

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest  
as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Buyer

For the purchase and sale of

Assessor's Block 3759, Lot 43 and also known as  
450 Sixth Street  
San Francisco, California

March 14, 2016

## TABLE OF CONTENTS

*Requires Updating!*

	<u>Page</u>
1. PURCHASE AND SALE.....	1
1.1 Property Included in Sale.....	1
2. PURCHASE PRICE .....	1
2.1 Purchase Price.....	1
2.2 Payment.....	2
2.3 Funds.....	2
3. TITLE TO THE PROPERTY.....	2
3.1 Conveyance of Title to the Property .....	2
3.2 Title Insurance .....	2
3.3 Assignment of Leases .....	2
4. BUYER'S DUE DILIGENCE INVESTIGATIONS .....	3
4.1 Due Diligence and Time for Satisfaction of Conditions.....	3
4.2 Energy Consumption .....	3
5. ENTRY .....	3
5.1 City's Conditions to Closing .....	3
5.2 Cooperation with City.....	7
5.3 Property Exchange.....	7
6. ESCROW AND CLOSING.....	7
6.1 Opening of Escrow .....	7
6.2 Closing Date.....	7
6.3 Seller's Delivery of Documents .....	8
6.4 City's Delivery of Documents and Funds .....	8
6.5 Other Documents .....	9
7. EXPENSES AND TAXES .....	9
7.1 Rent and Other Apportionments .....	9
7.2 Closing Costs .....	10
7.3 Real Estate Taxes and Special Assessments.....	10
7.4 Preliminary Closing Adjustment.....	10
7.5 Post-Closing Reconciliation.....	10

7.6	Survival.....	11
8.	REPRESENTATIONS AND WARRANTIES.....	11
8.1	As Is Sale .....	11
8.2	Representations and Warranties of Seller.....	11
9.	RISK OF LOSS AND POSSESSION .....	14
9.1	Risk of Loss .....	14
9.2	Insurance.....	15
9.3	Possession .....	15
10.	MAINTENANCE; CONSENT TO NEW CONTRACTS .....	15
10.1	Maintenance of the Property by Seller.....	15
10.2	City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts .....	15
11.	GENERAL PROVISIONS .....	16
11.1	Notices .....	16
11.2	Brokers and Finders .....	16
11.3	Successors and Assigns.....	17
11.4	Amendments .....	17
11.5	Continuation and Survival of Representations and Warranties .....	17
11.6	Governing Law .....	17
11.7	Merger of Prior Agreements .....	17
11.8	Parties and Their Agents; Approvals .....	17
11.9	Interpretation of Agreement.....	18
11.10	Attorneys' Fees.....	18
11.11	Sunshine Ordinance .....	18
11.12	Conflicts of Interest.....	18
11.13	Notification of Limitations on Contributions .....	19
11.14	Non-Liability of City Officials, Employees and Agents .....	19
11.15	Counterparts.....	19
11.16	Effective Date .....	19
11.17	Severability .....	19
11.18	Agreement Not to Market Prior to Effective Date.....	20
11.19	Acceptance of Agreement by Seller .....	20
11.20	Cooperative Drafting. ....	20

11.21 Time is of the Essence. ....20

LIST OF EXHIBITS

- EXHIBIT A – Real Property Description
- EXHIBIT B – Preliminary Title Report
- EXHIBIT C – Grant Deed
- EXHIBIT D – The Lease
- EXHIBIT E – Intentionally Omitted
- EXHIBIT F – Assignment of Leases
- EXHIBIT G – Tenant's Estoppel Certificate
- EXHIBIT H – Certificate of Transferor Other Than An Individual (FIRPTA Affidavit)
- EXHIBIT I – Designation Agreement

**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(450 Sixth Street, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of March 14, 2016 is by and between Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest; Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest; Kenneth Musso, as to an undivided 1/12 interest; David Musso, as to an undivided 1/12 interest; and Arlene Ripley, as to an undivided 1/12 interest ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Seller and City agree as follows:

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

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

(a) the real property consisting of approximately six thousand (6,000) square feet of land, located in the City and County of San Francisco, commonly known as Block 3759, lot 43 Sheet and more particularly described in Exhibit A attached h hereto (the "Land");

(b) all improvements and fixtures located on the Land, including, without limitation, that certain one story building containing approximately forty five hundred (4,500) square feet of net rentable area and known as 450 Sixth Street, as well as all any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

All of the items referred to in Subsections (a), and (b) above are collectively referred to as the "Property."

**2. PURCHASE PRICE**

**2.1 Purchase Price**

The total purchase price for the Property is Two Million Four Hundred Three Thousand Three Hundred Thirty Three Dollars (\$2,403,333) (the "Purchase Price").

## **2.2 Payment**

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

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under Sections 6.3(h) and 6.3(i) [Seller's Delivery of Documents], the Title Company may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code"), or Section 18662 of the California Revenue and Taxation Code (the "State Tax Code"). Any amount properly so withheld by the Title Company shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

## **2.3 Funds**

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

## **3. TITLE TO THE PROPERTY**

### **3.1 Conveyance of Title to the Property**

At the Closing Seller shall convey to City, or its nominee, marketable and insurable fee simple title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit C (the "Deed"), subject to the Accepted Conditions of Title (as defined in Section 3.2 [Title Insurance]).

