms and conditions of this Agreement, the Agency hereby agrees to grant to Grantee a total principal amount not to exceed TEN MILLION FIVE HUNDRED SIXTY-SIX THOUSAND DOLLARS (\$10,566,000) ("**Grant Funds**"). The funding sources from which the Agency will draw the Grant Funds include a substantial amount of tax-exempt bond proceeds. Accordingly, Grantee understands and acknowledges the limitations and requirements imposed on the Parties due to the sources of the Grant Funds and applicable laws, including but not limited to CRL and federal tax laws. The Grant Funds must be used for "redevelopment activities" that are defined in CRL (Sections 33678(b), 33020, and 33021 of the California Health and Safety Code), and for purposes consistent with federal tax laws. The Agency may withhold all or any portion of the Grant Funds if the Agency's disbursement of such Grant Funds would violate applicable laws or is otherwise disallowed by the federal government.

#### **1.2 Conditions of Use of Grant Funds.**

a) Grantee agrees, subject to the terms and conditions in this Agreement, to use the Grant Funds to pay for costs associated with Predevelopment Activities and Interior Improvements related to the Museum Space, and for no other purpose. The Grant Funds will be disbursed pursuant to one or more Grant Disbursement Agreements between the Agency and Grantee as described in Section 3.1, below. The Grant Disbursement Agreements will be



approved by the Agency Commission at a later date and will specify in greater detail the permitted uses that will be considered Predevelopment Activities and Interior Improvements.

b) Grantee is aware of and acknowledges the following: (i) the Grant Funds represent the entire amount of funds that the Agency has committed for payment of costs related to Predevelopment Activities and Interior Improvements for the Museum Space, (ii) after the Redevelopment Plan expires on January 1, 2011, the Agency is unable to commit any additional funds for the Museum Space, and (iii) Grantee shall have the obligation to repay any amounts that have been disbursed if Grantee uses those funds in violation of the terms and conditions of this Agreement.

c) Grantee is aware and acknowledges that the Agency will incur staff and administrative costs related to implementation of this Agreement and negotiation and implementation of the Mexican Museum Transaction Documents, and that the Agency will receive no new funds for implementation after the Redevelopment Plan expires. The Parties agree that Agency staff and administrative costs directly related to this Agreement and the Mexican Museum Transaction Documents may be deducted from the total Grant Funds if they are not otherwise recoverable or payable from another source.

## **ARTICLE 2 – GRANT TERM**

The term of this Agreement will commence on the Effective Date and will continue in full force and effect until the tenth (10<sup>th</sup>) anniversary of the Effective Date, unless terminated earlier as described in Article 6, below (the “Term”).

## **ARTICLE 3 – GRANT DISBURSEMENTS**

### **3.1 Disbursement Procedures and Requirements.**

a) The Agency shall disburse Grant Funds to Grantee in accordance with one or more Grant Disbursement Agreements by and between the Agency and Grantee, which agreements shall be negotiated during the Term of this Agreement, in form and substance satisfactory to the Agency, and subject to approval by the Agency Commission. The Grant Disbursement Agreements shall, at a minimum: (i) describe detailed disbursement procedures for the Grant Funds, including a detailed budget for the use of the Grant Funds, the roles and responsibilities of each party, mechanisms for the disbursement of funds based upon the successful completion of performance milestones, default provisions, and a form of funding request, (ii) require Grantee to comply fully with and be bound by all applicable laws and regulations governing the use of tax increment funds and tax exempt bond proceeds, (iii) require Grantee to comply with applicable Agency policies and programs, including, but not limited to, policies regarding small business enterprises, construction workforce, permanent workforce, nondiscrimination and equal benefits, minimum compensation, healthcare accountability, and prevailing wages, and (iv) require Grantee to maintain insurance coverage satisfactory to the Agency’s Risk Manager.

b) The Agency may disburse Grant Funds to the Developer or any other third party that procures, administers and manages a contract for Predevelopment Activities or Interior Improvements on behalf of Grantee through one or more Grant Disbursement Agreements by

and among Grantee, the Agency, and the Developer or any other third party, in accordance with the procedures described in Section 3.1(a), above.

