File No. 171208 Committee Item No. 11
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** December 7, 2017

Board of Supervisors Meeting **Date** _____

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Completed by: Victor Young **Date** December 1, 2017
Completed by: _____ **Date** _____

[Real Property Lease - Community Arts Stabilization Trust - Geneva Car Barn and Powerhouse - 2301 San Jose Avenue - $0 Initial Rent]

Resolution authorizing a 55-year lease for the Powerhouse building of the Geneva Car Barn and Powerhouse and a portion of adjacent City property with $0 initial rent with an affiliate of the Community Arts Stabilization Trust; affirming the Planning Department's determination under the California Environmental Quality Act; and finding the lease is in conformance with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

WHEREAS, The City and County of San Francisco ("City") owns certain real property located at 2301 San Jose Avenue on a portion of Assessor's Parcel Block No. 6972, Lot No. 036, commonly known as the Geneva Car Barn and Powerhouse ("GCB"); the GCB is under the jurisdiction of the Recreation and Park Commission, managed by the Recreation and Park Department ("RPD"), and adjacent to Cameron Beach Yard, which is a rail yard under the jurisdiction of the San Francisco Municipal Transportation Agency ("SFMTA"); and

WHEREAS, The GCB is the last physical reminder of the City's first electric railway system and has been vacant since approximately 1989; RPD, in partnership with the community, has developed a vision to renovate the GCB's Powerhouse building (the "Powerhouse") into a community arts center (the "Project"); and

WHEREAS, Because the Project will require significant investment, RPD desires to use New Market Tax Credits ("NMTCs") and Historic Rehabilitation Tax Credits ("HRTCs") to help finance the Project; and

WHEREAS, The NMTC program (U.S. Internal Revenue Code, Section 45D et seq.) was designed to attract investors into underserved communities and to provide private capital investment into qualified projects that may not otherwise be completed by allowing investors

to receive federal tax credits for seven years following the date of their initial investment (the "Tax Credit Period"); and

WHEREAS, The San Francisco Community Investment Fund ("SFCIF"), a California nonprofit public benefit corporation, serves as a community development entity ("CDE") to apply for NMTC allocations from the U.S. Treasury; SFCIF has received an allocation of NMTC from the Community Development Financial Institution Fund of the U.S. Treasury and has allocated $13,000,000 in NMTCs to the Project; and

WHEREAS, The HRTC program (U.S. Internal Revenue Code, Section 47 et seq.) was designed to encourage private sector investment in the rehabilitation and re-use of historic buildings by allowing investors to receive a 20% tax credit for the certified rehabilitation of certified historic structures; the National Park Service administers the HRTC program with the Internal Revenue Service in partnership with State Historic Preservation Offices; and

WHEREAS, The Powerhouse is on the National Register of Historic Places and as such is eligible for HRTCs; based on current projections, the Project is expected to generate approximately $2,464,353 in HRTCs; and

WHEREAS, NMTCs and HRTCs are used to offset amounts that would otherwise be due and owing to the federal government, and do not affect or limit any taxes payable to the State of California or to the City; and

WHEREAS, U.S. Bancorp Community Development Corporation ("USB"), a Minnesota corporation, has expressed a desire to invest a total of up to $6,454,900 in the Project, in return for the NMTCs and HRTCs generated by the Project; and

WHEREAS, RPD has performed a search for additional funding partners for the Project and has determined that it is essential to work with the Community Arts Stabilization Trust ("CAST"); CAST is a nonprofit public benefit corporation with a mission of creating stable physical spaces for arts and cultural organizations, has previously secured NMTC tax credit

financing, and has committed to providing $1,000,000 to the Project and monitoring the Project's compliance with NMTC requirements during the Tax Credit Period; and

WHEREAS, On June 15, 2017, the Recreation and Park Commission approved of RPD entering into negotiations with CAST for Project financing and the lease and recreational use of the Powerhouse; and

WHEREAS, To secure the NMTCs, CAST will create an affiliate entity known as CAST Powerhouse LLC, which will be a qualified active low income community business ("QALICB") that can receive NMTC funding; and

WHEREAS, The City desires to enter into a 55-year lease with the QALICB for the Powerhouse, comprised of approximately 3,000 square feet, and approximately 825 square feet of adjacent property under the SFMTA's jurisdiction needed for ancillary Powerhouse facilities (collectively, the "Premises"), a copy of which is on file with the Clerk of the Board under File No. ____ ("Ground Lease"), to comply with NMTC and HRTC requirements; and

WHEREAS, The Recreation and Park Commission determined the Market Rent, as defined in Administrative Code, Section 23.2, of the Premises is $5,213 per month, with annual adjustments equal to any increase in the Consumer Price Index and a fair market rent adjustment in the fifteenth lease year, but rent will be abated until the later date ("Conversion Date") to occur of the dissolution of the tax credit funding structure or the fifteenth lease year; and

WHEREAS, The Ground Lease requires that the Premises be used primarily for recreational, educational and cultural programming, and the Recreation and Park Commission authorized RPD to enter into the Ground Lease on _____; and

WHEREAS, It is impractical to competitively bid for the Ground Lease, which is required for NMTC and HRTC tax financing purposes, and leasing the Premises for less than

Market Rent until the Conversion Date serves the public purpose of generating tax credit equity to rehabilitate the Premises for community uses; and

WHEREAS, On February 4, 2016, the City's Planning Department determined the Project is in conformity with the General Plan, and the eight priority policies under Planning Code, Section 101.1, and a copy of such determination is on file with the Clerk of the Board of Supervisors in File No. _____; and

WHEREAS, The Planning Department has determined that the Project complies with the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.); and

WHEREAS, On December 4, 2008, the City's Planning Commission certified the Balboa Park Station Area Plan Final Environmental Impact Report (FEIR) by Motion No. 17774, which was further approved by the Board of Supervisors on April 7, 2009; and

WHEREAS, On November 14, 2013, the Planning Department determined that the proposed Project is exempt from further review under the California Environmental Quality Act (California Public Resources Code, Sections 21000 et seq.) under Title 14 of the California Code of Regulations, Section 15183.3; said determination is on file with the Clerk of the Board of Supervisors in File No. ___ and is incorporated herein by reference. The Board affirms this determination; now, therefore, be it

RESOLVED, That the Board of Supervisors finds the Ground Lease is in conformity with the General Plan, and the eight priority policies under Planning Code, Section 101.1; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General Manager to enter into the Ground Lease substantially in the form that is on file with the Clerk of the Board of Supervisors and to perform all acts required of the City thereunder; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the RPD General Manager to enter into any modifications and amendments to the Ground Lease, including to any of its exhibits, and authorizes the RPD General Manager to execute further agreements related to the Project financing, that the RPD General Manager determines, in consultation with the City Attorney, are in the best interests of the City and do not materially increase the obligations or liabilities of the City, are necessary or advisable to effectuate the purposes of the Project or this Resolution, and are in compliance with all applicable laws, including the City's Charter; and, be it

FURTHER RESOLVED, That within thirty (30) days of the full execution of the Ground Lease, RPD shall provide such final document to the Clerk of the Board of Supervisors for inclusion into the Board's file.

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Items 8, 9, 10, 11 and 12 Files 17-1205, 17-1206, 17-1207, 17-1208, 17-1209	Department: Recreation and Parks Department (RPD)

EXECUTIVE SUMMARY

Legislative Objectives

The five proposed resolutions related to the renovation and use of the Geneva Powerhouse and Car Barn would approve: (1) the Recreation and Park Department to accept and expend a $3,500,000 State grant (File 17-1205); (2) a Development Services Agreement between the City and CAST Powerhouse, LLC, an affiliate of the Community Arts Stabilization Trust (File 17-1206); (3) a Funding Agreement between the City and the Community Arts Stabilization Trust (File 17-1207); (4) a 55-year lease between the City and CAST Powerhouse, LLC for the Powerhouse (File 17-1208); and (5) an Indemnification Agreement (File 17-1209).

Key Points

- The Geneva Car Barn and Powerhouse are two buildings located at Geneva and San Jose Avenues near Balboa Park BART Station. The Phase 1 Powerhouse Project consists of the design, restoration and improvement of the Powerhouse only. The City will fund and develop the Project with assistance from the non-profit Community Arts Stabilization Trust. The Community Arts Stabilization Trust created a taxable entity, the CAST Powerhouse LLC, to be the qualified low-income business, in order for the Project to qualify for the New Market and Historic Rehabilitation Tax Credits.
- The City and the Community Arts Stabilization Trust will enter into a Funding Agreement, in which the Community Arts Stabilization Trust will contribute $1 million and the City will contribute $6.8 million (and may contribute up to $9.0 million) to the Project. The City will enter into a 55-year lease with CAST Powerhouse LLC for the Powerhouse in which the rent will be abated for 15 years in consideration of the Community Arts Stabilization Trust's $1 million contribution. The City and CAST Powerhouse LLC will enter into a Development Services Agreement in which the City develops and manages the Project and is reimbursed for expenses.

Fiscal Impact

- The Project budget is $13 million, of which $8.1 million are City funds and $4.8 million are tax credit financing and Community Arts Stabilization Trust contribution.

Policy Consideration

- As the writing of this report, the City does not have a finalized Indemnification Agreement (File 17-1209) with the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund.
- The current House bill on tax reform eliminates two Federal tax credits utilized in this project: the New Markets Tax Credit and the Historical Tax Credit. In order to utilize these Federal tax credits, the lease agreement must be approved by the end of the calendar year.

Recommendations

- Approve Files 17-1205, 17-1206, 17-1207 and 17-1208.
- Approval of File 17-1209 is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 9.118(c) requires Board of Supervisors approval for any lease that has an initial term of ten years or more, including options to extend, or that had anticipated revenues of $1 million or more.

City Administrative Code Section 10.170 requires Board of Supervisors to accept grants in the amount of $100,000 or more.

BACKGROUND

The Geneva Car Barn and Powerhouse are two buildings located at Geneva and San Jose Avenues across from the Balboa Park BART Station, adjacent to a vehicle storage facility owned by the San Francisco Municipal Transportation Agency (SFMTA). In 1998, the Geneva Car Barn and Powerhouse were saved from demolition by the Friends of the Geneva Car Barn and Powerhouse (Friends), a nonprofit neighborhood organization. In 2004, the SFMTA transferred jurisdiction of the vacant Geneva Car Barn and Powerhouse to the Recreation and Park Department (Department) (File No. 04-0320) at no cost, with the intent that the Department would form a partnership with the Friends to renovate the Geneva Car Barn and Powerhouse. Between 2004 and 2015, the Department and the Friends spent $3,983,000 on the Car Barn from various sources, for roof repairs, preliminary seismic stabilization, planning, design, program administration, historic preservation architect and environmental testing.

In October 2014, the Board of Supervisors approved a Lease Disposition and Development Agreement between the Recreation and Park Department and the Friends (File 14-0920) specifying the Friend's obligations to fundraise, rehabilitate and operate the Car Barn as a community center. However, the Friends were unable to meet the funding requirements and in October 2015, the Board of Supervisors terminated the Lease Disposition and Development Agreement with the Friends (File 15-0890).

When the Lease Disposition and Development Agreement terminated in October 2015, the Recreation and Park Department recommended a two-phase Geneva Car Barn and Powerhouse Project, managed by the Department.

- Phase 1: Design, restoration, and improvement of the Powerhouse building only, including installation of a modern utility system, restoration of historic features, seismic stabilization, hazardous material remediation, new circulation systems to accommodate ADA (Americans with Disabilities Act) access, streetscape improvements, improved entrances, a new roof, and a new floor plan with radiant heating; and
- Phase 2: Design, restoration, and improvement of the Car Barn building to be used as office space and completion of more extensive improvements to the Powerhouse building.

According to Ms. Nicole Avril, Recreation and Park Project Director, Phase 1 is a stand-alone project and does not depend on agreements or funding for the Phase 2 Car Barn renovation.

The Board of Supervisors appropriated $2,500,000 from the General Fund Reserve in March 2016 to partially fund the Phase 1 renovation of the Powerhouse. The Board of Supervisors placed these funds on Budget and Finance Committee Reserve pending identification of remaining funding sources for the Phase 1 Powerhouse renovation. In July 2017, the Department identified the sources and uses for Phase 1, totaling $11,863,804, and the Budget and Finance Committee approved the release of reserves.

DETAILS OF PROPOSED LEGISLATION

File 17-1205 is resolution authorizing the Recreation and Park Department to accept and expend a grant from the California Department of Parks and Recreation in the amount of $3,500,000 for the Geneva Car Barn and Powerhouse.

File 17-1206 is a resolution authorizing a Development Services Agreement between the City and CAST Powerhouse, LLC,[1] an affiliate of the Community Arts Stabilization Trust, a nonprofit public benefit corporation, for the payment of the City's construction costs and related expenses for the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse

File 17-1207 is a resolution authorizing a Funding Agreement between the City and the Community Arts Stabilization Trust to finance the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

File 17-1208 is a resolution authorizing a 55-year lease between the City and CAST Powerhouse, LLC, an affiliate of the Community Arts Stabilization Trust, for the Powerhouse building of the Geneva Car Barn and Powerhouse and a portion of adjacent City property; affirming the Planning Department's determination under the California Environmental Quality Act; and finding the lease is in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1.

File 17-1209 is a resolution authorizing an Indemnification Agreement in favor of the parties financing the renovation of the Powerhouse building of the Geneva Car Barn and Powerhouse.

Project Overview

According to the proposed legislation, the City will fund and develop the Phase 1 Powerhouse Project with assistance from Community Arts Stabilization Trust (CAST). The Community Arts Stabilization Trust is a non-profit corporation that secures space and works with community arts organizations to develop and strengthen their financial and organizational capacity to purchase permanent facilities and navigate complex real estate issues. The City has worked with the Community Arts Stabilization Trust in the past to secure New Market Tax Credits for the community and arts space at 80 Turk Street and the art gallery at 1007 Market Street.

After the termination of the lease with the Friends of the Geneva Car Barn and Powerhouse, the Recreation and Park Department informally sought a new partner to develop the buildings.

[1] According to Mr. Manu Pradhan, Deputy City Attorney, the name of the organization in the proposed resolutions may be subject to change.

In 2015, the Office of Economic Workforce Development proposed to the Park and Recreation Department the Community Arts Stabilization Trust as a partner for the development of the Geneva Powerhouse and Car Barn. According to Ms. Avril, the General Manager approved partnering with the Community Arts Stabilization Trust due to their agreement to contribute $1,000,000 to the project, previous experience in developing tax credits, interest in becoming partners with the City and their mission in rehabilitating arts spaces. It was not a competitive process.

The Phase 1 Powerhouse Project budget is $13 million, as shown in the Table below. Funding comes from several sources, including General Fund monies previously appropriated by the Board of Supervisors, the California Department of Parks and Recreation grant (File 17-1205), other City funds, a contribution from the Community Arts Stabilization Trust (File 17-1206), and federal New Market and Historic Rehabilitation Tax Credits.

The Community Arts Stabilization Trust created a taxable entity, the CAST Powerhouse LLC, to be the qualified low-income business, in order for the Phase 1 Powerhouse Project to qualify for the New Market and Historic Rehabilitation Tax Credits.[2,3] The Phase 1 Powerhouse Project has been awarded an allocation of New Market Tax Credits by the San Francisco Community Investment Fund[4]. The Powerhouse is on the National Register of Historic Places and therefore the Phase 1 Powerhouse Project qualifies for Historic Rehabilitation Tax Credits.[5]

The City will enter into a:

- 55-year lease (File 17-1208) with the CAST Powerhouse LLC for the Powerhouse. Under the terms of the draft lease,[6] the City will construct the Phase 1 Powerhouse Project improvements, subject to reimbursement from CAST Powerhouse LLC. CAST Powerhouse LLC will sublease the Powerhouse to the taxable entity, created by the Community Arts Stabilization Trust, who will serve as the master tenant. The master tenant will in turn sublease the Powerhouse to the non-profit corporation – Performing Arts Workshop, Inc. (PAW).
- Funding Agreement (File 17-1207) with the Community Arts Stabilization Trust in which the Community Arts Stabilization Trust will allocate $1,000,000 to the Phase 1 Powerhouse Project and the City will allocate $6,800,000 to the Phase 1 Powerhouse

[2] The New Market Tax Credit program provides a tax incentive to private investors to invest in low-income communities. Under the Internal Revenue Code, New Market Tax Credits are made available to qualified active low-income community businesses or QALICB.

[3] In order to qualify for tax credits, the Community Arts and Stabilization Trust will form a (1) taxable entity that will serve as the managing member (of which the Community Arts and Stabilization Trust is the sole member) of the CAST Powerhouse LLC; and (2) a taxable entity that will serve as the master tenant for the sublease of the Powerhouse, which will be controlled by the managing member of the CAST Powerhouse LLC.

[4] San Francisco Community Investment Fund is a Community Development Entity that serves as the intermediary vehicle for allocation of New Market Tax Credits.