### **3.2 Title Insurance**

Delivery of title in accordance with the preceding Section shall be evidenced by the commitment of Chicago Title Company (the "Title Company") to issue to City, or its nominee, a CLTA extended coverage owner's policy of title insurance (in a Form acceptable to City, in its sole discretion) (the "Title Policy") in the amount of the Purchase Price, insuring fee simple title to the Land, the Appurtenances and the Improvements in City, or its nominee, free of the liens of any and all deeds of trust, mortgages, assignments of rents, financing statements, creditors' claims, rights of tenants or other occupants (except for the existing lease to Beauty Systems Group, Inc., dated as of May 1, 1996 (the "Lease") and as subsequently amended, and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title pursuant to Section 5.1(a) below. The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property, shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and shall contain an affirmative endorsement that there are no violations of restrictive covenants, if any, affecting the Property such special endorsements as City may reasonably request. The Title Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request.

### **3.3 Assignment of Leases**

Seller represents that a true, correct and complete copy of the Lease is attached as Exhibit D. At the Closing Seller shall transfer its title to the Lease by an assignment of lease in the form attached hereto as Exhibit F (the "Assignment of Lease"), such title to be free of any

liens, encumbrances or interests, except for the Accepted Conditions of Title. There are no maintenance or other contracts affecting the Property as of the Closing Date. If any such contracts exist on the Effective Date, Seller shall terminate the contracts before the Closing Date.

#### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS**

##### **4.1 Due Diligence and Time for Satisfaction of Conditions**

City has been given or will be given before the end of the Due Diligence Period (as defined below), a full opportunity to investigate the Property, either independently or through agents of City's own choosing, including, without limitation, the opportunity to conduct such appraisals, inspections, tests, audits, verifications, inventories, investigations and other due diligence regarding the economic, physical, environmental, title and legal conditions of the Property as City deems fit, as well as the suitability of the Property for City's intended uses. City and its Agents may commence due diligence investigations on the Property on or after the date this Agreement is executed by both parties hereto. The period for completion of all such investigations shall expire on September 1, 2016 (the "Due Diligence Period"), subject to the terms and conditions provided hereinbelow. Seller agrees to deliver to City all of the Documents and other items described in Sections 5.1(d), 5.1(e) and 5.1(f) within five (5) business days after the date of mutual execution hereof, provided that if Seller fails to do so, then the expiration of the Due Diligence Period shall be extended by the number of days after the end of such five-day delivery period that Seller delivers all such items to City. Notwithstanding anything to the contrary in this Agreement, City shall have the right to terminate this Agreement without cost at any time before the end of the Due Diligence Period.

##### **4.2 Energy Consumption**

City acknowledges and agrees that Seller delivered the Disclosure Summary Sheet, Statement of Energy Performance, Data Checklist, and Facility Summary (all as defined in the California Code of Regulations, Title 20, Division 2, Chapter 4, Article 9, Section 1680) for the Property, copies of which are attached as Schedule 1 to this Agreement, no less than 24 hours prior to City's execution of this Agreement.

#### **5. ENTRY**

During the Due Diligence Period and at all times prior to the Closing Date but with any notice as required by the Lease, Seller shall afford City and its Agents reasonable access to the Property for the purposes of satisfying City with respect to the representations, warranties and covenants of Seller contained herein and the satisfaction of the Conditions Precedent including, without limitation, the drilling of test wells and the taking of soil borings. City hereby agrees to indemnify and hold Seller harmless from any damage or injury to persons or property caused by City or its Agents during any such entries onto the Property prior to the Closing, except to the extent such damage or injury is caused by the acts or omissions of Seller or any of its Agents. The foregoing Indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Property, including the Improvements. In the event this Agreement is terminated for any reason, City shall restore the Property to substantially the condition it was found subject to applicable laws. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

##### **5.1 City's Conditions to Closing**

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

(a) City shall have reviewed and approved title to the Property, as follows:

(i) Within five (5) business days after the date City and Seller execute this Agreement, Seller shall deliver to Buyer to the extent Seller knows of such documents copies of any existing or proposed easements, covenants, restrictions, agreements or other documents that affect the Property, and are not disclosed by the Preliminary Report attached as Exhibit B, or, if Seller knows of no such documents, a written certification of Seller to that effect; and

(ii) City may, at its option, arrange for an "as-built" survey of the Real Property and Improvements prepared by a licensed surveyor (the "Survey"). Such survey shall be acceptable to, and certified to, City and Title Company and in sufficient detail to provide the basis for and the Title Policy without boundary, encroachment or survey exceptions.

City shall advise Seller, prior to the end of the Due Diligence period, what exceptions to title, if any, City is willing to accept (the "Accepted Conditions of Title"). City's failure to so advise Seller within such period shall be deemed disapproval of title. Seller shall have ten (10) days after receipt of City's notice of any objections to title to give City: (A) evidence satisfactory to City of the removal of all objectionable exceptions from title or that such exceptions will be removed or cured on or before the Closing; or (B) notice that Seller elects not to cause such exceptions to be removed. If Seller gives notice under clause (B), City shall have ten (10) business days to elect to proceed with the purchase or terminate this Agreement. If City shall fail to give Seller notice of its election within such ten (10) days, City shall be deemed to have elected to terminate this Agreement. If Seller gives notice pursuant to clause (A) and fails to remove any such objectionable exceptions from title prior to the Closing Date, and City is unwilling to take title subject thereto, Seller shall be in default hereunder and City shall have the rights and remedies provided herein or at law or in equity.