### 3.2 Prerequisites for Grant Disbursements.

a) Predevelopment Activities. Before any Grant Funds can be disbursed for Predevelopment Activities, the following two conditions must be satisfied: (i) the Agency Commission must approve a Grant Disbursement Agreement for Predevelopment Activities with Grantee, as described in Section 3.1, above, and (ii) Grantee must be in compliance with all covenants, agreements, and conditions required by the Mexican Museum ENA and the Grant Disbursement Agreement for Predevelopment Activities. If these conditions are not satisfied during the Term of this Agreement, the Agency reserves the right to retain all undisbursed Grant Funds.

b) Interior Improvements. Before any Grant Funds can be disbursed for Interior Improvements, the following three conditions must be satisfied: (i) the Agency and Grantee must execute the Transaction Documents (as defined in the Mexican Museum ENA, "**Mexican Museum Transaction Documents**"), (ii) the Agency Commission must approve a Grant Disbursement Agreement for Interior Improvements with Grantee, as described in Section 3.1, above, and (iii) Grantee must be in compliance with all covenants, agreements, and conditions required by the Mexican Museum ENA and the Grant Disbursement Agreement for Interior Improvements. If these conditions are not satisfied during the Term of this Agreement, the Agency reserves the right to retain all undisbursed Grant Funds.

c) Total Amount of Grant Funds. In no event shall the aggregate amount of all funds disbursed to Grantee under this Agreement exceed the total amount of Grant Funds.

## ARTICLE 4 – PERMITTED TRANSFERS / CONSENT

Grantee shall not, either directly or indirectly, assign, transfer, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of Grantee hereunder without the prior written consent of the Agency.

## ARTICLE 5 – DEFAULT

### 5.1 Event of Default.

The occurrence of any one of the following events or circumstances, if not cured within the specified cure or grace period, will constitute an event of default ("**Event of Default**") under this Agreement, giving the Agency the right to declare Grantee in default and to exercise any or all of its remedies, at its sole election and in its reasonable discretion: (a) the material breach of any representation or warranty made by Grantee in this Agreement, unless Grantee notifies the Agency within fourteen (14) business days of the material breach and cures such breach within sixty (60) days from the date on which the Grantee was obligated to notify the Agency; (b) the sale or transfer of all or substantially all of Grantee's permanent art collection; or (c) Grantee files a petition for bankruptcy, applies for or consents to the appointment of a trustee or receiver, consents to or admits jurisdiction of the bankruptcy court, makes an assignment for the benefit of

creditors, or an involuntary petition for bankruptcy is filed against Grantee, or an order for relief is entered against Grantee under bankruptcy laws.

## **5.2     Remedies of the Agency.**

The Agency's remedies for an Event of Default are as follows: (a) the Agency may, at its option, terminate this Agreement and all commitments to disburse the Grant Funds; waive the Event of Default or, without waiving, determine, upon terms and conditions satisfactory to the Agency, to make further disbursements of the Grant Funds; or (b) the Agency may take any action permitted at law, in equity or under this Agreement at its option to cure or remedy the default.

## **ARTICLE 6 – TERMINATION**

This Agreement will automatically terminate upon the occurrence of either of the following events: (i) the one year anniversary of the full disbursement of Grant Funds in accordance with this Agreement and the Grant Disbursement Agreements; or (ii) the expiration of the Term.

## **ARTICLE 7 – RECORDS AND MONITORING**

### **7.1     Records.**

Grantee shall maintain and provide to the Agency upon request records that accurately and fully show the date, amount, purpose and payee of all expenditures of the Grant Funds, and shall keep all estimates, invoices, receipts, and other documents related to expenditures of the Grant Funds.

### **7.2     Monitoring.**

Grantee understands and agrees that it will be monitored by the Agency from time to time to assure compliance with all terms and conditions in this Agreement and all laws. Grantee acknowledges that the Agency may also conduct periodic on-site inspections of the Museum Space. Grantee shall cooperate with the monitoring by the Agency, and shall ensure full access by the Agency to the Museum Space and all information related to the Museum Space as reasonably required by the Agency.

## **ARTICLE 8 – REPRESENTATIONS AND WARRANTIES**

Grantee represents and warrants each of the following as of the date of this Agreement and at all times throughout the Term:

- a) Organization; Authorization. Grantee is a nonprofit corporation, duly organized and validly existing and in good standing under the laws of the jurisdiction in which it was formed. Grantee has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section. Grantee has duly authorized, by all necessary action, the execution, delivery and performance of this Agreement. When duly

executed, this Agreement shall constitute a legal, binding obligation of Grantee, enforceable against Grantee in accordance with the terms hereof.