[5] The federal Historic Rehabilitation Tax Credit program provides a 20 percent tax credit to projects that rehabilitate certified historic structures. The federal New Market Tax Credit program provides tax credits to qualified low-income investment businesses. Historic Preservation and New Market Tax Credits require the formation of a for-profit subsidiary to qualify for the tax credits.

[6] At the time of writing this, the Budget and Legislative Analysts' Office has only been offered a draft lease.

Project (see the Table below). According to Ms. Avril, the Recreation and Park Department is submitting revised legislation to the December 7, 2017 Budget and Finance Committee that provides for the City to allocate up to $9,025,000 to the Phase 1 Powerhouse Project. According to Ms. Avril, the additional allocation would be used in the event that the project's construction costs exceed the current construction budget, including the construction contingency. Ms. Avril states that the Community Opportunity Fund has sufficient funds to meet this additional obligation if necessary.

- Development Services Agreement (File 17-1206) with the CAST Powerhouse LLC that provides for the City to (1) serve as the Phase 1 Powerhouse Project developer; and (2) be paid a developer fee and for all project costs.
- Indemnification Agreement (File 17-1209) with Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund to provide certain indemnities in order to complete the Phase 1 Powerhouse Project.

Phase 2 Option

As mentioned previously, the Department divided the Geneva Car Barn and Powerhouse project into Phase 1 and Phase 2, allowing the City to approve a proposal for a set of construction documentation, bid and permit work and construction administration for the Phase 1 Powerhouse Project from the architect and engineering consultants. The budget for Phase 2 is estimated to be $38,500,000, with construction to begin in 2020. The City has not yet identified the funds for Phase 2.

According to Ms. Avril, the City will enter into a separate Office Building Option Agreement with the Community Arts Stabilization Trust for rehabilitation of the Geneva Car Barn under Phase 2 of the project, in which the City would award the Community Arts Stabilization Trust a ten-year exclusive option to lease and develop the Car Barn building into an office space as well as space to deliver arts related classes and community services. The form of the ten-year lease has not yet been developed and is subject to future negotiation if the Community Arts Stabilization Trust exercises the option. According to Ms. Avril, the ten-year exclusive option is to incentive the Community Arts Stabilization Trust to invest $1,000,000 in Phase 1 of the project, but also desired by the Department as key to the development of Phase 2. If the Community Arts Stabilization Trust chooses not to fund the development of Phase 2 by year ten of the Phase 1 Powerhouse Project, the Department will still be able to engage with another private partner to help develop the building.

Draft lease Provisions (File 17-1208)

As noted above, the proposed draft lease is between the City and CAST Powerhouse LLC, who will sublease the Powerhouse to a master tenant created by the Community Arts Stabilization Trust.

- The lease premises consist of the approximately 3,000 square foot Powerhouse located at 2301 San Jose Avenue.
- The lease term is for 55 years from approximately January 1, 2019 (the estimated date of completion of the Phase 1 Powerhouse Project) through December 31, 2074.

- The lease sets base rent at $5,213 per month (equal to approximately $21 per square foot per year), which increases annually by the Consumer Price Index but abates rent for the first 15 years of the lease in consideration of the Community Stabilization and Trust's $1 million contribution to the project.[7] Therefore, the City does not expect to receive rent under the proposed lease for the first 15 years. The City has the one-time right to increase the rent to fair market value after any dissolution of the tax credit financing structure.

Sublease between the Master Tenant and Performing Arts Workshop

In December 2016, the Department issued a request for proposals for arts related programming. By February 2017, the Department received three responses. A panel consisting of the Director of the San Francisco Arts Commission, Recreation and Park Department Director of Permits and Property Management, and one Friends of the Geneva Car Barn and Powerhouse Board Member based on the following metrics:

1. Compatibility with the desired programming at the Powerhouse
2. Meaningful public access
3. Program feasibility
4. Financial capacity

Performing Arts Workshop[8] was selected as the highest rated non-profit and will enter into a ten-year sublease with the Powerhouse master tenant, commencing on the completion date of the Powerhouse. Performing Arts Workshop will pay rent to the master tenant, subject to approval by the Department. The amount of rent to be paid by Performing Arts Workshop is determined by a required return on equity for the Historic Rehabilitation Tax Credits to be paid to the tax credit investor, as well as possessory interest tax to the City.

Funding Agreement (File 17-1207)

The funding agreement between the City and the Community Arts Stabilization Trust provides for the City to enter into a 55-year lease for the Powerhouse and the taxable entity formed by the Community Arts Stabilization Trust, who serves as the master tenant. According to the funding agreement:

- The Community Arts Stabilization Trust will invest $1,000,000 into the Phase 1 Powerhouse Project, the contribution of which will be recognized through abatement of rent, as noted above. The $1,000,000 investment will be used exclusively for construction costs for Phase 1.
- The City will invest $6,800,000 as shown in the Table below.

[7] The rent abatement will end early if there is dissolution of the tax credit financing structure.

[8] Public Arts Workshop has worked for 40 years in the City bringing sequential arts instruction to students ages 3-18. The Workshop has been a partner, collaborator and contractor with public agencies including Department of Children, Youth & their Families (DCYF) and the County of San Francisco's First 5 Preschool for All (PFA) program for low-income families. The Workshop participates in the City's internal and external audits yearly.

As noted above, the Recreation and Park Department is submitting revised legislation to the December 7, 2017 Budget and Finance Committee that provides for the City to allocate up to $9,025,000 to the Phase 1 Powerhouse Project to be used in the event that the project's construction costs exceed the current construction budget, including the construction contingency. Ms. Avril states that available funds from the Community Opportunity Fund, previously appropriated by the Board of Supervisors, are sufficient funds to meet this additional obligation if necessary.

Development Services Agreement and Construction Project (File 17-1206)

The Development Services Agreement between the City and CAST Powerhouse LLC sets the terms for the City to develop and manage the Phase 1 Powerhouse Project. These services would include acting on behalf of the CAST Powerhouse LLC to (1) work with project funders and government agencies, (2) select project contractors and negotiate project contracts, (3) monitor and administer disbursement of project funds, and (4) oversee the project. In exchange, the City, as the developer, will be paid a developer fee and be reimbursed for all project costs, including the cost of the actual construction contract. According to Ms. Avril, the Department expects to begin construction on Phase 1 in February 2018 and complete the Powerhouse in ten months by December 2018. The Recreation and Park Commission authorized the Department to enter into the construction contract.

Indemnification Agreement (File 17-1209)

The proposed resolution approves the indemnification agreement between the City and the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund. As of the writing of this report, the Recreation and Park Department has not completed indemnification agreements in which the City will indemnify the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund against the following project risks:

1. Environmental/Construction: in the case of unknown environmental conditions at the premises and against claims of construction delays and cost over-runs.
2. Closing: in the event that the tax credit financing does not close and therefore the tax credits are not delivered. The City will reimburse only for up-front costs.
3. Recapture: in the event of the U.S. Treasury disallowing the Tax Credits due to the project falling out of compliance with Federal Law.

According to the resolution, "it is a normal business practice to provide these indemnities, which are consistent with New Market Tax Credit and Historic Rehabilitation Tax Credit transactions generally." According to Ms. Avril, these indemnities are in exchange for the indemnified parties' investment and participation in the project, and these transactions cannot proceed without the Indemnification Agreement.

As of the writing of this report, the City does not have a finalized Indemnification Agreement with the Community Arts Stabilization Trust, the United States Bancorp Community Development Corporation, and the San Francisco Community Investment Fund. Because the proposed resolution authorizes the Indemnification Agreement which has not yet been

finalized, the Budget and Legislative Analyst considers approval of the proposed resolution to be a policy matter for the Board of Supervisors. The Recreation and Park Department will negotiate the Indemnification Agreement in consultation with its tax credit consultant, the City Attorney's Office and the City Risk Manager.

FISCAL IMPACT

The Phase 1 Powerhouse renovation budget is $13,003,379, as shown in the table below.

Table: Phase 1 Powerhouse Renovation Budget

Sources of Funds	
City Contribution	
California Department of Parks and Recreation Grant (File 17-1205)	$3,500,000
Previously Appropriated:	
Previously released Budget and Finance Committee Reserve	2,500,000
2000 Neighborhood Park General Obligation Bonds	838,000
Community Opportunity Funds	600,000
Recreation and Park Department FY 2015-16 Capital Budget	210,612
Neighborhood Asset Activation	306,000
Recreation and Park Department FY 2017-18 Budget	200,000
Subtotal City Contribution	$8,154,612
Other Funds	
Community Arts Stabilization Trust (CAST) (File 17-1207)	$1,000,000
Net Historic Preservation Tax Credits*	1,826,767
Net New Market Tax Credits*	2,022,000
Subtotal Other	$4,848,767
Total Sources	**$13,003,379**
Uses of Funds	
Contractor construction cost	$8,279,900
Contractor construction Contingency (10% of Construction)	827,990
Subtotal, Contractor Construction	9,107,890
Other Miscellaneous Construction	1,544,191
Planning, Permitting, Design, Engineering, Environmental	1,517,681
Other Consultant Fees	937,687
Total Uses	**$13,003,379**

*The Historic Preservation Tax Credits and New Market Tax Credits are federally required to flow through an investment fund which in turn is invested in the SCIF, which then lends funds to the qualified active low income community business (which in this case is the CAST Powerhouse, LLC). Therefore some of the proceeds of the original amount of the credit will be used to pay for these transaction fees. Only net funds are shown.

The City's total project contribution is $8,154,612, of which approximately $1,300,000 has been spent to date on planning, design, permitting and other project related-expenses. The balance of approximately $6,854,612 will meet the City's obligation under the funding agreement (File 17-1207)

The Department estimates the total cost of Phase 1 to be $13,003,379, as shown in the Table above. According to Ms. Avril, the Department only received one bid for the construction for Phase 1 on the Powerhouse. The bid, from Roebuck and Company, is $8,279,900, or $1,530,000 higher than the Department's cost estimate. The Department was able to offset some of the additional costs through additional Historic Tax Credits (File 17-1205).

POLICY CONSIDERATION

The current House bill on tax reform eliminates two Federal tax credits utilized in this project: the New Markets Tax Credit and the Historical Tax Credit. In order to utilize these Federal tax credits, the lease agreement must be approved by the end of the calendar year.

RECOMMENDATIONS

1. Approve Files 17-1205, 17-1206, 17-1207 and 17-1208.
2. Approval of File 17-1209 is a policy matter for the Board of Supervisors because the proposed resolution authorizes the Indemnification Agreement which has not yet been finalized.

SAN FRANCISCO
PLANNING DEPARTMENT

Certificate of Determination
EXEMPTION FROM ENVIRONMENTAL REVIEW

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Case No.:	**2012.0262E**
Project Title:	**Geneva Car Barn and Powerhouse - 2301 San Jose Avenue**
Zoning/Plan Area:	Public (P) District 40-X Height and Bulk District Balboa Park Station Plan Area
Block/Lot:	6972/036
Lot Size:	117,804 square feet
Project Sponsor:	Nicole Avril, San Francisco Recreation and Park Department (415) 305-8468
Staff Contact:	Craig Jung – (415) 575-9126 craig.jung@sfgov.org

PROJECT DESCRIPTION:

The proposed project involves adaptive reuse of two contiguous structures on the site: the Geneva Office Building (12,916 square feet) and Power House (3,735 square feet), collectively referred to as the "Geneva Complex." The project sponsor would construct a 40-foot-tall, 19,892 square-foot (sf) youth arts education center, theater and community assembly space. The Geneva Office Building is a two-story-plus-basement, utilitarian building, and the Geneva Power House is a one-story (with mezzanine), industrial building.

[continued on the next page]

EXEMPT STATUS:

Exempt per Section 15183 of the California Environmental Quality Act (CEQA) Guidelines California Public Resources Code Section 21083.3

DETERMINATION:

I do hereby certify that the above determination has been made pursuant to State and Local requirements.

Sarah B. Jones
Environmental Review Officer

November 14, 2013
Date

cc: Nicole Avril, Project Sponsor
Michael Smith, Current Planning Division
Dan Weaver, Friends of the Geneva Car Barn
Supervisor John Avalos, District 11
Virna Byrd, M.D.F.
Historic Preservation Distribution List

PROJECT DESCRIPTION (CONTINUED):

Project Location and Existing Conditions

The project site (Assessor Block 6972, Lot 036) is located at 2301 San Jose Avenue on a 117,804 sf lot at the southeast corner of San Jose Avenue and Geneva Avenue on the block bounded by Geneva Avenue to the north, Delano Avenue to the east, Niagara Avenue to the south and San Jose Avenue to the west (Figure 1). Historically, the Geneva Complex served as both the administrative center of the San Francisco rail system (Office Building) and as the power source for all the rail cars (Powerhouse). The project site is also known or referred to as "The Geneva Car Barn and Powerhouse" and will be referred to as such here after.

The project site is on a lot that is 329 feet wide by 373 feet long and has two, contiguous, two-story buildings on the project site: a 40-foot-tall, 50-foot-wide, 12,916-square-foot office building that extends 129 feet along San Jose Avenue and a 30-foot-tall, 37-foot-wide, 3,735 -square-foot powerhouse (historical use) building that extends 92 feet along San Jose Avenue. The Geneva Office Building was constructed in 1901 and the Powerhouse was constructed between 1901 and 1903. At the north and south ends of the two buildings are two sets of train tracks that are used by Muni street cars to access the site. There are no curb cuts but automobile access to the site is provided through the train tracks on the south side of the two buildings. An eight-foot-tall metal fence exists along the perimeter of the project site. Trees are adjacent to the project site along Geneva Avenue in the public right of way. The project site is vacant and is owned by the San Francisco Recreation and Park Department. Based on United States Geological Survey data, the project site elevation is between 215 feet above mean sea level, with a gentle slope to the east. The project site is within a Public (P) Use District and 40-X Height and Bulk District.

Zoning districts in the project vicinity vary (Figure 2). Zoning near and around the project site consists of RH-1, NCT-1, NCT-2 and Public Use Districts. To the west, approximately 338 feet from the project site, is Interstate-280 (I-280) and the land adjacent to I-280 is zoned for Small-Scale Neighborhood Commercial Transit (NCT-2). Abutting the project site to the south and east are Residential-House One Family (RH-1) Use Districts. To the north and across San Jose Avenue from the site is a block consisting of Public (P), Neighborhood Commercial Transit Cluster (NCT-1) and Residential-House One Family (RH-1) Use Districts.

The Balboa Park BART Station, situated in a P Use District, is located at the northwest corner of San Jose and Geneva Avenues across the street from the project site. Other P Use Districts are located north of the project site, and include James Denman Middle School, and the Geneva Avenue Strip public open space. The RH-1 Use District (east, southeast and northeast of the project site) is made up of primarily single-family, one-story over garage houses. The NCT-1 Use District (north of the project site) is made up of primarily single-family, one-story over garage houses except for the corner of Geneva Avenue and San Jose Avenue where a three-story residential over commercial building is situated next to a single-story commercial building. Across the street, west of the project site, is a NCT-2 Use District that is currently a parking lot but would be developed to include residential/commercial uses in the future.