(b) City's review and approval, within the Due Diligence Period, of the physical and environmental conditions of the Property, including, without limitation, structural, mechanical, electrical and other physical conditions of the Property. Such review may include an examination for the presence or absence of any Hazardous Material (as defined in Section 8.1(j)) City shall be responsible for performing or arranging any such reviews at City's expense, provided that if City's consultants reasonably determine that, based upon their Phase I examination, a Phase II examination is necessary with respect to all or a part of the Real Property, City may elect to perform a Phase II examination

If any of City's investigations reveal any contamination of the Property with any Hazardous Material, then City may, at its sole election, by written notice to Seller on or before the end of the Due Diligence Period: (i) request that Seller, at Seller's sole cost, complete before the Closing through duly licensed contractors approved by City such activities as are necessary to cleanup, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Material located on or under the Property in compliance with all governmental laws, rules, regulations and requirements and in accordance with a written remediation plan approved by City in its sole discretion and by all regulatory agencies with jurisdiction; (ii) terminate this Agreement; or (iii) request that Seller provide City with a credit against the Purchase Price for the a negotiated cost including testing and consultants to remediate the Hazardous Materials. If City notifies Seller of its election to request that Seller remediate the contamination as provided in clause (i) above or provide a credit as provided in clause, (iii) Seller shall in its sole discretion have fifteen (15) days after receipt of City's notice (the "Negotiation Period"), to agree to remediate the contamination, provide a negotiated credit in an amount agreed to by Seller and City or to elect not to remediate or provide any credit to City. If Seller notifies City within that fifteen day period of its election not to remediate the contamination or provide a negotiated credit, then City shall have the right to terminate this Agreement upon ten (10) days' notice to Seller. If Seller



fails to respond in writing to Buyer within fifteen days, then Seller shall be deemed to have elected not to remediate or provide any credit to City. If Seller chooses to remediate the contamination as provided in clause (i) above the Closing may be extended for a reasonable time to enable Seller to complete such remediation, provided any such extension shall be subject to City's prior written approval, which City may give or withhold in its sole discretion. If Seller does not complete the remediation within the agreed upon period, then City may terminate this Agreement or proceed with the purchase without the remediation or the credit.

(c) City's review and approval, within the Due Diligence Period, of the compliance of the Property with all applicable laws, regulations, permits and approvals.

(d) City's review and approval, within the Due Diligence Period, of (i) the following documents, all to the extent such documents exist and are either in the possession or control of Seller or its affiliates: structural calculations for the Improvements; site plans; certified copies of the as-built plans and specifications for the Improvements; recent inspection reports by Seller's engineers; service contracts; utility contracts; maintenance contracts; employment contracts, management contracts; brokerage and leasing commission agreements which may continue after Closing; certificates of occupancy; presently effective warranties or guaranties received by Seller from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Improvements or any tenant improvements; insurance policies, insurance certificates of tenants, and reports of insurance carriers insuring the Property and each portion thereof respecting the claims history of the Property; environmental reports, studies, surveys, tests and assessments; soils and geotechnical reports; and any other contracts or documents of significance to the Property (collectively, the "Documents"); and (ii) such other information relating to the Property that is specifically requested by City of Seller in writing during the Due Diligence Period and which is either in the possession or control of Seller or its affiliates (collectively, the "Other Information").

(e) City's review and approval, within the Due Diligence Period, of a certified rent roll showing rent payment history for the three (3) most recent calendar years before the Effective Date.

(f) City's review and approval, within the Due Diligence Period, of Seller's Tax Return income and expense statements for the Property for the three (3) most recent calendar years before the Effective Date.

(g) City's review and approval, within the Due Diligence Period, of: (i) the Lease, (ii) tenant correspondence files, and (iii) a current rent roll for the Property, prepared by Seller and listing for each tenant the name, location of leased premises, rent, obligation for reimbursement of expenses, amount of security deposit and rent paid more than thirty (30) days in advance, lease commencement date, lease termination date, lease expansion or extension options, option rent, and cost of living or other rent escalation clauses, any free rent, operating expense abatements or other unexpired concessions, and a description of any uncured defaults.

(h) Seller's obtaining and delivering to City, at least five (5) business days before the Closing Date, a tenant estoppel certificate in form and substance satisfactory to City from the tenant under the Lease. Such certificate shall be in the form attached hereto as Exhibit G and shall be dated no earlier than thirty (30) days prior to the Closing Date. Seller shall use reasonable commercial efforts to obtain such a tenant estoppel certificate, but the failure of Seller to obtain such an estoppel shall not be a default hereunder and in such instance, Buyer's sole remedies shall be either to terminate this Agreement with no further liability of the Seller or close the transaction without the tenant estoppel certificate.

(i) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct when made and shall be true and correct as of the Closing Date. At the Closing Seller shall deliver to City a certificate certifying that each of Seller's representations and warranties contained in Section 8.1 [Representations and Warranties of Seller] below are true and correct as of the Closing Date.

(j) The physical condition of the Property shall be substantially the same on the Closing Date as on the date of City's execution of this Agreement, reasonable wear and tear and loss by casualty excepted (subject to the provisions of Section 9.1 [Risk of Loss]), and, as of the Closing Date, there shall be no litigation or administrative agency or other governmental proceeding, pending or threatened, which after the Closing would materially adversely affect the value of the Property or the ability of City to operate the Property for its intended use, and no proceedings shall be pending or threatened which could or would cause the change, redesignation or other modification of the zoning classification of, or of any building or environmental code requirements applicable to, any of the Property.

(k) Title Company shall be committed at the Closing to issue to City, or its nominee, the Title Policy as provided in Section 3.2 [Title Insurance] , subject only to the Accepted Conditions of Title together with the same endorsements as the Title Policy

(l) Seller shall have delivered the items described in Section 6.3 below [Seller's Delivery of Documents] on or before the Closing.

(m)The City's Board of Supervisors shall, in its sole discretion, enacted a resolution approving this Agreement and the City's purchase of the Property, and the Mayor shall have signed or not vetoed the same.