- b) Grantee's Board of Directors. Grantee shall at all times be governed by a legally constituted board of directors. A list of the current members of Grantee's board of directors has been provided to the Agency, and, upon request, Grantee shall provide to the Agency an updated list of current directors. Grantee's board of directors shall exercise such oversight responsibility with regard to this Agreement as is necessary to ensure full and prompt performance by Grantee of its obligations under this Agreement.
- c) No Misstatements. No document furnished or to be furnished by Grantee to the Agency in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.
- d) Limitations on Contributions. Through execution of this Agreement, Grantee 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 Agency for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Grantee 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. Grantee further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Grantee's board of directors; Grantee's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Grantee; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Grantee. Additionally, Grantee acknowledges that Grantee must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

## ARTICLE 9 – NOTICE

All notices, consents, communications or transmittals required by this Agreement shall be made in writing, and shall be deemed communicated by personal delivery or by United States certified mail, postage prepaid, return receipt requested, as of the earlier of actual receipt or seven days from mailing, addressed as follows:

To the Agency: San Francisco Redevelopment Agency  
ATTN: Executive Director  
One South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Facsimile: (415) 749-2525

To Grantee: The Mexican Museum  
ATTN: Executive Director  
Fort Mason Center, Building D \_\_\_\_\_  
San Francisco, CA 94123 \_\_\_\_\_  
Facsimile: (415) 781-0213 \_\_\_\_\_

With a Copy to: Victor M. Marquez, Esq.  
c/o The Marquez Law Group  
731 Market Street, Suite 600  
San Francisco, CA 94103  
Email: VictorMarquezEsq@aol.com

or such other address as either party may designate, from time to time, by written notice sent to the other party in like manner.

#### **ARTICLE 10 – INDEMNITY**

Grantee shall defend, hold harmless and indemnify the Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees of and from all claims, loss, damage, injury, actions, causes of action and liability of every kind, nature and description directly or indirectly arising out of or connected with the performance of this Agreement and any of Grantee's operation or activities related thereto, excluding the willful misconduct or the gross negligence of the person or entity seeking to be defended, indemnified or held harmless.

#### **ARTICLE 11 – INSURANCE**

The insurance coverages required under this Agreement parallel those set forth in the Grant Agreement between the Museum and the City pursuant to the MOU, as set forth below:

11.1 Types and Amounts of Coverage. Without limiting Grantee's liability pursuant to Article 10, Grantee shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident, injury, or illness.

b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, property damage, contractual liability, personal injury, products and completed operations.

c). Commercial 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, Non-Owned and Hired auto coverage, as applicable.

11.2 Additional Requirements for General and Automobile Coverage. Commercial General Liability and Commercial Automobile Liability insurance policies shall:

a) Name as additional insured San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees.

b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

11.3 Additional Requirements for All Policies. All policies shall be endorsed to provide at least thirty (30) days' advance written notice to the Agency of cancellation of policy for any reason, nonrenewal or reduction in coverage and specific notice mailed to the Agency's address for notices pursuant to Article 9.

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

11.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder 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 annual aggregate limit shall be double the occurrence or claims limits specified above.

11.6 Evidence of Insurance. Before commencing any operations under this Agreement, Grantee shall furnish to the Agency certificates of insurance and additional insured policy endorsements from insurers in a form acceptable to the Agency, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon the Agency's request. Before commencing any operations under this Agreement, Grantee shall furnish to the Agency certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to the Agency, in a form evidencing all coverages set forth above.

11.7 Effect of Approval. Approval of any insurance by the Agency shall not relieve or decrease the liability of Grantee hereunder.

11.8 Insurance for Subcontractors and Evidence of this Insurance. If a subcontractor will be used to complete any portion of this Agreement, the Grantee shall ensure that the subcontractor shall provide all necessary insurance and shall name the San Francisco Redevelopment Agency, the City and County of San Francisco and their respective commissioners, members, officers, agents and employees and Grantee as additional insureds.

## **ARTICLE 12 – GENERAL PROVISIONS**

12.1 Amendment. This Agreement may be amended in writing by the Parties' execution of an amendment to this Agreement.

12.2 Successors. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Agency and Grantee, subject to the limitations set forth herein, as applicable.

12.3 Counterparts. This Agreement may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

12.4 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

12.5 Entire Agreement. This Agreement (together with the recitals and referenced or incorporated agreements) sets forth the entire agreement between the Parties.

12.6 Headings. All section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

12.7 Severability. The invalidity or unenforceability of any one or more provisions of this Grant Agreement shall in no way affect any other provision.

12.8 Consent. Except as expressly provided otherwise, whenever consent or approval of either party is required, that party shall not unreasonably withhold or delay consideration of such consent or approval.