Figure 1

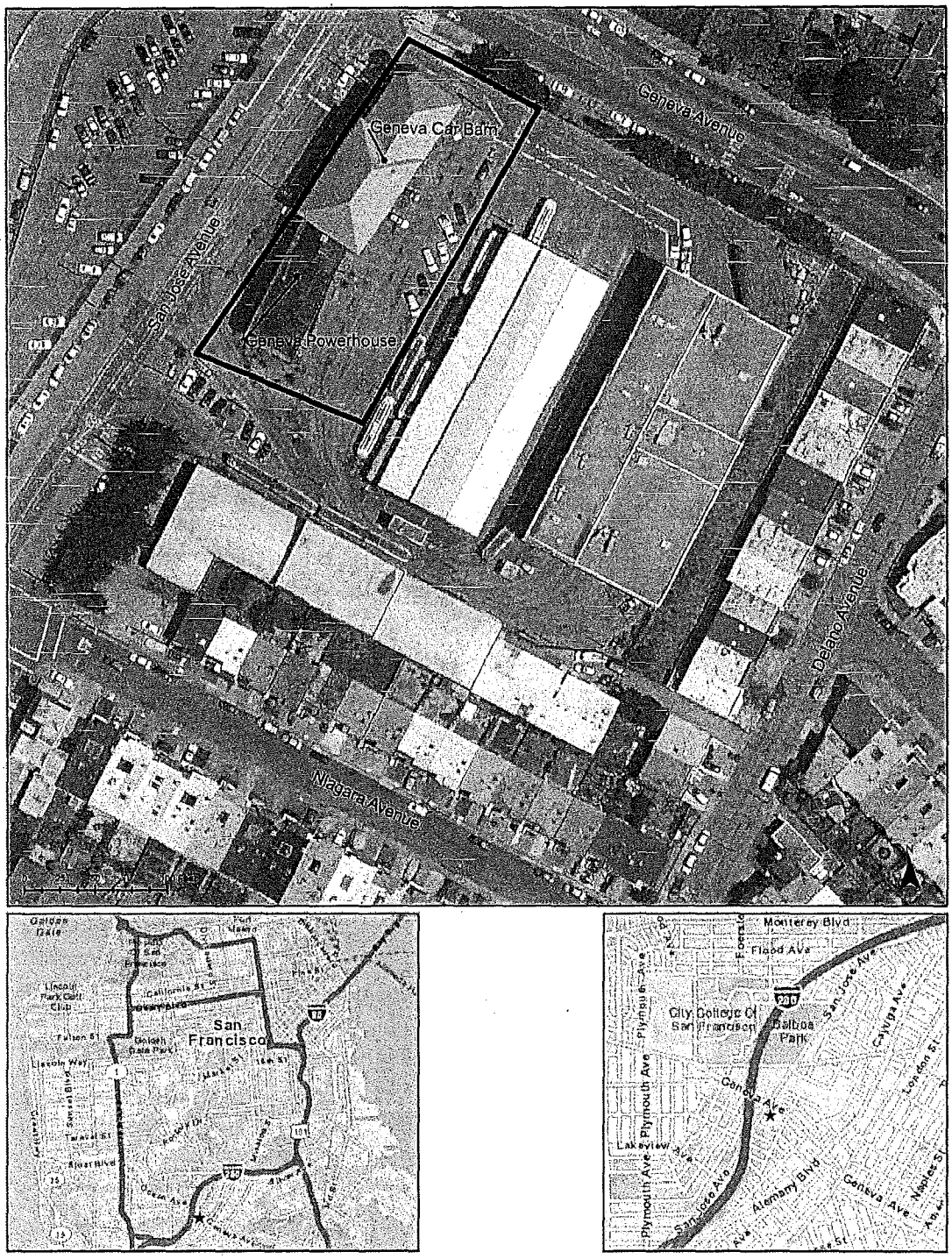

Geneva Car Barn
Geneva Powerhouse
Geneva Avenue
San Jose Avenue
Delano Avenue
Niagara Avenue
San Francisco
Monterey Blvd
Ocean Ave
Alemany Blvd
Plymouth Ave
Lakeview Ave
Balboa Park
Created by: San Francisco Planning Department
August 07, 2013

Figure 2

Zoning Districts
Public
P Public
Residential, House
RH-1 One Family
Neighborhood Commercial Transit
NCT-1 Neighborhood Commercial Transit Cluster District
NCT-2 Small-scale Neighborhood Commercial Transit District

SAN FRANCISCO PLANNING DEPARTMENT
27 August, 2013

Project Characteristics

The Geneva Office Building would contain the youth arts-related training facilities, a movie theater, administrative offices, training kitchen, restaurant and retail space on the ground floor. The Powerhouse would contain a community space and performing arts theater. Within the Office Building a third floor including two mezzanines would be constructed and add 2,400 sf. Within the Powerhouse a 550 sf would be added to serve the movie theater lobby. The basement would add 250sf for ancillary uses, i.e. bathrooms. These additional structures would add 3,200 sf and increase the overall square footage from 16,650 sf to 19,900 sf (Figures 3 and 4).

Significant historic features and finishes of the Geneva Office Building would be restored, an elevator and staircase would be added and all building systems would be brought up to code. This facility would be restored and the exterior massing and envelope will remain. All exterior work will be in accordance with the Secretary of the Interior's Standards.

Construction would last approximately 14-15 months with an anticipated date of occupancy in winter, 2015. Construction phases would occur simultaneously and include soil remediation, excavation, below-grade construction, exterior renovations and glazing, and interior renovations, construction and finishes. The estimated construction cost is $21,000,000.

Project Approvals

The proposed project would require the following approvals, with the Recreation and Park Commission approval of the conceptual design as the Approval Action for the proposed project:

Recreation and Park Commission

- The project would require approval of the conceptual and schematic design.
- The project would require the approval of the Lease Disposition and Development Agreement between the Rec and Park Department and the Friends of the Geneva Car Barn.
- The project would require the approval of the lease.
- The Memorandum of Understanding (MOU) between the Rec and Park Department and San Francisco Municipal Transportation Authority would require approval.

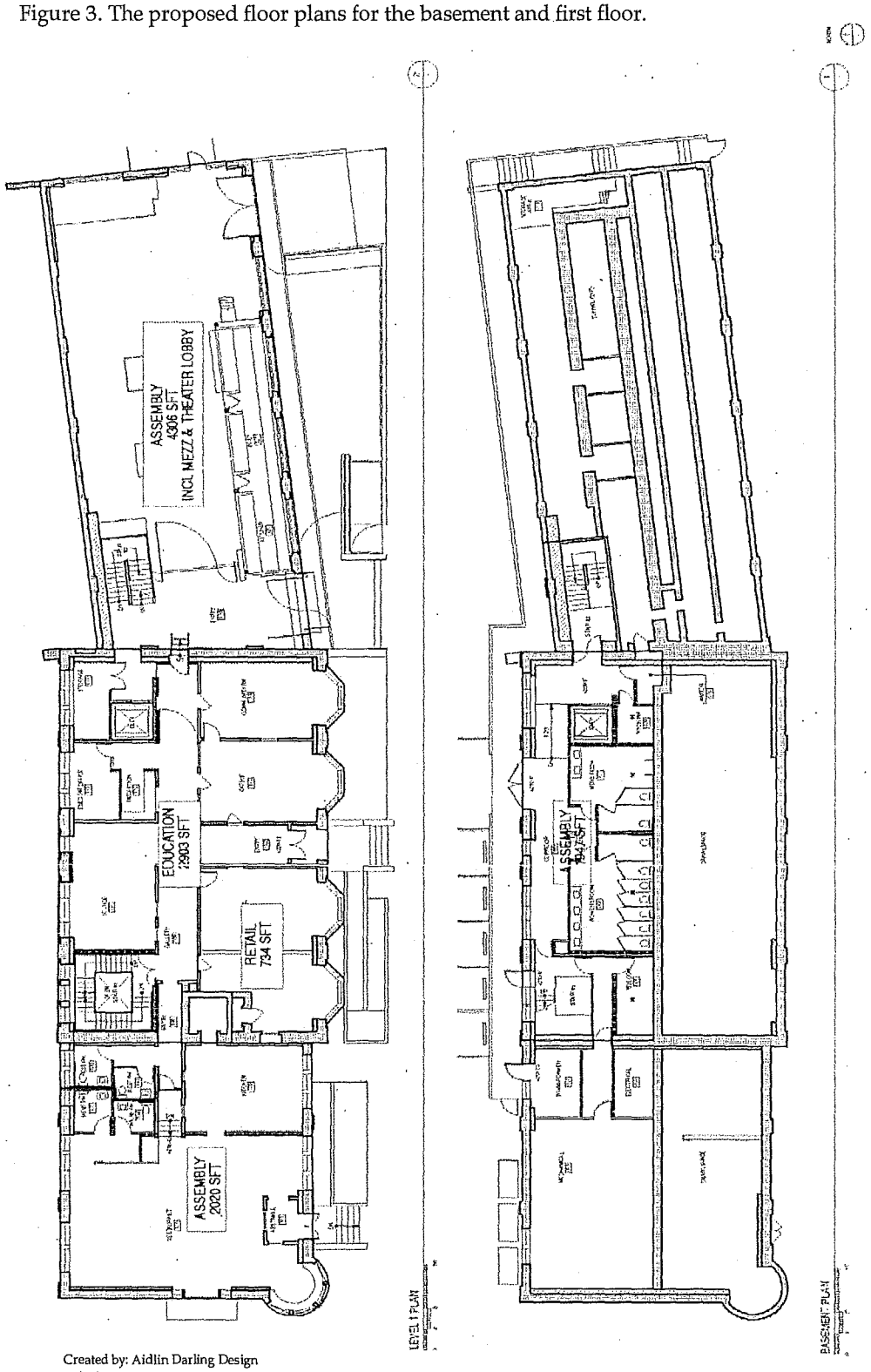
Planning Commission

- The project would require a Conditional Use authorization for the proposed restaurant pursuant to Section 234.2 of the Planning Code.
- A parking variance would be required to eliminate the parking requirement pursuant to Section 151 of the Planning Code.

Historic Preservation Commission

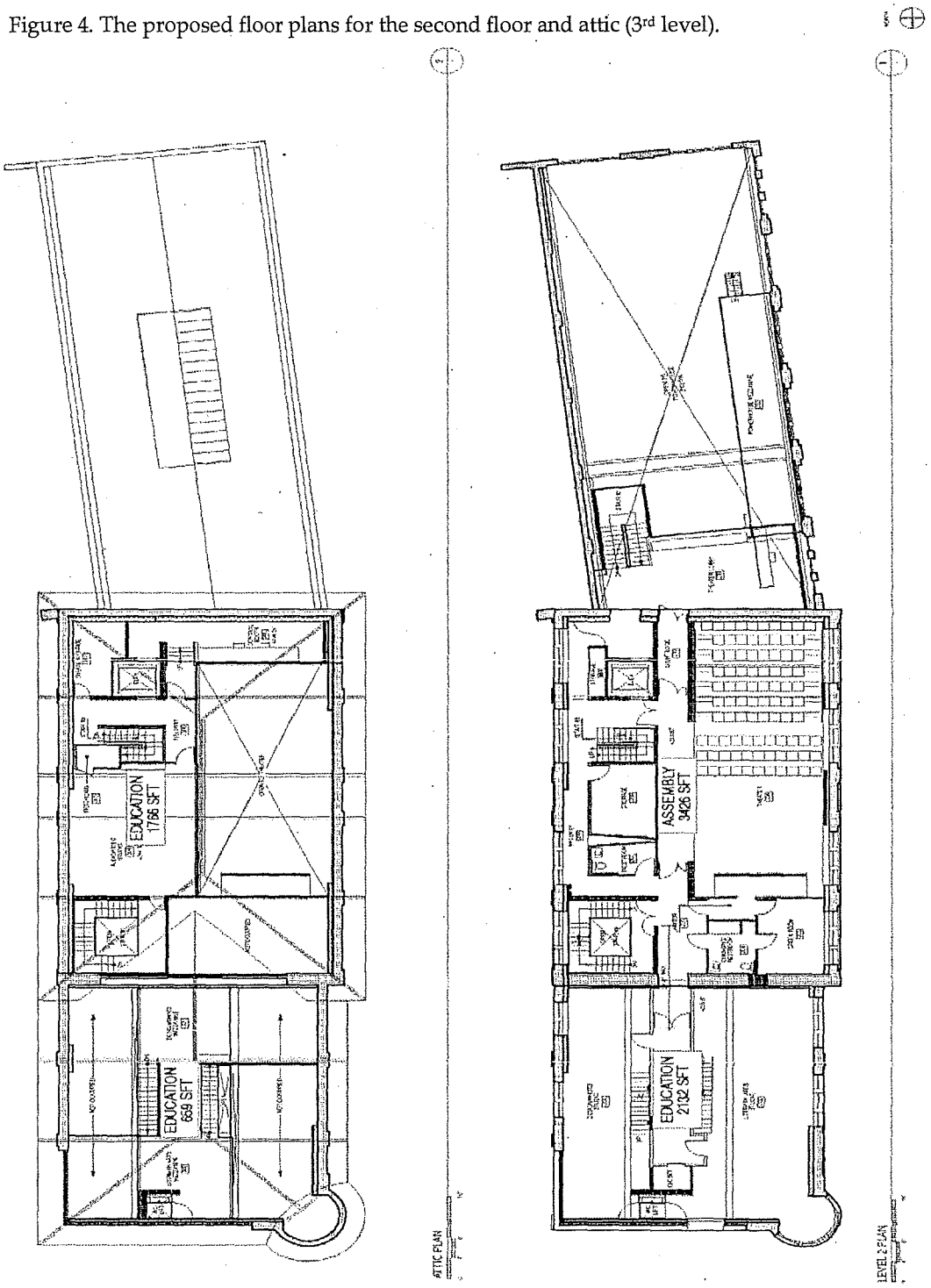
- Certificate of Appropriateness pursuant to Section 1006 of the Planning Code.

Figure 3. The proposed floor plans for the basement and first floor.



Created by: Aidlin Darling Design
10/30/13

Figure 4. The proposed floor plans for the second floor and attic (3rd level).



Created by: Aidlin Darling Design
10/30/13

REMARKS:

The California Environmental Quality Act (CEQA) State Guidelines Section 15183 provides an exemption from environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that: a) are peculiar to the project or parcel on which the project would be located; (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent; c) are potentially significant off-site and cumulative impacts which were not discussed in the underlying EIR; and d) are previously identified in the EIR, but are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

This Certificate of Determination (determination) evaluates the topics for which a significant impact is identified in the final programmatic EIR, the *Balboa Park Station Area Plan Final EIR*[1] (FEIR), and evaluates whether the proposed project would result in impacts that would contribute to the impact identified in the FEIR. Mitigation measures identified in the FEIR applicable to the proposed project are identified in the text of the determination under each topic area. The Community Plan Exemption Checklist (Attachment A) identifies the potential environmental impacts of the proposed project and indicates whether such impacts are addressed in the Balboa Park Station FEIR.

This determination assesses the proposed project's potential to cause environmental impacts and concludes that the proposed project would not result in new, peculiar environmental effects, or effects of greater severity than were already analyzed and disclosed in the *Balboa Park Station Area Plan FEIR*. This determination does not identify new or additional information that would alter the conclusions of the *Balboa Park Station Area Plan FEIR*. This determination also identifies mitigation measures contained in the *Balboa Park Station Area Plan FEIR* that would be applicable to the proposed Geneva Car Barn and Powerhouse project. Relevant information pertaining to prior environmental review conducted for the *Balboa Park Station Area Plan* (Area Plan) is included below, along with an evaluation of potential environmental effects.

Background

After several years of analysis, community outreach, and public review, the *Balboa Park Station Area Plan* was adopted in April 7, 2009. The *Balboa Park Station Area Plan* was adopted in part to encourage and intensify mixed-use housing and neighborhood-serving retail development near transit. The *Balboa Park Station Area Plan* also included changes to existing height and bulk districts in some areas, including the project site.

During the *Balboa Park Station Area Plan* adoption phase, the Planning Commission held public hearings to consider the various aspects of the proposed area plans, and Planning Code and Zoning Map amendments. On December 4, 2008, the Planning Commission certified the *Balboa Park Station Area Plan* FEIR by Motion 17774 and adopted the Preferred Project for final recommendation to the Board of Supervisors.

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[1] *Balboa Park Station Area Plan Final Environmental Impact Report*, Planning Department Case No. 2004.1059E, certified December 4, 2008. The FEIR is on file for public review at the Planning Department, 1650 Mission Street Suite 400 as part of Case No. 2004.1059E, or at: http://www.sf-planning.org/ftp/files/MEA/2004.1059E_Balboa_FEIR_Pt1.pdf.

On April 7, 2009 the Board of Supervisors approved the *Balboa Park Station Area Plan,* and the Mayor signed the legislation for the *Balboa Park Station Area Plan.* It was enacted on May 18, 2009. New zoning districts would encourage residential infill, maintain existing commercial uses, encourage new commercial uses and increase public transportation use.

The *Balboa Park Station Area Plan* FEIR is a comprehensive programmatic document that presents an analysis of the environmental effects of implementing the Balboa Park Station Rezoning and Area Plans, as well as the potential impacts of the proposed alternative scenarios. The *Balboa Park Station Area Plan* Draft EIR evaluated three alternatives, the Area Plan with Transportation Improvements, the Area Plan with No Transportation Improvements, and No Project. The Planning Commission adopted the Area Plan with Transportation Improvements as the Preferred Project after fully considering the environmental effects of the Preferred Project and the various scenarios discussed in the FEIR.

The *Balboa Park Station Area Plan FEIR* identified a significant and unavoidable impact to cultural architectural resources and transportation and circulation. The *Balboa Park Station Area Plan FEIR* included analyses of environmental issues including: land use; population, housing and employment (growth inducement); transportation and circulation; noise; air quality; shadow; archeological resources; historic architectural resources; greenhouse gas emissions; and water quality and hydrology. The Initial Study included analyses of visual resources; utilities and public resources; biological resources; geology; energy and natural resources and hazardous materials.

The Geneva Car Barn and Powerhouse are located in the Transit Station Area Subarea of the *Balboa Park Station Area Plan,* which retains the project site's P (Public) Use District zoning but changed the height district of the site from 105 feet to 40 feet. The Area Plan rezoned other areas of the Transit Station Area Subarea from a RH-1 (One-Family) and NC-2 (Small-Scale Neighborhood Commercial) Use District to a NCT (Neighborhood Commercial Transit) Use District.