The Conditions Precedent contained in the foregoing Subsections (a) through (m) are solely for the benefit of City. If any Condition Precedent is not satisfied, City shall have the right in its sole discretion either to waive in writing the Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the Conditions Precedent described in item (m) above may not be waived. The waiver of any Condition Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. If City shall not have approved or waived in writing all of the due diligence conditions by the end of the Due Diligence Period, then this Agreement shall automatically terminate; provided, the City may alternatively extend the Due Diligence Period and the Closing Date for a period of no more than forty-five (45) days to allow such Conditions Precedent to be satisfied, subject to City's further right to terminate this Agreement upon the expiration of the period of any such extension if all such Conditions Precedent have not been satisfied.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title or escrow fees incurred by City, and neither party shall have any further rights or obligations hereunder, or (2) bring a legal action for specific performance.

## **5.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City at no cost to Seller with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

## **5.3 Property Exchange.**

Because the City is empowered to initiate proceedings under its power of eminent domain, Seller intends to treat any gain or loss realized from the sale of the Property as sold under imminent threat of condemnation pursuant to Section 1033 of Internal Revenue Code of 1986 (the "Code"). If for any reason, Seller elects to do a 1031 exchange then City agrees to cooperate with Seller and any escrow holder or exchange facilitator selected by Seller in facilitating a tax-deferred exchange pursuant to the Code, undertaken by Seller with respect to the Property, provided that Seller shall Indemnify the City against all costs and liabilities incurred by the City in connection with any such exchange, and provided further that: (a) consummation or accomplishment of such an exchange shall not be a condition precedent or a condition subsequent to either party's obligations under this Agreement; (b) Seller shall effect the exchange through an assignment of this Agreement, or its rights under this Agreement, to a qualified intermediary without release of Seller from any liability hereunder; (c) Seller shall pay any additional costs that would not otherwise have been incurred by Seller or the City had Seller not undertaken such exchange; and (d) the City shall not be required to take an assignment of the purchase for purposes of consummating the exchange. Neither party by this agreement or acquiescence to an exchange shall have its rights under this Agreement affected or diminished in any manner or be responsible for compliance with or be deemed to have warranted to the other party that the exchange in fact complies with Section 1031 of the Code. Nothing in this section shall create any liability for Seller or the City if the Closing does not occur for any reason, and neither party shall have the right to assert that this section creates the basis for a claim against the other party.

## **6. ESCROW AND CLOSING**

### **6.1 Opening of Escrow**

On or before the Effective Date (as defined in Article 11 [General Provisions]), the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

### **6.2 Closing Date**

The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held and delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 455 Market Street #2100, San Francisco,

California 94105, on the later of October 1, 2016 or the date that is ninety (90) days from Seller's notification to Buyer of a scheduled closing date (the "Closing Date Notice"), or on such earlier or later date as City and Seller may mutually agree (the "Closing Date"), subject to the provisions of Article 5 [Conditions Precedent]. If Seller does not deliver the Closing Date Notice on or before September 30, 2018, then Buyer shall have the right, at any time thereafter so long as this Agreement remains in effect, to deliver the Closing Date Notice to Seller. Upon Seller's or Buyer's delivery of the Closing Date Notice as set forth above, the Closing Date shall be the day that is 90 days after delivery of the notice, provided if the 90th day falls on a Saturday, Sunday or holiday, then it shall be the first business day thereafter.

### **6.3 Seller's Delivery of Documents**

At or before the Closing, Seller shall deliver to City, or the Nominee, through escrow, the following:

- (a) a duly executed and acknowledged Deed;
- (b) four (4) duly executed counterparts of the Assignment of Lease;
- (c) duly executed tenant estoppel certificates as required pursuant to Section 5.1(g) hereof;
- (d) originals of the Documents, the Lease and any other items relating to the ownership or operation of the Property not previously delivered to City;
- (e) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit H, and on which City is entitled to rely, that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (f) a properly executed California Franchise Tax Board Form 590 certifying that Seller is a California resident if Seller is an individual or Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Section 18662 of the State Tax Code;
- (g) such resolutions, authorizations, or other partnership documents or agreements relating to Seller and its partners as City or the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (h) closing statement in form and content satisfactory to City and Seller; and
- (i) the duly executed certificate regarding the continued accuracy of Seller's representations and warranties as required by Section 5.1(i) hereof.

### **6.4 City's Delivery of Documents and Funds**

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

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

- (b) four (4) duly executed counterparts of the Assignment of Lease;
- (c) a closing statement in form and content satisfactory to City and Seller; and
- (d) the Purchase Price, as provided in Article 2 hereof.

## **6.5 Other Documents**

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof, including, without limitation, an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by Seller, City and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit I and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

## **7. EXPENSES AND TAXES**

### **7.1 Rent and Other Apportionments**

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

#### **(a) Rent**

Rent under the Leases shall be apportioned as of the Closing Date, regardless of whether or not such rent has been paid to Seller. With respect to any rent arrearage arising under the Leases, after the Closing, City shall pay to Seller any rent actually collected which is applicable to the period preceding the Closing Date; provided, however, that all rent collected by City shall be applied first to all unpaid rent accruing on and after the Closing Date, and then to unpaid rent accruing prior to the Closing Date. City shall not be obligated to take any steps to recover any rent arrearage. Seller shall be permitted to do so through a legal action directly against the tenant for breach of contract, and without City involvement, but shall have no right to bring an unlawful detainer action against the tenant. Seller shall indemnify City and defend City any tenant claim resulting from Seller's action against tenant.

#### **(b) Leasing Costs**

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

#### **(c) Other Tenant Charges**

Where the Leases contain tenant obligations for taxes, common area expenses, operating expenses or additional charges of any other nature, and where Seller shall have collected any portion thereof in excess of amounts owed by Seller for such items for the period prior to the Closing Date, there shall be an adjustment and credit given to City on the Closing Date for such excess amounts collected. City shall apply all such excess amounts to the charges

owed by City for such items for the period after the Closing Date and, if required by the Leases, shall rebate or credit tenants with any remainder. If it is determined that the amount collected during Seller's ownership period exceeded expenses incurred during the same period by more than the amount previously credited to City at Closing, then Seller shall promptly pay the deficiency to City.