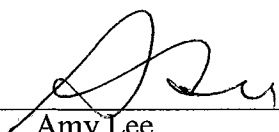
12.9 Attorneys' Fees. If any lawsuit is commenced to enforce any of the terms of this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

*[SIGNATURES BEGIN ON NEXT PAGE ]*


IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**AGENCY:**

**Redevelopment Agency of the City and County of San Francisco**, a public body, corporate and politic

By   
Amy Lee  
Deputy Executive Director  
Finance and Administration

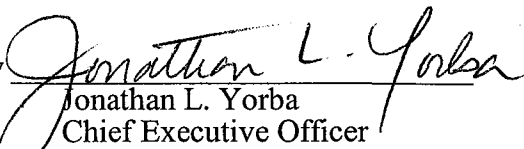
Approved as to Form:

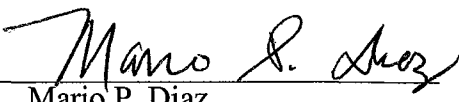
By   
James B. Morales  
Agency General Counsel

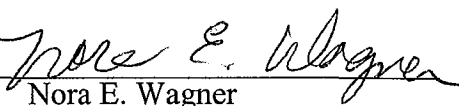
Authorized by Agency Resolution No. 157-2010, adopted December 14, 2010

**GRANTEE:**

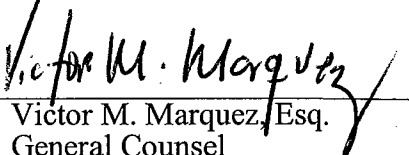
**The Mexican Museum**,  
a California non-profit corporation

By   
Jonathan L. Yorba  
Chief Executive Officer

By   
Mario P. Diaz  
Co-Chair, Board of Trustees

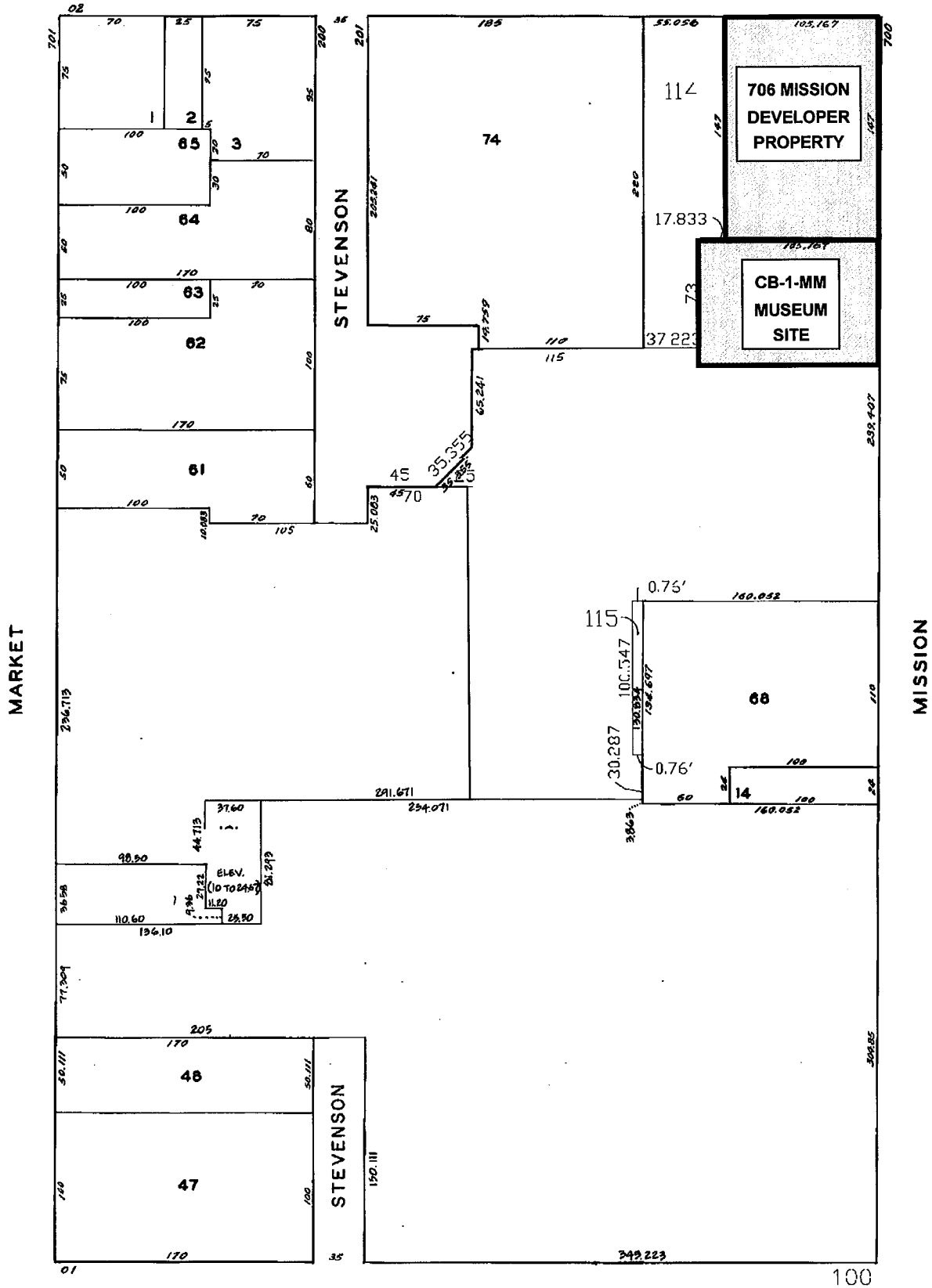
By   
Nora E. Wagner  
Co-Chair, Board of Trustees