Individual projects that could occur in the future under the *Balboa Park Station Area Plan* will undergo project-level environmental evaluation to determine if they would result in further impacts specific to the development proposal, the site, and the time of development and to assess whether additional environmental review would be required. This determination concludes that the proposed project is consistent with and was partially analyzed in the *Balboa Park Station Area Plan FEIR.* Further, this determination finds that the *Balboa Park Station Area Plan FEIR* adequately anticipated and described the impacts of the proposed project, and identified the applicable mitigation measures. Planning Department staff has determined that the proposed project is consistent with the *Balboa Park Station Area Plan* FEIR Plan and satisfies the requirements of the General Plan and the Planning Code.[2,3] Therefore, no further CEQA evaluation for the Geneva Car Barn and Powerhouse project is necessary.

Potential Environmental Effects

The following discussion demonstrates that the Geneva Car Barn and Powerhouse project would not result in significant impacts beyond those analyzed and disclosed in the *Balboa Park Station Area Plan* FEIR, including project-specific impacts related to cultural resources, transportation and circulation, noise, air quality, and hazardous materials.

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[2] Adam Varat, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Citywide Planning and Policy Analysis, 2301 San Jose Avenue - Geneva Car Barn. This document is on file and available for review as part of Case File No. 2012.0262E at the San Francisco Planning Department, 1650 Mission Street, Suite 400

[3] Jeff Joslin, San Francisco Planning Department, Community Plan Exemption Eligibility Determination, Neighborhood Analysis, 2301 San Jose Avenue - Geneva Car Barn. This document is on file and available for review as part of Case File No. 2012.0262E at the San Francisco Planning Department, 1650 Mission Street, Suite 400

Cultural Resources

Archeological Resources

The *Balboa Park Station FEIR* identified potential archeological impacts due to the lack of survey and data collection required to identify the location of specific pre-historic and historic archaeological resources within the entire project area. Two archeological mitigation measures were proposed that would reduce impacts to archeological resources to a less-than-significant level. *Balboa Park Station Area Plan* FEIR Mitigation Measure AM-1 - Accidental Discovery: applies to projects involving activities including excavation, construction of foundations, soils improvement/densification, and installation of utilities or soils remediation resulting in soils disturbance/modification to a depth of 4 feet or greater below ground surface. Mitigation Measure AM-2 - Accidental Discovery: applies to any project involving any soils-disturbing activities greater than 10 feet in depth, including excavation, installation of foundations or utilities or soils remediation, and to any soils-disturbing project of any depth within the Phelan Loop and Kragen Auto Parts Sites, the east side of San Jose between Ocean and Geneva Avenues, and the Upper Yard Parcel.

The proposed project would require approximately four feet to ten feet of excavation and soil remediation. Therefore, Mitigation Measure AM-1 would apply to the proposed project.

The project would not require ten feet or more of excavation. Therefore, the project would not be subject to Mitigation Measure AM-2.

Finally, review by the San Francisco Planning Department Staff Archaeologist determined the proposed project would have "no effect to archaeological resources".

With Project Mitigation Measures 1, the proposed project would not result in significant impacts that were not identified in the *Balboa Park Station Area Plan FEIR* related to archeological resources.

Project Mitigation Measure 1 – Accidental Discovery (Mitigation Measure AM-1 of the Balboa Park Station Area Plan FEIR). The following mitigation measure is required to avoid any potential adverse effect from the proposed project on accidentally discovered buried historical resources as defined in CEQA Guidelines Section 15064.5(a)(c). The project sponsor shall distribute the Planning Department archeological resource "ALERT" sheet to the project prime contractor; to any project subcontractor (including demolition, excavation, grading, foundation, pile driving, etc. firms); or utilities contractor involved in soils disturbing activities within the project site. Prior to any soils disturbing activities being undertaken each contractor is responsible for ensuring that the "ALERT" sheet is circulated to all field personnel, including machine operators, field crew, pile drivers, supervisory personnel, etc. The project sponsor shall provide the Environmental Review Officer (ERO) with a signed affidavit from the responsible parties (prime contractor, subcontractor(s), and utilities firm) to the ERO confirming that all field personnel have received copies of the Alert Sheet.

Should any indication of an archeological resource be encountered during any soils disturbing activity of the project, the project Head Foreman and/or project sponsor shall immediately notify the ERO and shall immediately suspend any soils disturbing activities in the vicinity of the discovery until the ERO has determined what additional measures should be undertaken.

If the ERO determines that an archeological resource may be present within the project site, the project sponsor shall retain the services of a qualified archeological consultant. The archeological consultant shall advise the ERO as to whether the discovery is an archeological resource, retains

sufficient integrity, and is of potential scientific/historical/cultural significance. If an archeological resource is present, the archeological consultant shall identify and evaluate the archeological resource. The archeological consultant shall make a recommendation as to what action, if any, is warranted. Based on this information, the ERO may require, if warranted, specific additional measures to be implemented by the project sponsor.

Measures might include: preservation in situ of the archeological resource; an archaeological monitoring program; or an archeological testing program. If an archeological monitoring program or archeological testing program is required, it shall be consistent with the Major Environmental Analysis (MEA) division guidelines for such programs. The ERO may also require that the project sponsor immediately implement a site security program if the archeological resource is at risk from vandalism, looting, or other damaging actions.

The project archeological consultant shall submit a Final Archeological Resources Report (FARR) to the ERO that evaluates the historical significance of any discovered archeological resource and describing the archeological and historical research methods employed in the archeological monitoring/data recovery program(s) undertaken. Information that may put at risk any archeological resource shall be provided in a separate removable insert within the final report.

Copies of the Draft FARR shall be sent to the ERO for review and approval. Once approved by the ERO, copies of the FARR shall be distributed as follows: California Archaeological Site Survey Northwest Information Center (NWIC) shall receive one (1) copy and the ERO shall receive a copy of the transmittal of the FARR to the NWIC. The Major Environmental Analysis division of the Planning Department shall receive three copies of the FARR along with copies of any formal site recordation forms (CA DPR 523 series) and/or documentation for nomination to the National Register of Historic Places/California Register of Historical Resources. In instances of high public interest or interpretive value, the ERO may require a different final report content, format, and distribution than that presented above.

Historical Architecture

The *Balboa Park Station Area Plan FEIR* anticipated that implementation of the Area Plan may result in the demolition of buildings identified as contributors to a historic district. The FEIR determined that a cumulative significant impact to historic resources would occur due to the loss of contributing buildings and the construction of considerably taller infill buildings in their place and on other sites within the potential district. The loss of specific buildings could eliminate the integrity of the potential district (i.e., its ability to convey its historic significance through survival of original features) such that potential the Ocean Avenue Neighborhood Commercial District could no longer be justified. The FEIR did not recommend any mitigation measures to address this impact. This unavoidable impact was addressed in a Statement of Overriding Considerations with Findings and adopted as part of the *Balboa Park Station Area Plan* approval on December 4, 2008.

The *Balboa Park Station Area Plan FEIR* identified the Geneva Office Building as a historic resource due to its inclusion in Article 10 of the San Francisco Planning Code, the City's landmarks preservation ordinance. The Geneva Office Building is San Francisco Designated Landmark no. 180.[4] Accordingly, as part of the environmental review for the proposed Geneva Car Barn and Powerhouse project, San

[4] The Geneva Office Building and not the Geneva Powerhouse is presumed to be a historical resource under CEQA as a locally designated resource under Article 10 of the Planning Code (City Landmark #180). The San Francisco Board of Supervisors made this designation with Ordinance Number 555-85.

Francisco Planning Department historical preservation staff evaluated the project's impact on historical resources. The following is a summary of the staff's analysis.[5]

The Geneva Car Barn and Powerhouse are not located within the potential Ocean Avenue Neighborhood Commercial Historic District or the potential Balboa Park Historic District. As such, the proposed project would not have a significant impact on the potential historic districts.

The FEIR analyzed the impact of the Area Plan on the Geneva Office Building. The FEIR indicated that the Area Plan does not include any specific development proposal for the project site. However, the Area Plan envisions rehabilitation and reuse of the landmark Geneva Office Building as a "primary activity generator for the station area." The Area Plan reduced the existing 105-foot height limit to 40 feet, which maintains the existing height of the Geneva Office Building and further ensures the building is preserved. This downzoning would reduce development pressures on the site by reducing the likelihood that the site would be redeveloped with a new building or addition that would be out of scale and character with the existing building. Any proposal for exterior alteration or demolition of the resource would require review under Article 10 of the Planning Code, and project-level analysis under CEQA to evaluate the significance of impacts on the historical resource.

The project site contains several structures including a metal building for train maintenance, constructed in 2009, a parking lot and a Muni car storage yard. The Geneva Office Building and Power House historically served as both the administrative center of the San Francisco rail system and as the power source for all the rail cars, respectively.

The first structure, the Geneva Office Building, is a two-story (plus basement), 12,916-sf utilitarian building, designed by the Reid Brothers Architects, and constructed in 1901. The building is reinforced concrete and brick, with a brick and wood trim exterior, built in the Roman-Renaissance Revival style. This building was also historically known as the S.F. & San Mateo Railroad Company Office Building. The S.F. & San Mateo Railroad Co., the first tenant of the building, is historically significant as a component of the electrical railway system in San Francisco at the turn of the century.

The second structure is the Geneva Power House, a two-story, 3,735-sf industrial building which was constructed sometime between 1901 and 1903. It is thought that the Reid Brothers Architects may have executed the design for this building; however, this is unconfirmed. The Geneva Power House contained the electrical transformers that powered San Francisco's electric rail cars. The Power House was significantly damaged in the earthquake of 1906, including collapse of the entire second story. The repairs to the Power House resulted in significant alterations to the building's original appearance. For this reason, the Geneva Office Building was designated by the Board of Supervisors as San Francisco Landmark No. 180, and the Power House was not included.

San Francisco Planning Department Historical Preservation staff determined that the proposed project would not have a significant adverse impact upon the Geneva Office Building such that the significance of the building would be materially impaired, nor would the proposed project cause a significant adverse impact to a California Register-eligible historic district. The proposed project would adaptively reuse the Geneva Office Building and the Geneva Power House. The exterior massing and building envelope would remain. The significant historic exterior features and finishes would be restored. Any additions to the historic building would not impair nor encroach upon the structural significance of the building.

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[5] Michael Smith, San Francisco Planning Department, Historic Resource Evaluation Response, January 11, 2013. This evaluation is available for review as part of Case file No. 2012.0262E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

Rehabilitation rather than replacement would be incorporated when possible. All rehabilitation and cleaning techniques would not damage the historical characteristics of the building. The project sponsor would conduct all work in accordance with the Secretary of the Interior's Standards.

In light of the above, the proposed project would not significantly impact San Francisco Designated Landmark no. 180.

Transportation and Circulation

The *Balboa Station Area Plan FEIR* anticipated that growth resulting from the zoning changes and transportation improvements could result in significant transportation and circulation impacts and identified mitigation measures. These impacts were found to be significant and unavoidable because cumulative traffic impacts at certain local intersections and the cumulative impacts on Muni K-Ingleside transit line could not be fully mitigated to less-than-significant levels. These impacts were addressed in a Statement of Overriding Considerations with Findings and adopted as part of the *Balboa Park Station Area Plan* approval on December 4, 2008.

The Balboa Park Station Area Plan FEIR proposed a mitigation measure to alter traffic signal timing for the Ocean Avenue/San Jose Avenue and Ocean Avenue/I-280 NB on-ramp intersections. In order to improve operating conditions to acceptable levels at the Ocean Avenue/I-280 NB on-ramp intersection, on-street parking would need to be removed from the westbound approach to the intersection in order to stripe an exclusive right-turn lane. Five seconds of green time would also need to be shifted from the westbound movement to the eastbound left-turn movement in order to accommodate the increased eastbound left-turn volume. Operating conditions at Ocean/San Jose Avenue intersection could improve by adding eight seconds of green time, which would need to be shifted from the north-south permitted phase to the east-west permitted phase to accommodate the increased east-west volume. Since implementing the proposed mitigation measures would involve the San Francisco Municipal Transportation Agency (SFMTA) assessment and approval it is uncertain that the measure is feasible to mitigate significant impacts to a less-than-significant level.

Trip Generation

Trip generation of the proposed project was calculated using information in the 2002 Transportation Impacts Analysis Guidelines for Environmental Review (SF Guidelines) developed by the San Francisco Planning Department.[6] The proposed project would generate approximately 184 person trips (inbound and outbound) on a weekday daily basis during the PM peak hours of 5:00 to 6:00, consisting of 119 person trips by auto, 22 transit trips, and 43 trips by other modes. During the p.m. peak hour, the proposed project would generate an estimated 64 vehicle trips (accounting for vehicle occupancy data for this Census Tract). Due to the project's location near major transit routes, this is likely a conservative estimate of vehicle trips.

Traffic

Intersection operating conditions are characterized by the concept of Level of Service (LOS), which ranges from A to F and provides a description of an intersection's performance based on traffic volumes, intersection capacity, and vehicle delays. LOS A represents free flow conditions, with little or no delay, while LOS F represents congested conditions, with extremely long delays; LOS D (moderately high delays) is considered the lowest acceptable level in San Francisco. Implementing the Area Plan would

[6] CHS Consulting Group, *Transportation Memo for Geneva Car Barn and Powerhouse Trip Generation Study*, August 13, 2013. This document is available for review as part of Case file No. 2012.0262E at the San Francisco Planning Department, 1650 Mission Street, Suite 400.

impact the intersections discussed below because they would experience significant loss of service (LOS) levels, E -F.

The proposed project is located in the Transit Station Area Subarea, which the *Balboa Park Station Area Plan FEIR* included in the traffic analysis (existing and 2025 operating conditions) based on proposed development plan options. During weekday p.m. peak hour conditions under the 2025 Area Plan the LOS at the following intersections would deteriorate: Ocean Avenue/I-280 northbound (NB) on-ramp is anticipated to change from LOS C to LOS F; Ocean Avenue/San Jose Avenue intersection[7] is anticipated to change from LOS C to LOS F; Geneva Avenue/I-280 northbound and southbound (SB) ramps intersection is anticipated to change from LOS C to LOS F; and Ocean Avenue/Geneva Avenue/Phelan Avenue intersection is anticipated to change from LOS B to LOS F. The intersection of Ocean Avenue and Junipero Serra Boulevard is anticipated to change from LOS D to F under the 2025 Area Plan. The proposed project would not contribute to the traffic-related impacts at this intersection because the two locations are 1.7 miles apart.

The signalized intersection at Ocean Avenue/I-280 NB on-ramp intersection (approximately one block to the north of the project site) during p.m. peak hour operates a LOS C under existing (baseline) conditions and implementing the Area Plan would deteriorate to LOS F. Additional vehicle trips from the proposed project are estimated to be an average of one vehicle per alternate signal cycle. This is a minimal contribution to the increased number of vehicles anticipated at this intersection. Therefore, the proposed project would not make a substantial contribution at this intersection and no mitigation measures would apply.

The signalized intersection at Ocean Avenue/San Jose Avenue (approximately one block to the north of the project site) during p.m. peak hour operates at LOS C under existing (baseline) conditions and implementing the Area Plan would deteriorate to LOS F under 2025 weekday p.m. peak hour operating conditions. Additional project-related trips are estimated to be an average of one vehicle per alternate signal cycle, but would not add substantial demand at the intersection. Therefore, the proposed project would not make a substantial contribution to the significant impact at this intersection and no mitigation measures would apply.

The signalized intersection at Geneva Avenue/I-280 northbound and southbound ramp intersection (one block away to the west of the project site) operates at LOS C under existing (baseline) conditions and implementing the Area Plan would cause the intersection to deteriorate to LOS F. The proposed project would contribute an average of one vehicle per alternate signal cycle. This would be a minimal contribution to the increased number of vehicles expected at this intersection. Therefore, the proposed project would not make a substantial contribution to the significant impact at this intersection and no mitigation measures would apply.

The signalized intersection at Ocean Avenue/Geneva Avenue/Phelan Avenue (four blocks northwest of the project site) currently operates at LOS B under existing (baseline) conditions and implementing the Area Plan would cause the intersection to deteriorate to LOS F. Changes to the intersection due to adding corner sidewalk bulbs, removing a channelized right-turn pocket and the elimination of a westbound vehicle travel lane from constructing a new segment of bicycle lane would contribute to the traffic congestion. The proposed project would contribute an average of one vehicle per alternate signal cycle. This is a minimal contribution to the increased number of vehicles anticipated at this intersection. Therefore, the proposed project would not make a substantial contribution to the significant impact of the Area Plan at this intersection and no mitigation measures would apply.

[7] Ocean Avenue/San Jose Avenue would operate at LOS F with or without implementation of the Area Plan.

Given that the proposed project would add approximately 64 p.m. peak hour vehicle trips to surrounding intersections, it is not anticipated to substantially increase traffic volumes at these or other nearby intersections, nor substantially contribute to the average delay that would cause these intersections to deteriorate to unacceptable levels of service. The proposed project's contribution of 64 p.m. peak hour vehicle trips would not be a substantial proportion of the overall traffic volume or the new vehicle trips generated by the *Balboa Park Station Area Plan* projects, should they be approved. Therefore, the proposed project would not result in a project-specific traffic impact.