#### **(d) Utility Charges**

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

#### **(e) Other Apportionments**

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

### **7.2 Closing Costs**

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

### **7.3 Real Estate Taxes and Special Assessments**

General real estate taxes payable for the tax year prior to year of Closing and all prior years shall be paid by Seller at or before the Closing. General real estate taxes payable for the tax year of the Closing shall be prorated through escrow by Seller and City as of the Closing Date. At or before the Closing, Seller shall pay the full amount of any special assessments against the Property, including, without limitation, interest payable thereon, applicable to the period prior the Closing Date.

### **7.4 Preliminary Closing Adjustment**

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

### **7.5 Post-Closing Reconciliation**

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

## **7.6 Survival**

The provisions of this Section shall survive the Closing.

## **8. REPRESENTATIONS AND WARRANTIES**

### **8.1 As Is Sale**

BUYER ACKNOWLEDGES AND AGREES THAT (i) THE PROPERTY IS TO BE PURCHASED BY BUYER "AS IS" IN ITS THEN-EXISTING PHYSICAL CONDITION AS OF THE CLOSE OF ESCROW, WITHOUT ANY IMPLIED OR EXPRESS WARRANTY OR REPRESENTATION WHATSOEVER BY SELLER, EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, (ii) THE CLOSE OF ESCROW HEREUNDER WILL BE DEEMED ACCEPTANCE BY BUYER OF THE PROPERTY IN ITS THEN EXISTING "AS IS" CONDITION, EXCEPT AS EXPLICITLY SET FORTH IN THIS AGREEMENT, (iii) NEITHER SELLER NOR ANY OF SELLER'S EMPLOYEES, AGENTS OR REPRESENTATIVES HAS MADE ANY WARRANTIES, REPRESENTATIONS OR AGREEMENTS BY OR ON BEHALF OF SELLER NOT EXPRESSLY SET FORTH IN THIS AGREEMENT AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION THE PRESENT USE OR CONDITION OF THE PROPERTY, AND THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE THEREOF; AND (iv) AS OF THE CLOSING DATE, BUYER SHALL HAVE HAD AN ADEQUATE OPPORTUNITY TO REVIEW BOUNDARIES OF THE PROPERTY; ALL EASEMENTS, RESTRICTIVE COVENANTS AND CONDITIONS, AND OTHER MATTERS AFFECTING TITLE TO THE PROPERTY; THE COMPACTION AND COMPOSITION OF SOILS UNDER THE PROPERTY; THE PHYSICAL CONDITION OF STRUCTURES AND OTHER IMPROVEMENTS ON THE PROPERTY; THE ZONING, LAND USE, AND OTHER LAWS APPLICABLE TO ITS INTENDED DEVELOPMENT AND/OR USE AND OPERATION OF THE PROPERTY; THE PRESENCE OF HAZARDOUS MATERIALS IN, ON OR ABOUT THE PROPERTY OR WITHIN THE SOILS OR GROUNDWATER UNDERNEATH THE SURFACE OF THE PROPERTY; BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER DOES NOT WARRANT THE ACCURACY OF ANY INFORMATION OF CONCLUSIONS CONTAINED IN ANY THIRD PARTY REPORTS THAT MAY BE DISCLOSED BY OR DELIVERED BY SELLER TO BUYER.

### **8.2 Representations and Warranties of Seller**

Seller represents and warrants to and covenants with City as follows:

(a) To the best of Seller's knowledge, it has received no notice that it is in violation of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act). If it receives any such notice prior to the Closing, it will immediately forward same to Buyer.

**(b)** The Lease, Documents and Other Information furnished to City are all of the relevant documents and information pertaining to the condition and operation of the Property to the extent available to Seller, and are and at the time of Closing will be true, correct and complete copies of such documents and the Lease is and at the time of Closing will be in full force and effect. Seller is not in default of its obligations under the Lease, and Seller is not aware of any defaults by the tenant and has not received any default notices from the tenant. If Seller becomes aware of any tenant defaults or if tenant sends notice to Seller of any default under the Lease prior to the time of Closing, Seller shall promptly advise Buyer of same and provide a copy of any notice of default. The existence of any such default by Seller or tenant will allow Buyer to determine that a closing condition has not been satisfied under Section 5.1.

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

**(d)** To the best of Seller's knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property other than those disclosed in the Title Report. To the best of Seller's knowledge, there are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

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

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

**(g)** This Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

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

**(i)** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from operating the Property after Closing in the normal manner in which it is intended.



**(j)** Seller hereby represents and warrants to and covenants with City that, to the best of Seller's knowledge: (i) the Property is not in violation of any Environmental Laws; (ii) that the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material; (iii) that there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property; and (iv) that there has been no release of any Hazardous Material in or on the Property, and there are no underground storage tanks in or on the Property. As used herein, the following terms shall have the meanings below:

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

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

**(iii)** "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

**(k)** At the time of Closing there will be no outstanding written or oral contracts made by Seller for any of the Improvements that have not been fully paid for and Seller shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Property prior to the time of Closing. There are no obligations in connection with the Property which will be binding upon City after Closing except for (i) matters which are set forth in the Preliminary Report and (ii) the Lease.

**(l)** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

**(m)** There are no free rent, operating expense abatements, incomplete tenant improvements, rebates, allowances, or other unexpired concessions (collectively referred to as "Offsets") or any termination, extension, cancellation or expansion rights under the Lease. Seller has paid in full any of landlord's leasing costs incurred by Seller in connection with any tenant improvements.