Approved as to Form:

By   
Victor M. Marquez, Esq.  
General Counsel



THIRD



FOURTH

A-1

Grant Agreement  
Yerba Buena Center Redevelopment Project Area  
Assessor's Block 3706, Portion of Lot 277

**EXHIBIT D**

**PERMIT TO ENTER**

*[To be Inserted Prior to the Commencement Date, in Accordance with Section 5.1]*

**EXHIBIT E**

**ARTS COMMISSION AGREEMENT**

*[To be Inserted in Accordance with Section 8.1.b]*

**EXHIBIT F**

**ENDOWMENT AGREEMENT**

*[To be Inserted in Accordance with Section 10.6]*

## APPENDIX A

### DEFINITIONS

1. **"Administrative Code"** means the San Francisco Administrative Code, as amended or modified.
2. **"Affiliate of Tenant"** means any person or entity which directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under the common Control with Tenant.
3. **"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.
4. **"Alterations"** means any alterations, installations or additions to any Improvements or to the Premises.
5. **"Assignment"** has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
6. **"Attorneys' Fees and Costs"** means reasonable attorneys' fees, costs, expenses and disbursements (including such fees, costs, expenses and disbursements of attorneys of the City's Office of City Attorney), including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal. For purposes of this Lease, the reasonable fees of attorneys of the City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.
7. **"Basic Lease Information"** means the information with respect to this Lease summarized in Article I hereof.
8. **"Charter"** means the 1996 Charter of the City and County of San Francisco, as amended or modified.
9. **"City"** means the City and County of San Francisco, a municipal corporation.
10. **"City's Personal Property"** means the personal property of City, including all works of art, fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible and intangible personal property or assets, whether now or hereafter located in, upon or about the Premises, belonging to City and/or in which City has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor. City's Personal Property specifically shall include the works of art, furniture, personal property, furniture, equipment, machinery, supplies, and other tangible and intangible assets owned by the City and

controlled by the Commission. Upon transfer of the Project to the City, the Improvements shall also become the City's property.

11. **"City's Sign Guidelines"** means any and all policies or rules of the City now or hereafter in effect governing the placement of signs, advertisements, awnings, canopies, banners or other exterior decoration, including as provided under the City's Park Code, a copy of which has been provided to Tenant.
12. **"Commencement Date"** means the date on which the Term of this Lease commences as described in Section 4.1 [Commencement Date and Expiration Date] hereof.
13. **"Commission"** means the San Francisco Arts Commission.
14. **"Completion"** means completion of the Project, as evidenced by the issuance of a temporary certificate of occupancy or certificate of occupancy for the Premises by the City's Department of Building Inspection.
15. **"Control", "Controlled", "Controlling" and "Controls"** mean the ownership of greater than fifty percent (50%) of the voting interests of a partnership or limited liability company, or alternatively, ownership of greater than fifty percent (50%) or more of the voting stock of a corporation or of the membership interests in a limited liability company.
16. **"Damage"** means as set forth in Section 16.
17. **"Developer"** means 706 Mission Street Co LLC, a Delaware limited liability company or its successor or assign (including without limitation the Master Association to the extent Developer elects, in its sole discretion, to assign its rights and obligations to the Master Association).
18. **"Director"** means the Director of Cultural Affairs for the City and County of San Francisco or his/her designee.
19. **"Director of Real Estate"** means the Director of Real Estate for the City and County of San Francisco or his/her designee.
20. **"Effective Date"** means the date on which this Agreement becomes effective pursuant to Section 4.2 [Effective Date] hereof.
21. **"Encumber"** means create any Encumbrance.
22. **"Encumbrance"** means any mortgage, deed of trust, leasehold deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument, or other lien, mortgage or encumbrance.
23. **"Encumbrancer"** means a mortgagee, beneficiary of a deed of trust or leasehold deed of trust, or other holder of an Encumbrance.
24. **"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 or, under or about the Premises (including any permitted Improvements) and any other property, including, without limitation, soil, air and groundwater conditions.