Freeway Ramp Operating Conditions

The Area Plan proposed changing to a single-point interchange, where there would be only one on- and off-ramp for each freeway mainline direction. The Geneva Avenue/I-280 NB on-ramp would be eliminated and the I-280 SB off-ramps to Geneva Avenue and Ocean Avenue would be combined into one off-ramp at Geneva Avenue. Overall, the revised freeway on-ramps are expected to operate at LOS D, with conditions similar to the current configuration. At the study off-ramps, with the proposed lane configurations, queues can be expected to spill back onto I-280, which would cause operations to deteriorate to LOS F, a significant impact on freeway mainline conditions. At the program level of analysis, feasible mitigation measures cannot be identified or developed to address the effects to mainline conditions as a result of the proposed consolidation of the off-ramps. Therefore, a Statement of Overriding Considerations related to the significant and unavoidable cumulative (2025) traffic impact was adopted as part of the EIR certification and project approval on December 4, 2008.

The proposed project would provide minimal contributions to the mainline traffic queues related to the Geneva Avenue/I-280 off-ramp. Therefore, the proposed project would not make a substantial contribution to the significant impact regarding the I-280 mainline operating conditions.

Transit

The *Balboa Park Station Area Plan FEIR* identified a significant and unavoidable cumulative impact relating to increases in transit ridership due to the Area Plan rezoning, population increase, and infill development. Implementation of the Area Plan would contribute about 6 percent to the future ridership on the K-Ingleside line at the maximum load point, increasing the already exceeded capacity utilization from 100 percent to 106 percent during the p.m. peak period. There is no mitigation measure proposed to address the impact related to increased ridership, and therefore, was found to be significant and unavoidable.

The proposed project is estimated to add 22 p.m. peak hour transit person trips occurring in the p.m. peak hour. The project site is served by other local and regional transit lines including BART, Muni Metro lines (J-Church and M-Oceanside) and Muni bus lines (8x-Bayshore Express, 8BX-Bayshore B Express, 26-Valencia, 29-Sunset, 43-Masonic, 49-Van Ness-Mission, 54-Felton, 88 BART Shuttle and 91-Owl) and therefore, the additional project-related P.M. peak hour transit trips would likely be accommodated on existing routes, and would result in a less-than-significant impact to transit services. For the above reasons, the proposed project would not result in transit-related peculiar impacts that were not identified and analyzed in the *Balboa Park Station Area Plan FEIR*.

In conclusion, the proposed project would not have peculiar transportation circulation impacts that were not evaluated and identified in the *Balboa Park Station Area Plan FEIR*.

Noise

The *Balboa Park Station Area Plan Initial Study* (IS) identified potential significant noise impacts from short-term and long-term construction-related activities. The *Balboa Park Station Area Plan FEIR* identified potential significant noise and vibration impacts related to exposing occupants of new residential development in close proximity to high traffic roadways such as I-280, Ocean, Geneva, San Jose and Phelan Avenue. The IS determined that compliance with San Francisco Noise Ordinance (Article 29 of the Police Code) would mitigate potential construction noise impacts to a less-than-significant level. Two mitigation measures, N-1 and N-2, were proposed in the *Balboa Park Station Area Plan FEIR*. Both mitigation measures are specific to new residential development related to implementation of the Area Plan.

Since the proposed project would not construct new dwelling units that could be exposed to excessive ambient noise levels or create new noise-generating uses the project would result in less-than-significant noise impacts and would not have peculiar impacts.

Air Quality

The *Balboa Park Station Area Plan IS* identified a significant construction-related air quality impact and determined that Mitigation Measure AQ-1, which specified construction dust control measures, would reduce the effects to a less-than-significant level. Subsequent to publication of the IS, the San Francisco Board of Supervisors approved a series of amendments to the San Francisco Building and Health Codes, generally referred to as the Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008). The intent of the Construction Dust Control Ordinance is to reduce the quantity of dust generated during site preparation, demolition, and construction work in order to protect the health of the general public and of on-site workers, minimize public nuisance complaints, and to avoid orders to stop work by the Department of Building Inspection. Construction activities from the proposed project would result in dust, primarily from ground-disturbing activities.

The project sponsor would be required to comply with the Construction Dust Control Ordinance, which would avoid any significant potential construction-related air quality impacts. As a result, the proposed project would not have significant impacts related to the generation of construction dust.

The Balboa Station Area Plan FEIR identified potentially significant air quality impacts related to exposing future new residential uses near roadways with elevated pollutant levels, diesel particulate matter and PM_{10}. These significant impacts would conflict with the applicable air quality plan at the time, the *Bay Area 2005 Ozone Strategy*. *The Balboa Station Area Plan FEIR* identified one mitigation measure that would reduce air quality impacts to less-than-significant levels.

The *Balboa Park Station Area Plan* FEIR determined that Mitigation Measure AQ-2 would reduce effects to a less-than-significant level. Mitigation Measure AQ-2 would not apply because the proposed project does not include residential units.

For the above reasons, significant air quality impacts would not result from the proposed project.

Hazardous Materials

The *Balboa Park Station Area Plan Initial Study* determined that during excavation, grading, and dewatering activities, hazardous materials could be encountered in the soil or groundwater, resulting in the potential exposure of workers, the public, and the environment to hazardous materials, which would be a significant impact.

Potential impacts from the proposed project would be the result of the exterior/interior renovations, excavation and change of use from industrial to institutional. The exterior/interior renovations would likely result in potential exposure of workers or the community to hazardous building materials during renovation and construction. The previous industrial use would require further investigation, soil remediation, and is subject to the Maher Ordinance due to the past industrial use and the change of use from industrial to institutional.

There are four mitigation measures from the IS but only two of the measures would apply because one measure addresses naturally occurring asbestos and the other is specific to the Kragen Auto Parts Site development project. The project site is not located on top of serpentine rock formations, which are the primary source of naturally occurring asbestos in San Francisco. In accordance with the *Balboa Park Station Area Plan FEIR* requirements, the project sponsor has agreed to implement Project Mitigation Measures 3 and 4, below.

Implementation of Project Mitigation Measure 3 would minimize worker, public, and environmental exposure to hazardous materials in the soil or groundwater during construction and would be less than significant.

> **Project Mitigation Measure 3 – Phase I, Environmental Site Assessment (Mitigation Measure HM-1 of the *Balboa Park Station Area Plan FEIR*).** Development projects in the *Balboa Park Station Area Plan* Project Area that include excavation, shall prepare a site-specific Phase I Environmental Site Assessment for sites not subject to regulatory closure prior to development. The site assessment shall include visual inspection of the property; review of historical documents; and review of environmental databases to assess the potential for contamination from sources such as underground storage tanks, current and historical site operations, and migration from off-site sources. If the Phase I Environmental Site Assessment indicates that a release of hazardous materials could have affected soil or groundwater quality at the site, follow up investigations and possibly remediation shall be conducted in conformance with state and local laws, regulations, and guidelines.

Project Mitigation Measure 3 has been met due to the project site being located within the Maher zone, the historic industrial use at the site and the change of use from industrial to institutional. As such, the project is subject to Article 22A of the Health Code, also known as the Maher Ordinance, which is administered and overseen by the Department of Public Health (DPH). The Maher Ordinance requires the project sponsor to retain the services of a qualified professional to prepare a Phase I Environmental Site Assessment (ESA) that meets the requirements of Health Code Section 22.A.6.

The Geneva Car Barn and Powerhouse property is listed on various hazardous materials databases. The databases included the emissions inventory data (EMI), Resource Conservation and Recovery Act small quantity generator (RCRA SQG), facility and manifest data (HAZNET), historical hazardous waste and substance site (HIST CORTESE), leaking underground storage tank (LUST), facility index system (FINDS) and historical underground storage tank (HIST UST). An underground storage tanks (UST) existed on the project site.

The Phase I ESA prepared for the project[8] identified several potentially recognized environmental conditions (REC's) in connection with the prior uses of the site and adjacent properties required

[8] Ecology and Environment, Inc., Phase I Environmental Site Assessment for Geneva Car Barn and Powerhouse, 2301 San Jose Avenue, City and County of San Francisco, California, February 2012. A copy of this document is available for review at the Planning Department, 1650 Mission Street, Suite 400, in File No. 2012.0262E.

assessment to determine potential presence at the site. Historically the office building was used by SFMTA for offices and boarding of transit agency workers. The powerhouse structure housed fuel oil powered electric generators that provided power for electric street cars. The southwest end of the powerhouse contained a former oil storage area that may be contaminated with petroleum oil, which could allow for vapor intrusion from aromatic volatile organic compounds into the powerhouse structure. Chlorinated volatile organic compounds (VOCs) in the breathing air of the office building and powerhouse used off-site may be present. In the powerhouse, the oil stains on the concrete floor suggest the possible presence of poly chlorinated biphenyls (PCB), which may also be found in fluorescent light ballasts and various electric components throughout both buildings. Mercury from old thermostats may be present in the office building. Lead based paint (LBP) and asbestos containing building materials (ACBM) may be present in both buildings.

The Phase I report concluded that a Phase II would be required. The Phase II required the development of a field sampling plan to conduct subsurface investigation of the project site.[9]

The Phase II determined the following information. Total petroleum hydrocarbons such as motor oil (TPH-mo) were detected at concentrations exceeding the project screening level in two samples collected from the ½ foot sampling taken from the asphalt pavement. No associated indications of contamination such as staining and odor were noted in the samples suggesting that due to the shallow samples obtained the TPH-mo is most likely associated with the asphalt pavement and not contamination. No further soil testing for TPH-mo is required.

Benzene, a VOC, was the only constituent of potential concern (COPC) from all the indoor air samples obtained that was above the screening levels. It was detected in all the indoor air samples. The source of the VOCs was found to be from an off-site source. No further assessment of VOCs in indoor air at the site is required.

Testing for mercury vapor concentrations determined that it was below the 3,000 ng/m3 screening level. This level is considered acceptable for occupancy of a structure in an occupational or commercial setting after a spill where mercury is not usually handled. The Agency for Toxic Substances and Disease Registry considers this concentration of mercury vapor to be safe and acceptable for indoor air where shorter exposure time typical of most work places provided no visible mercury is present after a spill has been cleaned up.

Lead and asbestos in paint and construction materials are present at concentrations that require special handling and/or disposal and specialized worker training disturbed during the renovation.

Concrete chip samples showed that concentrations of PCBs are below the project screening level of 50 mg/kg. This level is considered to be adequate when determining whether PCB-contaminated concrete will require handling and disposal. Since the land use will change from the original power plant, remediation is required in accordance with 40 CFR Part 761.

The potential presence of PCBs in fluorescent light ballasts and in various electrical components in the office building and in the basement of the powerhouse is a REC that would be addressed by a qualified contractor before renovation of the site.

Recommendations, in terms of pre-renovation requirements, based on review of current and historical laboratory analytical results presented in the Phase I and II reports were provided. Fluorescent light

[9] Ecology and Environment, Inc., Field Sampling Plan for Targeted Brownfields Assessment of Geneva Car Barn and Powerhouse, 2301 San Jose Avenue, City and County of San Francisco, California, April 2012. A copy of this document is available for review at the Planning Department, 1650 Mission Street, Suite 400, in File No. 2012.0262E.

ballasts and electrical components throughout the office building and powerhouse would be collected and recycled or disposed of, based on whether or not they contain PCBs. Mercury-containing switches would be collected from wall thermostats in the office building by a contractor licensed and trained to handle and dispose of hazardous waste. LBP, ACM and lead-based material would be abated and waste material disposed of in accordance with all applicable regulations. Stained areas of concrete in the powerhouse would be cleaned and waste materials disposed of in accordance with 40 CFR Part 761.

A site mitigation plan (SMP) was prepared and presented mitigation measures recommending how to handle risks to the environment, to workers' and project site users' health and safety from the presence of metal and petroleum related contamination in the soil.

As of August 24, 2013, remediation of any subsurface contamination is required by ordinance under the authority provided in Health Code Article 22A (the Maher Ordinance), which is administered by the Department of Public Health (DPH). Similarly to Mitigation Measure HM-1 (Project Mitigation Measure 3) from the FEIR, the Maher Ordinance requires the project sponsor to retain the services of a qualified professional to prepare a Phase I ESA that meets the requirements of Health Code Section 22.A.6. These steps are required to be completed prior to the issuance of any building permit. Therefore, Mitigation Measure HM-1 is now required by law, and would ensure that remediation of any subsurface soil contamination occurs, resulting in a less-than-significant impact with respect to hazardous materials. Since the project sponsor already complied with the Maher Ordinance, the proposed project would result in less-than-significant hazardous materials impacts from exposing construction workers, the public, and the environment to contaminated soil and groundwater.

Building renovation may lead to the exposure of workers and the public to PCBs and DEHP. Project Mitigation Measure 4 would minimize worker, public and environmental exposure to hazardous materials during construction. Implementation of Project Mitigation Measure 4 would reduce potential exposure to PCBs and DEHP to a less-than-significant level.

> **Project Mitigation Measure 4 - Hazardous Building Materials (Mitigation Measure HM-2 of the *Balboa Station FEIR*.** The project sponsors of future development in the Project Area that include demolition shall ensure that any equipment containing PCBs or DEHP, such as fluorescent light ballasts, are removed and properly disposed of according to applicable federal, state, and local laws prior to the start of renovation or demolition, and that any fluorescent light tubes, which could contain mercury, are similarly removed and properly disposed of. Any other hazardous materials identified, such as asbestos-containing building materials, either before or during work, shall be abated according to applicable federal, state, and local laws.

Public Notice and Comment

A "Notification of Project Receiving Environmental Review" was mailed on July 27, 2013 to adjacent occupants and owners of properties within 300 feet of the project site.

The Planning Department received comments in response to the notice. Concerns raised include the absence of off-street parking for the project, potential light pollution effects from the type and amount of lighting for the new buildings, loitering in the surrounding neighborhoods, the type of uses and occupants using the new community space, changes to Muni train storage, access changes to Muni train yard due to the project, estimated construction time, hours of operation for construction, hours of operation for the new facility, and whether there will be a public hearing for the proposed project.

Concerns and issues raised in the public comments on the environmental review are discussed in the corresponding topical sections of this CPE. No significant, adverse environmental impacts from issues of

concern have been identified. Comments that do not pertain to physical environmental issues and comments on the merits of the proposed project will be considered in the context of project approval or disapproval, independent of the environmental review process. While local concerns or other planning considerations may be grounds for modifying or denying the proposal, in the independent judgment of the Planning Department, there is no substantial evidence that the proposed project could have a significant effect on the environment.

Conclusion

The *Balboa Park Station Area Plan* FEIR incorporated and adequately addressed all potential impacts of the proposed Geneva Car Barn and Powerhouse project. As described above, the Geneva Car Barn and Powerhouse project would not have any additional or peculiar significant adverse effects not examined in the *Balboa Park Station Area Plan* FEIR, nor has any new or additional information come to light that would alter the conclusions of the *Balboa Station Park Area Plan* FEIR. Thus, the proposed Geneva Car Barn and Powerhouse project would not have new significant or peculiar effects on the environment not previously identified in the *Balboa Station Area Plan* FEIR, nor would any environmental impacts be substantially greater than described in the *Balboa Park Station Area Plan* FEIR. No mitigation measures previously found infeasible have been determined to be feasible, nor have any new mitigation measures or alternatives been identified but rejected by the project sponsor. Therefore, in addition to being exempt from environmental review under Section 15183 of the CEQA Guidelines, the proposed project is also exempt under Section 21083.3 of the California Public Resources Code.

SAN FRANCISCO
PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- ☐ Affordable Housing (Sec. 415)
- ☐ Jobs Housing Linkage Program (Sec. 413)
- ☐ Downtown Park Fee (Sec. 412)
- ☐ First Source Hiring (Admin. Code)
- ☐ Child Care Requirement (Sec. 414)
- ☐ Other

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Planning Commission Motion No. 19559

HEARING DATE: FEBRUARY 4, 2016

Date:	February 4, 2016
Case No.:	**2012. 0262CUAVAR**
Project Address:	**2301 SAN JOSE AVENUE/500 GENEVA AVENUE**
Zoning:	P (Public Use District) 40-X Height and Bulk District Balboa Park Station Plan Area Landmark No. 180 – S.F. & San Mateo Railroad Co. Office Building
Block/Lot:	6972/036
Applicant:	San Francisco Recreation and Parks Department Attn: Nicole Avril McLaren Lodge, 501 Stanyan St San Francisco, CA 94117
Staff Contact:	Marcelle Boudreaux - (415) 575-9140 Marcelle.boudreaux@sfgov.org
Recommendation:	Approval with Conditions

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 211.2 AND 303 OF THE PLANNING CODE TO ALLOW A COMMUNITY FACILITY AT THE POWERHOUSE BUILDING, INCLUDING EXHIBITION SPACE WITHIN THE P (PUBLIC USE) DISTRICT AND A 40-X HEIGHT AND BULK DISTRICT, AND ADOPTING FINDINGS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

PREAMBLE

On December 28, 2015, Nicole Avril (hereinafter "Project Sponsor") filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Section(s) 211.2 and 303 to allow a community facility at the Powerhouse building, including exhibition space, within the P (Public Use) District and a 40-X Height and Bulk District.