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

(o) The copies of the Lease delivered by Seller to City on or before the commencement of the Due Diligence Period contain all of the information pertaining to any rights of any parties to occupy the Property, including, without limitation, all information regarding any rent concessions, over-standard tenant improvement allowances or other inducements to lease. None of the tenants of the Property has indicated to Seller either orally or in writing its intent to terminate its respective Lease prior to expiration of the respective term of such Lease.

(p) Except as otherwise expressly set forth herein, the Property is sold as-is with no warranties by Seller.

## 9. RISK OF LOSS AND POSSESSION

### 9.1 Risk of Loss

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

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount thereunder, and the insurer agrees to timely pay for the entire cost of such repair, and such damage or destruction would cost less than Purchase Price (the "Threshold Damage Amount") to repair or restore, then this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein. In such event, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement shall be consummated with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction. If the parties are unable to agree to an amount to be the cost of repairing such damage or destruction despite good faith efforts to do so, then either party hereto may terminate the Agreement on ten (10) days' notice to the other party, with no further liability.

(c) If the cost of such damage or destruction would exceed the Threshold Damage Amount, then, City shall have the right, at its election, to (i) terminate this Agreement in its entirety or (ii) proceed with the transaction contemplated by this Agreement with City receiving a credit against the Purchase Price equal to Seller's deductible amount under existing insurance applicable to the loss, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City. City shall have thirty (30) days after Seller notifies City that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its

entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (c) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination. If City elects not to terminate this Agreement, Seller shall give City a credit against the Purchase Price at the Closing in the amount the Insurance Proceeds.

(d) If part but not all of the Property is the subject of a condemnation action, then City may elect to terminate this Agreement or it may elect to proceed and assume Seller's rights in the condemnation action. Seller shall not accept a condemnation award during this Agreement without prior notice to City. If Seller accepts a condemnation award and City elects to proceed with the Closing, City shall receive a credit against the Purchase Price in the amount of the condemnation award.

## **9.2 Insurance**

Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller shall furnish City with evidence of such insurance upon request by City.

## **9.3 Possession**

Subject to provisions of the Lease, possession of the Property shall be delivered to City on the Closing Date.

# **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

## **10.1 Maintenance of the Property by Seller**

Between the date of Seller's execution of this Agreement and the Closing, Seller shall maintain the Property in its current order, condition and repair, reasonable wear and tear excepted, and shall perform all work required to be done by the landlord under the terms of any Lease and shall make all repairs, maintenance and replacements of the Improvements and otherwise operate the Property in the same manner as before the making of this Agreement, as if Seller were retaining the Property.

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

Seller shall not enter into any lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property to the extent Seller has the right of approval under the terms of the Lease, or waive any rights of Seller under the Lease, without in each instance obtaining City's prior written consent thereto. During the term of this Agreement, Seller shall notify Buyer of any such sublease, assignment or agreement of which Seller becomes aware, and provide a copy of same if Seller obtains a copy, even if Seller does not have approval rights over the sublease, assignment or agreement. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management or other agreements affecting the Property other than the current leases unless City agrees in writing to assume the contract before the Closing.

## 11. GENERAL PROVISIONS

### 11.1 Notices

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) day after being deposited with a reliable overnight courier service, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

City: Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property  
Re: 450 Sixth Street Acquisition  
Facsimile No.: (415) 552-9216

with copy to: Charles Sullivan  
Deputy City Attorney  
Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Re: 450 Sixth Street Acquisition

Seller: Walter Arnold  
45475 Pueblo Road  
Indian Wells, CA 92210  
email: waltwal@yahoo.com

With a copy to: Bradley Matteoni  
Matteoni, O'Laughlin & Hechtman  
848 The Alameda  
San Jose, CA 95126  
Facsimile No.: (408 ) 293-4004

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above or by email, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile or by email. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

### 11.2 Brokers and Finders

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein. In the event that any 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 his or her claim shall be

responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

### **11.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the Nominee or one (1) or more assignees at any time before the Closing Date.

### **11.4 Amendments**

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

### **11.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing for a period of twelve (12) months. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

### **11.6 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

### **11.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

### **11.8 Parties and Their Agents; Approvals**

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

## **11.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

## **11.10 Attorneys' Fees**

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall have such remedies as are available at law or in equity and shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

## **11.11 Sunshine Ordinance**

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

## **11.12 Conflicts of Interest**

Through its execution of this Agreement, Seller acknowledges that it is familiar with the provisions of 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 provision, and agrees that if Seller becomes aware of any such fact during the term of this Agreement, Seller shall immediately notify the City.

### **11.13 Notification of Limitations on Contributions**

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

### **11.14 Non-Liability of City Officials, Employees and Agents**

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

### **11.15 Counterparts**

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

### **11.16 Effective Date**

As used herein, the term "Effective Date" shall mean the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both parties.

### **11.17 Severability**

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

**11.18 Agreement Not to Market Prior to Effective Date**

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

**11.19 Acceptance of Agreement by Seller**

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on \_\_\_\_\_, 20\_\_\_\_.

**11.20 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.21 Time is of the Essence.**

Time is of the essence with respect to the performance of all terms, covenants, conditions and provisions of this Agreement.

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

*[SIGNATURES ON FOLLOWING PAGES]*



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

SELLER:

Joan Spargo, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Joan Spargo" dated April 4, 2001, as to an undivided 3/8 interest

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Walter A. Arnold, in Trust, as Trustee of the "Stella Arnold 1987 Exempt Trust FBO Walter A. Arnold" dated April 4, 2001, as to an undivided 3/8 interest

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Kenneth Musso, as to an undivided 1/12 interest;  
David Musso, as to an undivided 1/12 interest

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Arlene Ripley, as to an undivided 1/12 interest

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

Date: \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Charles Sullivan  
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between City and Seller.