25. **"Event of Default"** means any one of the events of default described in Section 18 [Default; Remedies] hereof following the expiration of any applicable cure periods.
26. **"General Admission Revenues"** means all general admission fees which are collected or received by the Tenant, as more particularly described in Section 10.1(a) below.
27. **"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 and Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.
28. **"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 in writing by any third party against City or its 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, damages to any natural resource (as that term is defined in CERCLA) owned by City, and reasonable Attorneys' Fees and Costs and consultants' fees and experts' fees and costs.
29. **"Holidays"** means any date on which either City or Tenant are authorized or required by Law or executive order to be closed for a state or national Holiday.
30. **"Impositions"** means any and all real and personal property taxes, general and special assessments, excises, licenses, liens, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Improvements, Tenant's Personal Property, the leasehold estate or any subleasehold estate, or Tenant's use of the Premises or any Improvements, including, without limitation, possessory interest taxes.
31. **"Improvements"** means any and all buildings, structures, fixtures, facilities, installations, machinery and equipment, erected, built, constructed, installed or placed, in on, over or under the Premises, including, without limitation, the Project, 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, and each and every type of physical improvement to the extent located at, on or affixed to the Premises; provided, however, the Improvements shall specifically exclude any of City's Personal Property and any of Tenant's Personal Property.

- 32. **"Indemnify"** means indemnify, protect, defend and hold harmless.
- 33. **"Indemnified Parties"** means 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 respective Agents, and their respective heirs, legal representatives, successors and assigns, and each of them.
- 34. **"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.
- 35. **"Invitees"** when used with respect to Tenant means the clients, customers, invitees, guests, members and licensees, assignees and subtenants of Tenant.
- 36. **"Landlord"** means the City and County of San Francisco, acting through its Director of Real Estate.
- 37. **"Law"** means any law, statute, ordinance, resolution, rule, 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, or over the Commission whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.
- 38. **"Lease"** means this Lease as it may be amended in accordance with its terms.
- 39. **"Lease Year"** is a calendar year, except that the first Lease Year shall commence on the Commencement Date and the last Lease Year shall end on the date this Lease expires or terminates.
- 40. **"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, Attorneys' Fees and Costs and consultants' fees and costs.
- 41. **"Master Association"** means the master property owners' association with respect to the Project to be formed pursuant to the Master Declaration.
- 42. **"Master Declaration"** means that certain Master Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement to be prepared by the Developer for the Project.
- 43. **"Merchandise Sales"** means all sales or rentals of, cards, posters, books, apparel and equipment, magazines, newspapers and any other merchandise from any museum retail store or elsewhere on the Premises or related to



the Premises, including, without limitation, sales of Museum merchandise ordered via the internet or telephone.