On February 4, 2016, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0262CUAVAR.

The environmental effects of the Project were determined by the San Francisco Planning Department to have been fully reviewed under the Balboa Park Station Area Plan Environmental Impact Report (hereinafter "EIR"). The EIR was prepared, circulated for public review and comment, and, at a public hearing on December 4, 2008, by Motion No. 17774, certified by the Commission as complying with the California Environmental Quality Act (Cal. Pub. Res. Code Section 21000 et seq., hereinafter "CEQA"). The Commission has reviewed the Final EIR, which has been available for this Commission's review as well as public review.

The EIR is a Program EIR. Pursuant to CEQA Guideline 15168(c)(2), if the lead agency finds that no new effects could occur or no new mitigation measures would be required, the agency may approve the project as being within the scope of the project covered by the program EIR, and no additional or new environmental review is required. In approving the Balboa Park Station Area Plan, the Commission adopted CEQA Findings in its Motion No. 17774 and hereby incorporates such Findings by reference.

Additionally, State CEQA Guidelines Section 15183 provides a streamlined environmental review for projects that are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, except as might be necessary to examine whether there are project–specific effects which are peculiar to the project or its site. Section 15183 specifies that examination of environmental effects shall be limited to those effects that (a) are peculiar to the project or parcel on which the project would be located, (b) were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent, (c) are potentially significant off–site and cumulative impacts which were not discussed in the underlying EIR, or (d) are previously identified in the EIR, but which are determined to have a more severe adverse impact than that discussed in the underlying EIR. Section 15183(c) specifies that if an impact is not peculiar to the parcel or to the proposed project, then an EIR need not be prepared for that project solely on the basis of that impact.

On November 14, 2013, the Planning Department of the City and County of San Francisco determined that the proposed application did not require further environmental review under Section 15183 of the CEQA Guidelines and Public Resources Code Section 21083.3. The Project is consistent with the adopted zoning controls in the Balboa Park Station Area Plan and was encompassed within the analysis contained in the Final EIR. Since the Final EIR was finalized, there have been no substantial changes to the Balboa Park Station Area Plan and no substantial changes in circumstances that would require major revisions to the Final EIR due to the involvement of new significant environmental effects or an increase in the severity of previously identified significant impacts, and there is no new information of substantial importance that would change the conclusions set forth in the Final EIR. The file for this project, including the Balboa Park Station Area Final EIR and the Community Plan Exemption certificate, is available for review at the San Francisco Planning Department, 1650 Mission Street, Suite 400, San Francisco, California.

Planning Department staff prepared a Mitigation Monitoring and Reporting Program (MMRP) setting forth mitigation measures that were identified in the Balboa Park Station Area Plan EIR that are applicable to the project. These mitigation measures are set forth in their entirety in the MMRP attached to the draft Motion as Exhibit C.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2012.0262CUAVAR, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The above recitals are accurate and constitute findings of this Commission.

2. **Site Description and Present Use.** The Office Building and Powerhouse are located on a portion of lot 036 in block 6972, on the southeastern side of the intersection of San Jose and Geneva Avenues. This building complex abuts the active San Francisco MUNI Rail Yard (Cameron Beach Yard) with active rail lines accessing the Yard from both sides of the Complex. The Office Building, completed in 1901, is located to the north, and immediately south along San Jose Avenue is the Powerhouse, completed in 1903. Both structures survived the 1906 earthquake with reconstruction from that event still evident on the exterior facades of both buildings. The original brick exterior façade of the second level of the Powerhouse was reconstructed in 1910 in concrete in the Mission Revival style. Black tar paper remains the cladding at the northeastern corner of the upper level Office Building.

   Both buildings are currently vacant. The historic use of the Powerhouse was industrial, as a power production facility. The Office Building hosted administrative offices for the SFMTA transit workers.

   The Recreation and Park Department jurisdiction is limited to a five foot perimeter around the existing historic building complex. The area surrounding three sides of the building is occupied with active MUNI rail lines or is part of an active MUNI rail yard, and is not publicly accessible. (The parking shown on the site plan is for use by MUNI railyard).

3. **Surrounding Properties and Neighborhood.** The site is located within the Balboa Park Plan Area, and is immediately surrounded by single-family residential, public use and neighborhood commercial (NCT) areas at the intersection of San Jose and Geneva Avenues. The Ocean Avenue NCT and the Excelsior Outer Mission Street NCD are approximately 1/3mile from the subject site. The site is well-served by transit, including the Balboa Park BART station catty-corner from the

subject site, the MUNI KT, M and J light rail lines on Geneva Avenue, and numerous bus lines on both San Jose and Geneva Avenues. Immediately across Geneva Avenue is a small neighborhood commercial zoned district with several neighborhood-serving commercial uses. Immediately across San Jose Avenue, the Mayor's Office of Housing (MOH) is proposing a development of affordable family housing with ground floor active use.

4. **Project Description.** The Geneva Car Barn Complex consists of two contiguous structures, the Office Building (12,916 square feet (sf)) and the Powerhouse (3,735 sf). The overall proposal is to rehabilitate the two structures in the Geneva Car Barn Complex and adaptively reuse the Office Building and Powerhouse as a community-serving facility for youth arts education and a community arts/events center, including a 83-seat black box theater, studios for education, and restaurant and retail space. The project is designed to move forward in two phases, due to anticipated funding allocations.

   This authorization would approve phase 1 scope of work at the Powerhouse. This Conditional Use Authorization request is to establish a community facility, specifically a 300-person exhibition space (approximately 2,058 sf), within the P (Public Use) zoning district. Anticipated hours of operation are between 10am and 10pm, with highest capacity on weekend evenings.

   Seismic and ADA compliance work is proposed at both buildings, and no building envelope expansion is proposed. The Project will seek at a minimum LEED Gold Status, per City requirements. Sustainable strategies include solar panels, radiant heat, natural ventilation, reclaimed materials and daylighting.

   The Geneva Car Barn building complex is located at the property lines at the intersection of two streets, with a five foot perimeter to the east and south. The site surrounding the building complex at the rear is utilized by the active MUNI railyard, which cannot be safely accessed or utilized to provide required off-street parking.

   Project Background
   In 1989 the structures were damaged in the Loma Prieta earthquake and were initially slated for demolition in 1998, until a community coalition halted the plans. In the early 2000s, efforts were undertaken to stabilize the building until funds were in place for rehabilitation; this stabilization included new roofing, seismic retrofitting, and protecting windows in place with plywood. In 2004, ownership of the building, with approximately a five-foot perimeter into the active MUNI yard, was transferred from SFMTA to the SF Recreation and Parks Department.

   The Balboa Park Station Area Plan, enacted in 2009, specifically encourages establishment of an active, mixed-use neighborhood around the Transit Station. The restoration of the landmark Geneva Office Building is noted as a key policy to achieve this goal through encouragement of centers for cultural and arts enrichment.

5. **Public Comment.** To date, the Department has received comments only through the Environmental Review process in 2013. No comments were received during the current notification process. During the Environmental Review process a "Notification of Project

Receiving Environmental Review" was mailed on July 27, 2013. Comments raised included the absence of off-street parking for the project, potential light pollution effects from the type and amount of lighting for the new buildings, loitering in the surrounding neighborhoods, the type of uses and occupants using the new community space, changes to Muni train storage, access changes to Muni train yard due to the project, estimated construction time, hours of operation for construction, hours of operation for the new facility, and whether there will be a public hearing for the proposed project. Concerns and issues raised in the public comments on the environmental review were discussed in the topical sections of the CPE. No significant, adverse impacts from issues of concern have been identified.

No comments in support or in objection the project were received following public notice for the Certificate of Appropriateness hearing before the Historic Preservation Commission on November 18, 2015.

The sponsor has conducted extensive outreach, as the Geneva Car Barn and Powerhouse non-profit is a member of the District 11 Council. Since 2011, at least six informational and design presentation meetings have been hosted at venues in the District, some attended by over 30 people. In Fall of 2009, a series of open houses were held at Balboa High School, Ingleside Presbyterian Church and Lick Wilmerding School. Car Barn staff and Board also attend other neighborhood organization meetings.

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

A. **Bicycle Parking.** Planning Sections 155.1-155.3 of the Planning Code requires project totals of 2 Class 1 bicycle spaces and 2 Class 2 bicycle spaces.

No Class 1 bicycle parking spaces are provided at this phase, therefore the project requires a Variance from the Planning Code to proceed. With the implementation of the full project, the theater use will require 10 off-street parking spaces which will not be provided. The project sponsor will seek a variance from providing off-street automobile parking in the future. In total, the project will require 15 Class 1 bicycle spaces and 9 Class 2 bicycle spaces. In phase 2, the sponsor will request a variance from providing the remaining required Class 1 bicycle parking spaces. The project is providing 14 Class 2 bicycle parking spaces.

B. **Signage.** Currently, there is not a proposed sign program on file with the Planning Department. Any proposed signage will be subject to the review and approval of the Planning Department.

A sign program will be presented to the Historic Preservation Commission during the request for Certificate of Appropriateness for phase 2, in compliance with Article 6 and Article 10 of the Planning Code.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

   A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

   The existing historic building complex pre-dates many other buildings or structures in the vicinity. The Office Building and Powerhouse are proposed for rehabilitation and adaptive reuse for community-serving facilities, and retail and restaurant uses. The Balboa Park Station Plan Area, enacted in 2009, incorporates the adaptive reuse of the Office Building as an arts and cultural center as a key policy objective. Prior to Plan enactment, community input and outreach was conducted to determine neighborhood input on development. The rehabilitation of the Geneva Car Barn complex is intertwined with the rich history of rail transportation in San Francisco, and offers extraordinary art-related opportunities, and that such an arts "hub" in the neighborhood might begin to establish the arts as an overall theme for the new Transit Station Neighborhood.

   B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

      i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

      The existing historic Powerhouse building will be rehabilitated and the proposed work will not affect the building envelope.

      ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

      The Planning Code does not require parking or loading for the proposed exhibition space. The 83-seat theater requires 10 off-street parking spaces, however, no parking is provided. The subject site is transit-rich as it is catty corner to Balboa Park BART station, three MUNI light rail lines run on San Jose Avenue and numerous bus lines run on San Jose and Geneva Avenues. Additionally, the project was analyzed under the Balboa Park Station Area Plan Final EIR and no significant, adverse impacts were identified.

      iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

      The project was analyzed under the Balboa Park Station Area Plan Final EIR and no significant, adverse impacts were identified.

iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

Project Design elements such as landscaping, screening, parking and loading areas, service areas, open spaces, and lighting and signs have been approved by the San Francisco Arts Commission Civic Design Review Committee. Phase 1 scope of work has been approved the Planning Department's Historic Preservation Commission.

C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with relevant requirements and standards of the Planning Code with exception the requirement to obtain a Variance to Section 155.3 for lack of code-compliant Class 1 bicycle parking, and is consistent with objectives and policies of the General Plan as detailed below.

8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

BALBOA PARK STATION AREA PLAN

OBJECTIVE 1.3:
ESTABLISH AN ACTIVE, MIXED-USE NEIGHBORHOOD AROUND THE TRANSIT STATION.

Policy 1.3.2:
Encourage centers for cultural enrichment in the Transit Station Neighborhood.

The plan specifically notes the restoration and adaptive reuse of the Geneva Office Building to provide cultural and arts space for the community. In the proposal for the Geneva Car Barn complex, a majority of the floor area is dedicated to arts studios, a theater, and an arts exhibition space.

OBJECTIVE 7.1:
PROTECT, PRESERVE, AND REUSE HISTORIC RESOURCES WITHIN THE BALBOA PARK STATION PLAN AREA.

Policy 7.1.1
The Secretary of the Interior's "Standards and Guidelines for the Treatment of Historic Properties" should be applied in conjunction with the overall neighborhood plan and objectives for all projects involving historic resources.

Policy 7.1.2
The rehabilitation and adaptive reuse of historic buildings in the Balboa Park Station plan area should be promoted.

The rehabilitation project at the Powerhouse has been reviewed in keeping with the Secretary of Interior's Standards. Phase 1 scope of work has received a Certificate of Appropriateness from the

Historic Preservation Commission, and Phase 2 has been reviewed by that Commission but requires a second Certificate of Appropriateness.

ARTS ELEMENT

OBJECTIVE VI-1:
SUPPORT THE CONTINUED DEVELOPMENT AND PRESERVATION OF ARTISTS' AND ARTS ORGANIZATIONS' SPACES.

Policy VI-1.3
Increase the use of City owned neighborhood facilities for the arts.

The Recreation and Parks Department owns the Geneva Car Barn complex of buildings and is undertaking a rehabilitation and adaptive reuse program. The overall outcome of the project is dedicated space to performing arts, arts exhibition and studios for youth arts education.

NEIGHBORHOOD COMMERCE

OBJECTIVE 1:
MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:
Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:
Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:
Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The proposed development will provide desirable goods and services to the neighborhood and will provide resident employment opportunities to those in the community. The project site is located within a P (Public Use) zoning district across from two NCT zoning districts, and within 1/3 mile from two named NC districts.

OBJECTIVE 2:
MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The Project will primarily be dedicated to arts performance, education and exhibition, however, some space will be dedicated to a restaurant and to retail which are both supportive of the primary functions proposed at the Geneva Car Barn Complex and add additional retail opportunity to support the NCT districts adjacent to the site. These will be new businesses in the Transit Station District.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

A. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses be enhanced.

The existing building is vacant. The rehabilitation of this building will bring a large number of people to the area, enhancing the neighborhood retail activities and providing additional employment opportunities.

B. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods.

The project will not impact existing housing. Neighborhood character will be strengthened by the project's rehabilitation of character-defining features and adaptive reuse of a vacant building. The historic structures are some of the oldest in the neighborhood and are landmarks intertwined with the rich transit history in San Francisco.

C. That the City's supply of affordable housing be preserved and enhanced,

No housing is removed for this Project.

D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The project does not include any parking, and the surrounding area is well-served by public transportation. The subject site is transit-rich as it is catty corner to Balboa Park BART station, three MUNI light rail lines run on San Jose Avenue and numerous bus lines run on San Jose and Geneva Avenues. The project will not result in commuter traffic impeding MUNI service or overburdening the streets or parking.

E. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced.

The Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. The project will enhance the area's service sector jobs by providing for new employment opportunities with the new theater and cafe, and will attract visitors to the neighborhood who may frequent other nearby businesses.

F. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code.

G. That landmarks and historic buildings be preserved.

The property contains an Article 10 historic landmark building as listed in the Planning Code. Phase 1 scope of work has received approval from the Historic Preservation Commission and the entire proposal seeks to meet the Secretary of Interior's Standards.

H. That our parks and open space and their access to sunlight and vistas be protected from development.

The Project does not have an impact on open spaces.

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2012.0262CUAVAR** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated September 11, 2015, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

The Planning Commission hereby adopts the MMRP attached hereto as Exhibit C and incorporated herein as part of this Motion by this reference thereto. All required mitigation measures identified in the Balboa Park Station Area Plan EIR and contained in the MMRP are included as conditions of approval.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19559. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

Protest of Fee or Exaction: You may protest any fee or exaction subject to Government Code Section 66000 that is imposed as a condition of approval by following the procedures set forth in Government Code Section 66020. The protest must satisfy the requirements of Government Code Section 66020(a) and must be filed within 90 days of the date of the first approval or conditional approval of the development referencing the challenged fee or exaction. For purposes of Government Code Section 66020, the date of imposition of the fee shall be the date of the earliest discretionary approval by the City of the subject development.

If the City has not previously given Notice of an earlier discretionary approval of the project, the Planning Commission's adoption of this Motion, Resolution, Discretionary Review Action or the Zoning Administrator's Variance Decision Letter constitutes the approval or conditional approval of the development and the City hereby gives **NOTICE** that the 90-day protest period under Government Code Section 66020 has begun. If the City has already given Notice that the 90-day approval period has begun for the subject development, then this document does not re-commence the 90-day approval period.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 4, 2016.

Jonas P. Ionin
Commission Secretary

AYES:	Fong, Wu, Antonini, Hillis, Moore
NAYS:	None
ABSENT:	Johnson, Richards
ADOPTED:	February 4, 2016

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a community facility, including theater, studios, exhibition space, and restaurant, retail and administrative office uses at 500 Geneva Ave/2301 San Jose Ave, Block 6972, Lot 036, pursuant to Planning Code Section(s) **211.2** and **303** within the **P (Public Use) District** and a **40-X Height and Bulk District**; in general conformance with plans, dated **September 11, 2015**, and stamped "EXHIBIT B" included in the docket for Case No. **2012.0262CUAVAR** and subject to conditions of approval reviewed and approved by the Commission on **February 4, 2016** under Motion No **19559**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **February 4, 2016** under Motion No **19559**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **19559** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

1. **Mitigation Measures.** Mitigation measures described in the MMRP for the Balboa Park Station Area Plan EIR (Case No. 2004.1059E) attached as Exhibit C are necessary to avoid potential significant effects of the proposed project and have been agreed to by the project sponsor.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

3. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the Project Sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

4. **Diligent Pursuit.** Once a site of Building Permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. Failure to do so shall be ground for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
   For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

6. **Conformity with Current Law.** No application for Building Permit, Site Permit or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN

1. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org .