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

For APN/Parcel ID(s): LOT 043, BLOCK 3759

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

**PARCEL ONE:**

BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF SIXTH STREET,  
DISTANT THEREON 200

FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF BRYANT STREET;  
RUNNING THENCE

NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SIXTH STREET 50 FEET;  
THENCE AT A

RIGHT ANGLE SOUTHWESTERLY 90 FEET; THENCE AT A RIGHT ANGLE  
SOUTHEASTERLY 50 FEET;

THENCE AT A RIGHT ANGLE NORTHEASTERLY 90 FEET TO THE POINT OF  
BEGINNING.

BEING PORTION OF 100 VARA BLOCK NO. 397.

**PARCEL TWO:**

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF HARRIET STREET,  
DISTANT THEREON 300

FEET SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF HARRISON STREET;  
RUNNING THENCE

SOUTHEASTERLY ALONG SAID NORTHEASTERLY LINE OF HARRIET STREET 20  
FEET; THENCE AT A

RIGHT ANGLE NORTHEASTERLY 75 FEET; THENCE AT A RIGHT ANGLE  
NORTHWESTERLY 20 FEET;

THENCE AT A RIGHT ANGLE SOUTHWESTERLY 75 FEET TO THE POINT OF  
BEGINNING.

BEING A PORTION OF 100 VARA BLOCK NO. 397.

**EXHIBIT B**

**PRELIMINARY TITLE REPORT**

**EXHIBIT C**

**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

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

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (CA Govt. Code § 27383)  
and Documentary Transfer Tax (CA Rev. & Tax Code  
§ 11922 and S.F. Bus. & Tax Reg. Code § 1105)

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

**GRANT DEED**

(Assessor's Parcel No. \_\_\_\_\_)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
\_\_\_\_\_, a \_\_\_\_\_, hereby grants to  
the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property  
located in the City and County of San Francisco, State of California, described on Exhibit A  
attached hereto and made a part hereof (the "Property").

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

*[SIGNATURES ON FOLLOWING PAGE]*

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_, a \_\_\_\_\_

\_\_\_\_\_, By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

\_\_\_\_\_, By: \_\_\_\_\_  
NAME

Its: \_\_\_\_\_

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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CERTIFICATE OF ACCEPTANCE

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

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

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

**EXHIBIT D**

**THE LEASE**

**EXHIBIT E**

**INTENTIONALLY OMITTED**

## EXHIBIT F

### ASSIGNMENT OF LEASE

THIS ASSIGNMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("Assignor"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Assignee").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), Assignor hereby assigns and transfers to Assignee all of Assignor's right, title, claim and interest in and under that certain Lease executed with respect to that certain real property commonly known as 450 Sixth Street, San Francisco (the "Property"), a copy of which is attached as Schedule 1 (the "Lease").

ASSIGNOR AND ASSIGNEE FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. Assignor represents and warrants that as of the Effective Date (i) the Lease attached Schedule 1 is a true, correct and complete copy of the Lease, and (ii) there are no other leases or occupancy agreements affecting any of the Property. As of the Effective Date, there are no assignments of or agreements to assign the Lease to any other party.

2. Assignor agrees to indemnify Assignee against and hold Assignee harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), resulting from landlord's obligations under the Lease arising before the Effective Date.

3. Except as otherwise set forth in the Purchase Agreement (as defined below), Assignee assumes all of the landlord's obligations under the Leases arising from and after the Effective Date, and agrees to indemnify Assignor against and hold Assignor harmless from any and all costs, liabilities, losses, damages or expenses (including, without limitation, reasonable attorneys' fees), resulting from the landlord's obligations under the Lease arising on and after the Effective Date.

4. Any rental and other payments under the Leases shall be prorated between the parties as provided in the Purchase Agreement between Assignor, as Seller, and Assignee, as City, dated as of \_\_\_\_\_ (the "Purchase Agreement").

5. In the event of any litigation between Assignor and Assignee arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees, as set forth in the Purchase Agreement.

6. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

7. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

8. For purposes of this Assignment, the "Effective Date" shall be the date of the Closing (as defined in the Purchase Agreement).

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

*[SIGNATURES ON FOLLOWING PAGE]*

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

ASSIGNOR:

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

ASSIGNEE:

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: \_\_\_\_\_  
[DEPUTY'S NAME]  
Deputy City Attorney

**EXHIBIT G**

**TENANT'S ESTOPPEL CERTIFICATE**

Requires seller information

DATE: JANUARY \_\_\_\_, 2016

TENANT: Beauty Systems Group, Inc., a Delaware corporation

PREMISES: Approximately 4,500 sq. ft. located at 450 Sixth Street, San Francisco

LEASE DATE: March 6, 1996 and amended by the First, Second, Third and Fourth Amendments

COMMENCEMENT DATE: May 1, 1996

EXPIRATION DATE: April 30, 2026

OPTIONS: One (1) further Extension Option for sixty (60) months (May 1, 2026 through April 30, 2026) at \$11,200.00 per month with 1996 Base Year Expenses

BASE MONTHLY RENT: To April 30, 2016: \$ 8,000.00  
May 1, 2016 to April 30, 2021: \$ 9,250.00  
May 1, 2011 to April 30, 2026: \$10,000.00

DATE RENT AND OPERATING EXPENSE PAYMENTS ARE DUE: First of the month

BASE YEAR TAXES: Requires seller information  
\_\_\_\_\_

BASE YEAR INSURANCE Requires seller information  
\_\_\_\_\_

BASE YEAR LANDLORD MAINTENANCE: \_\_\_\_\_

OPERATING EXPENSES: \_\_\_\_\_

Requires seller information

SECURITY DEPOSIT:

Requires seller information

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PURCHASE OPTION:

None

THE UNDERSIGNED, AS TENANT OF THE ABOVE REFERENCED PREMISES ("PREMISES") UNDER THE LEASE DATED AS OF THE ABOVE-REFERENCED LEASE DATE, BETWEEN \_\_\_\_\_ ("LANDLORD") AND TENANT, HEREBY CERTIFIES, REPRESENTS AND WARRANTS TO THE CITY AND COUNTY OF SAN FRANCISCO ("CITY"), AND ITS ASSIGNEES, AS FOLLOWS:

1. Accuracy. All of the information specified above and elsewhere in this Certificate is accurate as of the date hereof.
2. Lease. The copy of the Lease including the four (4) Addendums to Lease attached hereto as Exhibit A is a true and correct copy of the Lease. The Lease is valid and in full force and effect. The Lease contains all of the understandings and agreements between Landlord and Tenant and has not been amended, supplemented or changed by letter agreement or otherwise, except as follows (if none, indicate so by writing "NONE" below): \_\_\_\_\_
3. Premises. The Premises consist of approximately 4,500 sq. ft. , and Tenant does not have any options to expand the Premises.
4. Acceptance of Premises. Tenant has accepted possession of the Premises and is currently occupying the Premises. There are no unreimbursed expenses due Tenant including, but not limited to, capital expense reimbursements.
5. Lease Term. The term of the Lease commenced and will expire on the dates specified above, subject to the above option to renew.

**6. Base Year Expenses**

Requires seller information

7. Rental Escalations. The current monthly base rental specified above is subject to the following escalation adjustments (if none, indicate so by writing "NONE" below):

8. No Defaults/Claims. Neither Tenant nor Landlord under the Lease is in default under any terms of the Lease nor has any event occurred which with the passage of time (after notice, if any, required under the Lease) would become an event of default under the Lease. Tenant has no claims, counterclaims, defenses or setoffs against Landlord arising from the Lease,



nor is Tenant entitled to any concession, rebate, allowance or free rent for any period after this certification. Tenant has no complaints or disputes with Landlord regarding the overall operation and maintenance of the property within which the Premises are located (the "Property"), or otherwise.

9. No Advance Payments. No rent has been paid in advance by Tenant except for the current month's rent.

10. No Purchase Rights. Tenant has no option to purchase, or right of first refusal to purchase, the Premises, the Property or any interest therein.

11. Notification by Tenant. From the date of this Certificate and continuing until, Tenant agrees to notify City immediately of the occurrence of any event or the discovery of any fact that would make any representation contained in this Certificate inaccurate as of the date hereof or as of any future date.

12. No Sublease/Assignment. Tenant has not entered into any sublease, assignment or any other agreement transferring any of its interest in the Lease or the Premises.

13. No Notice. Tenant has not received notice of any assignment, hypothecation, mortgage, or pledge of Landlord's interest in the Lease or the rents or other payments payable thereunder, except those listed below (if none, indicate so by writing "NONE" below):

14. Hazardous Materials. Tenant has not used, treated, stored, disposed of or released any Hazardous Materials on or about the Premises or the Property. Tenant does not have any permits, registrations or identification numbers issued by the United States Environmental Protection Agency or by any state, county, municipal or administrative agencies with respect to its operation on the Premises, except for any stated below, and except as stated below no such governmental permits, registrations or identification numbers are required with respect to Tenant's operations on the Premises. For the purposes hereof, the term "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids, and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

15. Reliance. Tenant recognizes and acknowledges it is making these representations to City with the intent that City, and any of its assigns, will fully rely on Tenant's representations.

16. Binding. The provisions hereof shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Tenant and City.

17. Due Execution and Authorization. The undersigned, and the person(s) executing this Certificate on behalf of the undersigned, represent and warrant that they are duly authorized to execute this Certificate on behalf of Tenant and to bind Tenant hereto.

EXECUTED BY TENANT ON THE DATE FIRST WRITTEN ABOVE.

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

By:

\_\_\_\_\_  
[NAME]

\_\_\_\_\_  
[TITLE]

**EXHIBIT H**

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

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by \_\_\_\_\_

\_\_\_\_\_, a \_\_\_\_\_  
("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is \_\_\_\_\_; and

3. Transferor's office address is \_\_\_\_\_

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

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

Dated: \_\_\_\_\_, 20\_\_\_\_.

On behalf of:

\_\_\_\_\_,  
[NAME]

a \_\_\_\_\_

By: \_\_\_\_\_  
[NAME]

Its: \_\_\_\_\_

## EXHIBIT I

### DESIGNATION AGREEMENT

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 20\_\_\_\_, is by and between \_\_\_\_\_, a \_\_\_\_\_ ("Seller"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and \_\_\_\_\_ TITLE INSURANCE COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and between Seller and City, dated \_\_\_\_\_, 20\_\_\_\_ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller, City and Title Company agree as follows:

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or criminal penalties imposed by law. Accordingly, Seller hereby certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is \_\_\_\_\_.

4. The names and addresses of the parties hereto are as follows:

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: (\_\_\_\_) \_\_\_\_\_

CITY:

Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Facsimile No.: (415) 552-9216

TITLE COMPANY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: (\_\_\_\_) \_\_\_\_\_

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.

*[SIGNATURES ON FOLLOWING PAGE]*

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

SELLER:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile No.: (\_\_\_\_) \_\_\_\_\_

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

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

Date: \_\_\_\_\_

Title Company:

\_\_\_\_\_ TITLE INSURANCE  
COMPANY

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_