- 44. **"Mortgage"** means a mortgage, deed of trust, assignment of rents, fixture filing, security agreement, pledge or similar security instrument or assignment of Tenant's leasehold interest under this Lease that is recorded in the Official Records.
- 45. **"Mortgagee"** means the holder or holders of a Mortgage and, if the Mortgage is held by or for the benefit of a trustee, agent or representative of one or more financial institutions, the financial institutions on whose behalf the Mortgage is being held. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Lease.
- 46. **"Museum"** means the Mexican Museum.
- 47. **"Non-General Admission Revenues"** means any revenues generated or collected on the Premises, other than General Admission Revenues, including without limitation, the special admissions fees paid to the Museum, selling price of all merchandise or services sold, leased, licensed or delivered in or from the Premises or any Improvements by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees, or concessionaires, whether for cash or on credit (whether collected or not, except as specifically set forth below), including the gross amount received by reason of orders taken on the Premises or any Improvements although filled elsewhere, and whether made by store personnel or vending machines. Non-General Admission Revenues shall include, without limitation, (i) all revenues and income derived from (1) special admission fees, instructional fees received by Tenant, reservation fees, membership and other fees and dues of any kind (including nonrefundable deposits), but specifically excluding any General Admission Revenues; (2) merchandise sales (without deduction for any rent, interest or other payments made by Tenant, any Affiliate of Tenant, or any of its or their subtenants, licensees or concessionaires); (3) the operation of restaurants, banquet facilities, and any other food or beverage operations or sales on the Premises, if allowed pursuant to the terms of this Lease; (4) proceeds from parking facilities, if applicable; (5) proceeds from business interruption insurance, loss of earnings insurance or other insurance of a similar kind; (6) payments from, or pass-throughs to, any subtenants or any other entity or individual for use of the Premises; (7) pay telephones, stamp machines, music machines, amusement machines, food and beverage vending machines or public toilet locks; (8) rent or other fees for the use of any of the Improvements; and (9) whatever source, which Tenant in the normal and customary course of Tenant's operations would credit or attribute to Tenant's business conducted at, upon or from Premises; and (ii) all monies or other things of value received by Tenant from Tenant's operations at, upon or from the Premises which are neither included in nor excluded from Non-General Admission Revenues by other provisions of this definition, but without any duplication.
- 48. **"Official Records"** means the official records of the city and county of San Francisco.
- 49. **"Party" means Landlord or Tenant; "Parties"** means both Landlord and Tenant.

50. **"Permitted Encumbrances"** means and includes: (1) liens and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith by the Commission; (2) the lien of taxes and assessments which are not delinquent, or if delinquent, are being contested; (3) defects and irregularities in the title to the Premises which, whether singly or in the aggregate do not materially adversely affect the value or operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (4) easements, exceptions or reservations for the purpose of pipelines, fiber optic lines, telephone lines, telegraph lines, power lines and substations, and other utilities, roads streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, which, whether singly or in the aggregate, do not materially interfere with or impair the operation of the Premises for the purposes for which they are or may reasonably be expected to be used; (5) statutory liens or encumbrances arising in the ordinary course of business which are not delinquent or are being contested in good faith by the Commission; (6) the lease or license of the use of a part of the Premises to art or culture-related non-profit corporations or for the use in performing special events, professional or other services in accordance with customary museum, charitable trust and/or business practices; (7) any liens, encumbrances and title matters existing on the date of execution of this Lease, including matters which are discoverable by a survey or inspection of the Premises; and (8) Encumbrances necessary to repair the Premises in the event of damage or destruction to the Premises.
51. **"Permitted Uses"** means those uses set forth in Section 8.1 [Permitted Uses].
52. **"Person"** means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision hereof.
53. **"Premises"** has the meaning given in Section 1 [Premises] hereof and as more particularly described and depicted on Exhibits A-1 and A-2. The Premises shall include any permitted Improvements now or hereafter located thereon, together with any additions, modifications or other Alterations thereto permitted hereunder, and any and all utilities located on and serving the Premises. Notwithstanding anything to the contrary in this Lease, the Premises do not include the Reserved Rights, nor the Project Facilities, nor any water, water rights, riparian rights, water stock, mineral rights or timber rights relating to the Premises, nor any paved, public streets located within the Premises.
54. **"Prohibited Activities"** means the following activities:
- (a) any activity that creates a public or private nuisance under applicable Laws;
  - (b) any activity that is not within the Permitted Uses, including any use not authorized under any applicable annual Management Plan;

- (c) any activity or object that causes material damage or material injury to the Premises;
- (d) any activity that will in any way materially injure, materially obstruct or materially interfere with rights of any owners or occupants of adjacent properties, including the Project Facilities;
- (e) use of the Premises for sleeping or personal living quarters;
- (f) any distress, fire bankruptcy or going-out-of-business sale on the Premises without the prior written consent of the City;
- (g) any activity that will cause a cancellation of any insurance covering the Premises;
- (h) any activity or use which is not in compliance with all applicable Laws concerning the Premises or Tenant's use and occupancy of the Premises; and
- (i) any granting of licenses, easements or access rights over the Premises by Tenant if the same would be binding on City's reversionary interest in the Premises, or changes in applicable land use Laws or conditional use permits for any uses not provided for hereunder, in each instance without the City's prior written consent, which consent may be withheld in the City's sole discretion, and subject to the provisions of Section 14 [Compliance with Laws].