2. **Signage.** Any signs on the property shall be made to comply with the requirements of Article 6 of the Planning Code. Additionally, due to the property's listing in Article 10 of the Planning Code, signage requires review by the Historic Preservation Commission through the Certificate of Appropriateness process.
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org .

MONITORING

3. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

4. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, http://sfdpw.org

5. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, http://sfdpw.org

6. **Community Liaison.** Prior to issuance of a building permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor is to provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

LEASE

GENEVA POWERHOUSE

between the

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its

RECREATION AND PARKS COMMISSION

and

CAST POWERHOUSE QALICB, LLC,
a California limited liability company

for the lease of real property located at
2301 San Jose Avenue, San Francisco, California

Dated as of December ___, 2017

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LEASE

THIS LEASE ("**Lease**"), dated for reference purposes as of December ___, 2017, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**" or "**Landlord**"), acting by and through its Recreation and Park Commission (the "**Commission**"), and the CAST POWERHOUSE QALICB, LLC, a California limited liability company ("**Tenant**"), and is made with reference to the facts and circumstances described in the Recitals set forth below.

RECITALS

A. City owns that certain real property located at 2301 San Jose Avenue in San Francisco, California, which is comprised of a portion of APN 6972-036 and more particularly depicted on ***Exhibit A*** attached hereto (the "**Property**").

B. The Property is improved with the Geneva Avenue Powerhouse (the "**Powerhouse**"), which is a single-story car shed that contains approximately 3,000 square feet of space and was designated as City Landmark No. 180 by the San Francisco Board of Supervisors on January 26, 1986.

C. The Commission has jurisdiction over the Property and is responsible, through City's Recreation and Park Department (the "**Department**"), for its operation and management. The Department identified the Powerhouse as a possible site for youth and teen arts, community center, and related uses consistent with the Department's mission.

D. Tenant is a California limited liability company formed to operate and maintain the Powerhouse and to provide recreational, educational, and cultural programming in the Powerhouse, with an emphasis on such areas as literacy, visual, dance, musical, performing, digital, design and technical arts (collectively, the "**Primary Uses**"), and wishes to lease the Premises (as defined in Section 2.2) to further such purpose.

E. Tenant intends to obtain new market and historic rehabilitation tax credits to partially finance the costs to rehabilitate the Powerhouse and to sublease the Premises to CAST Powerhouse Master Tenant, LLC, a California limited liability company ("**Master Subtenant**"), which will then sublease the Premises to The Performing Arts Workshop, Inc., a California non-profit corporation ("**PAW**"), or to any other entity that is qualified to provide recreational, educational, and cultural programming in the Powerhouse and approved in advance and in writing by City.

F. City and Tenant now desire to enter into this Lease on all of the terms and conditions set forth in this Lease.

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

Section 1 BASIC LEASE INFORMATION; DEFINITIONS

1.1 Basic Lease Information.

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

Lease Reference Date:	December ___, 2017

City:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation
Tenant:	_____, a _____
Premises (Section 2.1):	The Powerhouse and the real property surrounding and near the Powerhouse, as generally delineated and fully described on the attached ***Exhibit A***.
Term (Section 3):	Fifty-five (55) years, commencing on the Effective Date (as defined in Section 3.1) and ending on the fifty-fifth (55th) anniversary of the Effective Date.
Rent (Section 4):	The initial monthly base rent ("**Base Rent**") shall be $5,213.00, which shall be increased annually by any increase in the Index; provided, however, that Base Rent shall be abated during the period specified in Section 4.1.
Use (Section 5):	The Primary Uses, the Supporting Uses, and the performance of Tenant's obligations under and in compliance with this Lease.
Programming (Section 5):	Tenant shall provide, or cause the provision of, recreational, educational, and cultural programming that meets the minimum standards set forth in Section 5.
Phase 1 Improvements (Section 11):	City shall perform the Phase 1 Improvements prior to the Delivery Date (as defined in Section 3.1), subject to Tenant's payments of certain Phase 1 Improvement costs pursuant to that certain Development Services Agreement between City and Tenant dated _____.
Utilities and Services (Section 13.1):	The Phase 1 Improvements will include the installation of separate meters to measure electricity and water service to Premises. City shall pay for, at its sole cost and expense, electricity and water services to the Premises up to $600 per month. Tenant shall reimburse City for any electricity or water fees that exceed such monthly cap. Tenant shall pay, at its sole cost, for garbage and recycling disposal, pest control, and all telephone, fax and internet connection charges, including the cost of bringing any such service(s) to locations in the Premises.
Maintenance (Section 10):	Tenant shall be responsible for all maintenance and repair of the Premises, the Trash Facility Area, Restroom Area, and the Mechanical Unit Area; subject to City's obligations for the initial ten (10) Lease Years.
Security Deposit:	Not required.
Notice Address of City (Section 29.1):	Recreation and Park Department McLaren Lodge Annex San Francisco, California 94117 Attention: [_____]

	Facsimile: [_____]
with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, California 94102-4682 Attn: Real Estate/Finance Team Facsimile: (415) 554-4757
Address for Tenant (Section 29.1):	CAST Powerhouse, LLC c/o CAST 70 Otis Street San Francisco, California Attn: Executive Director Facsimile: _____
with a copy to:	
Definitions:	For purposes of this Lease, initially capitalized terms not otherwise defined in this Lease shall have the meanings given to them in Section 1.2. If there is any conflict between a definition given in Section 1.2 and any more specific provision of this Lease, the more specific provision shall control.
Other Noteworthy Provisions: (Section 3.3)	If the Dissolution Event (as defined in Section 1.2) has occurred at any time and CAST does not timely exercise its lease option under the Office Building Option Agreement, City shall have the right to require Tenant to assign all of its interest under this Lease and to the Premises to a City-designated party at no cost, as further described in Section 3.3.

1.2 Defined Terms.

If not defined elsewhere in this Lease, initially capitalized terms shall have the meanings ascribed to them in this Section:

Additional Rent means any and all sums that may become due or be payable by Tenant under this Lease other than Base Rent.

Adjustment Date means each anniversary of the Delivery Date.

Adjustment Index means the Index that is published most immediately preceding a particular Adjustment Date.

Agents means, when used with reference to either party to this Lease or any other person or party so designated, the members, officers, directors, commissioners, employees, agents, contractors and vendors of such party or other person, and their respective heirs, legal representatives, successors and assigns.

Ancillary Structure Uses is defined in Section 2.2.

Approved Signage Program means, if and to the extent previously approved in writing by the General Manager in his or her reasonable discretion, the exterior signage program with respect to the Premises, as provided in Section 5.3.

Assignee means any person or entity leasing, occupying or having the right to occupy or use any portion of the Premises under and by virtue of an Assignment.

Assignments mean any assignment, encumbrance, pledge or otherwise transfer of any part of Tenant's interest in or rights with respect to the Premises or its leasehold estate hereunder.

Attorneys' Fees and Costs means reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and other reasonable costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, including such fees and costs associated with execution upon any judgment or order, and costs on appeal.

Base Rent is defined in Section 1.1.

Beginning Index means the Index published most immediately preceding the Delivery Date.

Bona Fide Institutional Lender means any one or more of the following, whether acting in its own interest and capacity or in a fiduciary capacity for another person: a savings bank, a savings and loan association, a commercial bank or trust company or branch thereof or its subsidiary entity, an insurance company, a governmental agency, a community development entity and any entity owned or controlled by such development entity that is certified by the Community Development Financial Institution Fund of the U.S. Department of the Treasury, a real estate investment trust, an employees' welfare, benefit, pension or retirement fund or system, an investment banking, merchant banking or brokerage firm, or any other person or persons which, at the time of a Mortgage is recorded, has (or is controlled by a person having) assets of at least $500 million in the aggregate (or the equivalent in foreign currency), and is regularly engaged in the financial services business, including but not limited qualified low income community investments by one or more community development entities in accordance with Internal Revenue Code, 26 U.S. Code Section 45D.

Building Systems means the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications systems of the Powerhouse.

CAST means the Community Arts Stabilization Trust, a California corporation, which is an affiliate of Manager.

Construction Documents is defined in Section 12.2.

Default Rate is defined in Section 4.5.

Department means City's Recreation and Park Department.

Department's Mission means the mission to serve City residents by providing appropriate recreational, cultural and educational programs.

Disabled Access Laws means the Americans with Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities.

Dissolution Event shall mean the later to occur of (i) Tax Credit Investor's exercise of its right to require Manager to acquire all of Tax Credit Investor's membership interests in the Tenant and Master Subtenant pursuant to that certain [Put Call Agreement] between Manager and the Tax Credit Investor dated as of [ ], and (ii) the satisfaction of the QLICI Loan and the release of the leasehold interest created by this Lease from the lien of the Leasehold Deed of Trust.

Effective Date is defined in Section 3.2.

Encumber means create any Mortgage.

Event of Default is defined in Section 22.1.

Expiration Date is defined in Section 3.1.

General Manager means the General Manager of the San Francisco Recreation and Park Department.

Hazardous Material means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or under Sections 25281 or 25316 of the California Health & Safety Code; any "hazardous waste" as defined in Section 25117 or listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing Improvements on the Premises, any Improvements to be constructed on the Premises by or on behalf of Tenant, or are naturally occurring substances on, in or about the Premises, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids, and lead containing materials.

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

Hazardous Material Laws means any present or future federal, state or local Laws relating to Hazardous Material (including, without limitation, its Handling, transportation or Release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises (including the Improvements), including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but are not limited to, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code).

Impositions means all taxes, assessments, liens, levies, charges or expenses of every description levied, assessed, confirmed or imposed on the Premises, any of the improvements or personal property located on the Premises, Tenant's leasehold estate, any subleasehold estate, or any use or occupancy of the Premises hereunder.

Improvements means all buildings, structures, fixtures and other improvements existing, erected, built, placed, installed or constructed upon or within the Premises, including, but not limited to, the Building and the Phase 1 Improvements.

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

Indemnify means indemnify, protect, reimburse, defend and hold harmless.

Index means the Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Delivery Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

Indexed means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Index from the first day of the month in which the Delivery Date occurred to the first day of the most recent month for which the Index is available at any given time.

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

Invitees means the customers, patrons, invitees, guests, members, licensees, assignees and subtenants of Tenant or any Subtenant.

Law or Laws means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the parties or to the Premises or any portion thereof, or to Tenant's use of the Premises, whether or not in the present contemplation of the parties.

Leasehold Deed of Trust means that certain _____, dated as of _____ and recorded in the Official Records of San Francisco County on _____.

Leasehold Deed of Trust Beneficiaries means _____.

Leasehold Improvements has the meaning set forth in Section 11.1.

Lease Year shall be determined as follows: the first "Lease Year" shall be the period commencing on the Delivery Date and ending on the last day of the twelfth (12^{th}) full calendar month thereafter, and each twelve (12) calendar month period thereafter shall also constitute a "Lease Year," provided that the final Lease Year shall end on the expiration or termination date of this Lease.

Loss or Losses when used with reference to any Indemnity means any and all claims, demands, losses, liabilities, costs, damages (including consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits, and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable Attorneys' Fees and Costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

Manager means _____, a _____, which is a member and the manager of Tenant and Master Subtenant.

Manager Affiliate means any of the following: (a) any person or entity owning, directly or indirectly, fifty percent (50%) or more of the ownership interests of Manager (a "Manager Owning Person"), (b) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by any Manager Owning Person, (c) any entity, fifty percent (50%) or more of the ownership interests of which are owned, directly or indirectly, by Manager.

Master Sublease has the meaning set forth in Section 18.9.

Master Subtenant has the meaning set forth in Recital E.

Material Alteration has the meaning set forth in Section 12.1(a).

Minor Alteration has the meaning set forth in Section 12.1(a).

Mortgage means any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance.

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

Office Building Option Agreement means the Office Building Option Agreement between City and CAST dated as of _____.

PAW means The Performing Arts Workshop, a California non-profit corporation.

PAW Sublease has the meaning set forth in Recital E.

Permitted Uses means the Primary Uses, the Supporting Uses, and the performance of Tenant's obligations under and compliance with this Lease.

Personal Property means all fixtures, furniture, furnishings, equipment, machinery, supplies, software and other tangible and movable personal property, whether now or hereafter located in, upon or about the Premises, belonging to Tenant or any Subtenant and/or in which Tenant or any Subtenant has or may hereafter acquire an ownership interest, together with all present and future attachments, accessions, replacements, substitutions and additions thereto or therefore.

Phase 1 Improvements has the meaning set forth in Section 11.1.

Pre-Existing Hazardous Material as defined in Section 21.2.

Premises has the meaning set forth in Section 2.1.

Primary Mission has the meaning set forth in Section 1.

Primary Uses has the meaning set forth in Recital D.

Property has the meaning set forth in Recital A.

QLICI Loan means [redacted].

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

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

Rent means the sum of Base Rent and Additional Rent.

Rent Commencement Date is defined in Section 4.1.

Restore and Restoration mean the restoration, replacement, or rebuilding of the Improvements (or the relevant portion thereof) in accordance with all then applicable Laws (including code upgrades) to substantially the same condition they were in immediately before an event of damage or destruction, or in the case of a Taking, the restoration, replacement, or rebuilding of the Improvements to an architectural whole.

Secretary's Standards shall mean the requirements of the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (36 Code of Federal Regulations § 67.7).

SFMTA Property is defined in Section 2.2.

Sublease means any lease, sublease, license, concession or other agreement by which Tenant or a Subtenant leases, subleases, demises, licenses or otherwise grants to any person the right to occupy or use any portion of the Premises (whether in common with or to the exclusion of other persons), which right to occupy or use shall be in conformity with and subject to the provisions of this Lease.

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

Supporting Uses shall mean the following, to the extent such uses are reasonably necessary to provide the Primary Uses: (i) administrative/office use, subject to City's approval of the proposed portion of the Premises to be used for such purpose, (ii) arts rehearsals and performances, (iii) visual, performance, and design arts space, (iv) classrooms, (v) theater, and (vi) public and private special events and exhibitions.

Tax Credit Investor means U.S. Bancorp Community Development Corporation and its successors or assigns.

Term shall have the meaning set forth in Section 3.1.

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

Section 2 PREMISES; CONDITION OF PREMISES

2.1 Premises.

Subject to any modification pursuant to Section 2.2, the Property and all other Improvements now and hereafter located on the Property are referred to in this Lease as the "**Premises**." Subject to the terms and conditions of this Lease, City hereby leases the Premises to Tenant and Tenant hereby leases the Premises from City. The Parties reserve the right, upon mutual agreement of the General Manager and Tenant, to enter into memoranda setting forth the legal description of the Property or technical corrections thereto to reflect any non-material changes occurring during or after the development of the Project, and upon full execution thereof, such memoranda shall be deemed to become a part of this Lease.

2.2 SFMTA Property.

(a) Use. The Premises includes certain real property that is owned by City and under the control and jurisdiction of the San Francisco Municipal Transportation Agency ("**SFMTA**"), as further depicted and described in the attached ***Exhibit A*** (the "**SFMTA Property**"). The SFMTA also operates an active rail yard adjacent to the SFMTA Property (the "**Rail Yard**"). Tenant shall only use the SFMTA Property for the "**Ancillary Structure Uses**", which shall mean using, maintaining, repairing,

and replacing the garbage facilities to be located northeast of the Powerhouse (the "**Trash Facility Area**"), the modular restroom to be located southeast of the Powerhouse (the "**Restroom Area**"), the underground conduit to be located adjacent to the Trash Facility Area and the Restroom Area (the "**Conduit Area**"), and the transformer pad to be located southeast of the Powerhouse (the "**Mechanical Unit Area**"), all as further depicted in the attached ***Exhibit A***.