- 55. **"Project"** means the mixed-use building, fixtures, equipment and other improvements and appurtenances, including the Jessie Square Garage improvements, now located or hereafter erected upon the land generally at the northwest corner of Third and Mission Streets, San Francisco, California, as shown on the Basic Concept Drawings.
- 56. **"Project Facilities"** means, except for the Premises, any and all mixed-use building, fixtures, equipment and other improvements and appurtenances, including the Jessie Square Garage improvements, now located or hereafter erected which are part of the Project and any and all public utilities and pipelines serving the Project.
- 57. **"Regulatory Approval"** means any authorization, approval or permit required by a governmental agency having jurisdiction over the Project or the Premises, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Department of Building Inspection and the Commission.
- 58. **"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 into or inside any existing improvements or any Improvements constructed hereunder by or on behalf of Tenant or Landlord, or in, on, under or about the Premises or Project Facilities or any portion thereof.
- 59. **"Remediation"** when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Premises or the Project Facilities or 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.

60. **"Reserved Rights"** means certain rights reserved by the City relating to the Premises, including the following:
- 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 unreasonably interfere with the permitted use thereof by Tenant, without Tenant's prior written consent, which may be withheld by Tenant in its reasonable discretion;
  - d. All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct the Project 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, provided that any such easement or right-of-way shall not unreasonably interfere with Tenant's use and operation 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 Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way;
  - f. 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 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, provided that any such easement, right-of-way, permit or license shall not unreasonably interfere with Tenant's use and operation of the Premises hereunder, and provided further that the grant of any such easement, right-of-way, permit or license shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement, right of way, permit or license; and

- g. All additional rights of access provided for in Section 21 [Access by City] below.
  - h. Any approval rights of the City over Tenant's use and operation of the Premises provided for in this Lease, and the authority of the City over the Premises, including all Improvements thereon, under applicable Law.
61. **"Restoration"** means the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all Laws then applicable. All Restoration shall be conducted in accordance with the provisions of Section 11 [Alterations]. ("Restore" and "Restored" shall have the correlative meanings.)
  62. **"Rules and Regulations"** means those rules and regulations as may be imposed by the Director of Real Estate, which are subject to change from time to time, regarding the use and operation of the Premises.
  63. **"Significant Changes"** means any dissolution, merger, consolidation or other reorganization, or any issuance, sale, assignment, hypothecation or other transfer of ownership interests in Tenant, in one or more transactions (collectively, a "Transaction"), by operation of law or otherwise, that results in any of the following:
    - a. As to the original named Tenant hereunder, a change in the identity of the Person Specially Controlling Tenant, or (ii) as to any successor permitted Tenant hereunder, a change in the identity of the Person Specially Controlling said Tenant (herein, the "Tenant Owners"), such that the Tenant Owners which, collectively, have Special Control of Tenant as of the date immediately prior to the Transaction no longer are Specially Controlling Tenant from and after the date of such Transaction;
    - b. The dissolution of Tenant, or
    - c. The sale of over fifty percent (50%) of the assets of Tenant.
  64. **"Special Control"** means the power to direct the affairs or management of another Person, whether by contract, operation of Law or otherwise (and "Specially Controlling" and "Specially Controlled" shall have correlative meanings).
  65. **"Sublease"** has the meaning given in Section 17.1 [Restriction on Assignment and Subletting] hereof.
  66. **"Subsequent Construction"** means all repairs to and reconstruction, replacement, addition, expansion, restoration, Alteration or modification of any Improvements, or any construction of additional Improvements, following completion of the Improvements.
  67. **"Tenant"** means the Party identified as Tenant in the Basic Lease Information and at the beginning of this Lease. Except when immediately followed by the word "itself," the term Tenant shall also refer to the successors and assigns of Tenant's interests under this Lease, provided that the rights and obligations of Tenant'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.
  68. **"Tenant's Personal Property"** means the personal property of Tenant, including all fixtures, furniture, furnishings, equipment, machinery,

supplies, software and other tangible or movable personal property that is incident to the ownership, development or operation of the Improvements and/or the Premises, whether now or hereafter located in, upon or about the Premises, belonging to Tenant and/or in which Tenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefor that can be removed without structural or other material damage to the Improvements or the Premises.

- 69. **"Term"** means the term of this Lease as determined under Section 4.1 [Term of Lease] hereof.
- 70. **"Transfer"** means any Assignment, Sublease or Significant Change.
- 71. **"Transferee"** means any recognized assignee of any part of Tenant's leasehold interest hereunder or any recognized subtenant of any portion of the Premises, pursuant to a Transfer that complies with Section 17 [Assignment and Subletting] hereof.
- 72. **For purposes of Section 11 only, "Work"** means as defined in Section 11.7.