(b) Compliance with SFMTA-RPD MOU. The Department has the right to use, and to permit its tenants, its agents, and its tenants' agents to use, the SFMTA Property for the Ancillary Structure Uses pursuant to a memorandum of understanding between the Department and the SFMTA, dated for reference purposes only as of _____, 2017, and attached to this Lease as ***Exhibit XX*** (the "**SFMTA-RPD MOU**"). Tenant shall not do or grant to others the right to do anything in, on, under or about the Premises or the SFMTA Property that would violate the SFMTA-RPD MOU and shall comply, and cause its Subtenants, Agents, and Invitees, to comply, with the terms of the SFMTA-RPD MOU, including, but not limited to, maintaining a sufficient barrier that prevents people from entering the Rail Yard from the Restroom Area, obtaining the SFMTA's consent to any Material Alteration or Minor Alteration in the SFMTA Property, obtaining a license from the SFMTA to access any of the SFMTA Property from the Yard, maintaining the improvements in the Trash Facility Area, the Restroom Area, and the Mechanical Unit Area good and clean operating condition at all times, and maintaining the underground conduit in the Conduit Area in a good and safe condition at all times. The General Manager shall reasonably cooperate with Tenant's efforts to enforce Tenant's rights under the SFMTA-RPD MOU during the Term, but City, as Landlord under this Lease, shall have no direct obligations under the SFMTA-RPD MOU. The Department shall not modify the SFMTA-RPD MOU in a manner that would materially impair the Ancillary Structure Use of the SFMTA Property.

(c) Removal of Restroom Area. If functional Office Building restrooms become available to Powerhouse users, City shall have the right to reduce the Premises to exclude the Restroom Area by delivering at least thirty (30) days' written notice of such reduction to Tenant (the "**Reduction Notice**"). The Reduction Notice shall state the effective date the Premises will no longer include the Restroom Area, and Tenant shall remove its Personal Property from the Restroom Area prior to such effective date.

2.3 Rights Reserved to City.

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

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

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

(c) All rights to use, operate, maintain, repair, enlarge, modify, expand, replace and reconstruct any and all surface and subsurface facilities owned by the City and now or later located in, under, on or about the Premises, including, without limitation, sidewalks and street improvements, provided such activities shall not unreasonably interfere with the construction of the Phase 1 Improvements or the Permitted Uses;

(d) The right to grant future easements and rights of way over, across, under, in and upon the Premises as City shall determine to be in the public interest, provided that any such easement or

right-of-way shall be conditioned upon the grantee's assumption of liability to Tenant for damage to its property that Tenant may sustain hereunder as a result of the grantee's use of such easement or right of way;

(e) Without limiting the generality of Section 2.2(d) above, the right to grant future easements, rights of way, permits and/or licenses over, across, under, in and upon the Premises as City shall determine to be in the public interest, including but not limited to the installation, operation, maintenance, and repair of equipment for cellular telephone, radio or other telecommunications services, provided such grant does not materially interfere with the Permitted Uses and the grantee assumes liability to Tenant for damage that Tenant may sustain to its property or the Premises as a result of the grantee's use of such easement, right of way, permit and/or license; and

(f) All rights of access provided for in Section 30 below.

2.4 Subject to Public and Municipal Uses and Rules.

Tenant acknowledges that the Premises is under the Commission's jurisdiction and must be used for recreational purposes under Section 4.113 of the City Charter and in compliance with the San Francisco Park Code. Tenant's rights under this Lease shall be subject to such requirements, and Tenant shall comply, and cause its Subtenants to comply, with Section 4.113 of the City Charter and the San Francisco Park Code with respect to the Premises and any rules and regulations relating to property under the Commission's jurisdiction, as the same may change from time to time (the "**Rules and Regulations**").

2.5 Condition of Premises.

(a) Inspection of Premises. Tenant represents and warrants that Tenant has conducted a thorough and diligent inspection and investigation, either independently or through Agents of Tenant's own choosing, of the Premises and the suitability of the Premises for Tenant's intended use. Such inspection shall not release City from its obligations pursuant to Section 10.4 and Section 11.1 below. Tenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses, subject to City's completion of the Phase 1 Improvements in compliance with the requirements of Section 11.1.

(b) Accessibility Inspection Disclosure. California law requires commercial landlords to disclose to tenants whether the property being leased has undergone inspection by a Certified Access Specialist ("**CASp**") to determine whether the property meets all applicable construction-related accessibility requirements. Tenant is hereby advised that the Premises have been inspected by a CASp. A CASp can inspect the Premises and determine if it complies with all the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the Premises, City may not prohibit Tenant from obtaining a CASp inspection of the Premises for the occupancy or potential occupancy of Tenant if requested by Tenant. City and Tenant must mutually agree on the arrangements for the time and manner of such CASp inspection, the payment of the CASp inspection fee, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises.

(c) "As-Is With All Faults". By taking possession of the Premises, Tenant agrees acknowledges and agrees that except for City's obligation to perform the Phase 1 Improvements in compliance with Section 11 below, the Premises are being leased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable Laws governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Lease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises or any portion thereof, whether or not of record. Tenant acknowledges and agrees that neither City, the Department, nor any of their Agents have made, and City hereby disclaims, any representations or warranties, express or implied, concerning: (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the present or future suitability of the Premises for Tenant's business and intended uses, (v) the feasibility, cost or legality of constructing any Improvements other than the Phase 1 Improvements on the Premises

required for Tenant's use and permitted under this Lease, or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(d) Release. As part of its agreement to accept the Premises in its "As Is With All Faults" condition set forth above, effective on the Effective Date, Tenant, on behalf of itself and its successors and assigns, shall be deemed to waive any right to recover from, and forever release, acquit and discharge, City and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that Tenant may now have or that may arise on account of or in any way be connected with (i) the physical, geotechnical or environmental condition of the Premises as of the Delivery Date, including, without limitation, any Hazardous Materials in, on, under, above or about the Premises, except to the extent that any Losses arise from City's failure to perform the Phase 1 Improvements in compliance with the requirements of Section 11 below, and (ii) the compliance of the Premises as of the Delivery Date with any Laws applicable to the Premises, including without limitation, Hazardous Materials Laws, except to the extent that any Losses arise from City's failure to perform the Phase 1 Improvements in compliance with the requirements of Section 11 below. In connection with the foregoing release, Tenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Tenant agrees that the release contemplated by this Section includes unknown claims for Losses pertaining to the subject matter of this release. Accordingly, Tenant hereby waives the benefits of Civil Code Section 1542, or under any other statute or common law principle of similar effect, in connection with the releases contained in this Section. Notwithstanding anything to the contrary in this Lease, the foregoing release shall survive any termination of this Lease. Notwithstanding the foregoing, City shall not be released under this Section 2.5(d) with respect to its performance of its obligations specifically set forth in the Lease, including, but not limited to, the construction of the Phase 1 Improvements.

Initials: _____ _____

Section 3 TERM; EARLY TERMINATION RIGHT; CITY ASSIGNMENT RIGHT

3.1 Term.

The Term shall commence on the Effective Date and shall expire on the fifty-fifth (55th) anniversary (the "**Expiration Date**") of the Delivery Date (defined as follows), unless sooner terminated in accordance with the terms of this Lease. The "**Delivery Date**" shall be the date that City's Public Works issues a Notice of Final Completion for the Phase 1 Improvements to the Phase 1 Contractor. City shall deliver the Premises to Tenant on the Delivery Date in its as is condition as of the Effective Date, except as modified by the Phase 1 Improvements, with no City obligation to make any repair, alterations, or other improvements in connection with such delivery other than enforcing all warranties and other rights of City for defects in design or construction of the Phase 1 Improvements against the design professionals and contractor(s) who or which designed or constructed the Phase 1 Improvements. Both the City and the Tenant shall have the right to terminate this Lease if the new market and historic rehabilitation tax credits financing for the Project does not close on or before March 31, 2018, ("Early Termination") by delivering written notice of such termination to the other party no later than April 30, 2018. In the event of Early Termination, neither party shall have any liability to the other party under the terms of this Lease.

3.2 Effective Date.

This Lease shall become effective on the date (the "**Effective Date**") which is the later of: (i) the date on which the Parties have executed and delivered this Lease, and (ii) the effective date of a resolution by the City's Board of Supervisors approving this Lease and authorizing the City's execution.

3.3 Assignment of Lease.

If (i) CAST or a CAST Affiliate (as defined in the Office Building Option Agreement) does not timely exercise its option to lease the Office Building (as defined in the Office Building Option Agreement) under the Office Building Option Agreement, and (ii) City has a written agreement with a third party for the rehabilitation of the Office Building and the use of the Office Building for recreational purposes, then at any time after the Dissolution Event, City shall have the right to require Tenant to assign all of its interest under this Lease and to the Premises to a City-designated party at no cost by delivering written notice of such City exercise to Tenant (the "**City Assignment Notice**") at least one (1) year before the effective date of such assignment, together with an assignment of lease in the form attached to this Lease as ***Exhibit B***. Notwithstanding anything to the contrary in the foregoing sentence, City shall not deliver the City Assignment Notice before the tenth (10th) anniversary of the Rent Commencement Date unless City reasonably determines it is necessary to assign this Lease to allow for the development of the Office Building. Tenant shall return such assignment of lease, duly executed by Tenant, to City within ____ days of receiving the City Assignment Notice. On the assignment of this Lease pursuant to this Section, Tenant shall be released from all liability under this Lease occurring or accruing from and after such assignment; provided, however, that Tenant shall not be released from any liability arising from Tenant's acts or failure to perform its obligations under this Lease prior to such assignment or Tenant's indemnity to City with respect to matters that occurred prior to such assignment.

If City elects to require the assignment of this Lease pursuant to the foregoing paragraph, City shall require the assignee, or any other party that leases the Premises, to only use the Premises for the Permitted Uses until the fifty-fifth (55th) anniversary of the Effective Date.

Section 4 RENT

4.1 Tenant's Covenant to Pay Rent.

(a) Rent Commencement Date; Abatement. The "**Rent Commencement Date**" shall be the earlier date to occur of (i) the commencement of any of the Primary Uses or Supporting Uses at the Premises, and (ii) the ____ day immediately following the Delivery Date; provided, however, that the Rent Commencement Date shall not occur before the Delivery Date. Beginning on the Rent Commencement Date, Tenant shall pay to City monthly installments of Base Rent during the Term on or before the tenth (10th) day of each month in the manner provided in this Section 4; provided, however, that Base Rent shall be abated during the period between the Rent Commencement Date and the later to occur of (1) the effective date, if any, of the Dissolution Event, and (2) the fifteenth (15th) anniversary of the Rent Commencement Date.

(b) Fair Market Rent Adjustment. If the Dissolution Event occurs, City shall have the right to adjust Base Rent to Fair Market Rent (defined as follows) by delivering written notice of such adjustment and its determination of Fair Market Rent to Tenant (the "Rent Adjustment Notice") on or before the later to occur of (i) the first (1st) anniversary of the effective date of the Dissolution Event and (ii) the fourteenth (14th) anniversary of the Rent Commencement Date. "Fair Market Rent" shall mean the higher of prevailing market rate for space of comparable size and location to the Premises then being offered for rent in other buildings similar in age, location and quality to the Premises situated within southern San Francisco ("Reference Area") taking into account any additional rental and all other payments and escalations payable hereunder, floor location and size of the premises covered by leases of such comparable space, the duration of the term of this Lease and the term of such comparable leases, free rent given under such comparable leases and any other tenant concessions, tenant improvement allowances and other allowances given under such comparable leases, and the restrictions and requirements of this Lease.

If Tenant disputes City's Fair Market Rent determination, Tenant shall so notify City in writing within fourteen (14) days following Tenant's receipt of the Rent Adjustment Notice and such dispute shall be resolved as follows:

(i) Within thirty (30) days following City's delivery of the Rent Adjustment Notice to Tenant, City and Tenant shall attempt in good faith to meet no less than two (2) times, at a mutually agreeable time and place, to attempt to resolve any such disagreement.

(ii) If within this thirty (30) day period City and Tenant cannot reach agreement as to the Fair Market Rent, they shall each select one appraiser or commercial real estate broker to determine the Fair Market Rent. Each such appraiser shall arrive at a determination of the Fair Market Rent and submit his or her conclusions to City and Tenant within thirty (30) days of the expiration of the thirty (30) day consultation period described in (a) above.

(iii) If only one appraisal is submitted within the requisite time period, it shall be deemed to be the Fair Market Rent. If both appraisals are submitted within such time period, and if the two appraisals so submitted differ by less than ten percent (10%) of the higher of the two, then the average of the two shall be the Fair Market Rent. If the two appraisals differ by more than ten percent (10%) of the higher of the two, then the two appraisers shall immediately select a third appraiser who will within thirty (30) days of his or her selection make a determination of the Fair Market Rent and submit such determination to City and Tenant. This third appraisal will then be averaged with the closer of the two previous appraisals and the result shall be the Fair Market Rent.

(iv) All appraisers specified herein shall be "MAI" designated members of the Appraisal Institute with not less than five (5) years' experience appraising leases of commercial properties similar to the Premises in the southern portion of San Francisco. City and Tenant shall pay the cost of the appraiser selected by such party and one-half of the cost of the third appraiser plus one-half of any other costs incurred in the arbitration.

4.2 Adjustments in Base Rent.

On each Adjustment Date, the Base Rent payable by Tenant shall be adjusted in the following manner. The Adjustment Index shall be compared with the Beginning Index. If the Adjustment Index has increased over the Beginning Index, then the Base Rent payable on and after such Adjustment Date shall be set by multiplying Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Beginning Index. In no event shall the Base Rent on or after the Adjustment Date be less than the Base Rent in effect immediately prior to the Adjustment Date.

4.3 Additional Rent.

Except as otherwise provided in this Lease, all costs, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature relating to the Premises that may arise or become due during the Term of, or in connection with, this Lease, whether foreseen or unforeseen, which are payable by Tenant to City pursuant to this Lease, shall be deemed Additional Rent. As used in this Lease, "**Rent**" means Base Rent and Additional Rent.

4.4 Manner of Payment of Rent.

Tenant shall pay all Rent to City in lawful money of the United States of America at the address for notices to City specified in this Lease, or to such other person or at such other place as City may from time to time designate by notice to Tenant. Rent shall be due and payable at the times provided in this Lease, provided that if no date for payment is otherwise specified, or if payment is stated to be due "on demand," "promptly following notice," "on receipt of invoice," or the like, then such Rent shall be due twenty (20) days following the giving by City of such written demand, notice, invoice or the like to Tenant specifying that such sum is presently due and payable.

4.5 Limitations on Abatement or Setoff.

Tenant shall pay all Rent at the times and in the manner in this Lease provided without any abatement, setoff, deduction, or counterclaim whatsoever (except as specifically set forth in this Lease).

4.6 Interest on Delinquent Rent.

If any Rent is not paid within twenty (20) days following written demand for payment of such Rent, such unpaid amount shall bear interest from the date due until paid at an annual interest rate (the "**Default Rate**") equal to the greater of (i) ten percent (10%) or (ii) five percent (5%) in excess of the rate the Federal Reserve Bank of San Francisco charges, as of the date payment is due, on advances to member banks and depository institutions under Sections 13 and 13a of the Federal Reserve Act; provided, in no event shall the Default Rate exceed any applicable usury or similar Law. Payment of interest shall not excuse or cure any default by Tenant.

4.7 Late Charges; Collection Costs.

Tenant acknowledges and agrees that late payment by Tenant to City of Rent will cause City increased costs not contemplated by this Lease. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of City's rights or remedies hereunder, if any Rent is not paid within five (5) days following the due date, then Tenant shall immediately pay to City a late charge equal to five percent (5%) of such delinquent rent amount (the "**Late Charge**"). Tenant shall also pay reasonable attorney's fees incurred by City due to Tenant's failure to pay Rent by the due date. Late Charge shall accrue interest at the rate of ten percent (10%) per annum, compounded monthly, from the due date to the date of payment. Except as provided above, such late charge may be assessed without notice and, except as provided above, without cure periods, and regardless of whether such late payment results in an Event of Default. The Parties agree that the Late Charge and reimbursement for attorney's fees represents a fair and reasonable estimate of the cost City will incur due to a late payment by Tenant. Amounts due under this Section are in addition to, not in lieu of, amounts due under Section 4.6. Payment of Late Charge shall not excuse or cure any default by Tenant.

4.8 Net Lease.

It is the purpose of this Lease and intent of City and Tenant that, except as expressly stated to the contrary in this Lease, all Rent shall be net to City, so that this Lease shall yield to City the full amount of the Rent at all times during the Term, without deduction, abatement or offset. Except as otherwise expressly set forth in this Lease, under no circumstances, whether now existing or hereafter arising, and whether or not beyond the present contemplation of the Parties, shall City be expected or required to incur any expense or make any payment of any kind with respect to this Lease or Tenant's use or occupancy of the Premises, including any improvements, except as specifically set forth in Section 11. By taking possession of the Premises for operations pursuant to this Lease following satisfaction of the conditions set forth in Section 2.1 above, Tenant acknowledges that City has satisfied its obligations under Section 11 below.

Section 5 USES

5.1 Permitted Uses.

Tenant shall use the Premises for the Permitted Uses; provided, however, that Tenant shall only use the SFMTA Property for the Ancillary Structure Uses. Tenant shall obtain all permits as may be required under applicable Law in accordance Tenant's use of the Premises. Tenant's use and operations on the Premises shall be commensurate in quality with other programming offered by the Department. Some or all of the Permitted Uses may be performed by Subtenants, in compliance with the provisions of Section 18 below.

5.2 Tenant Proposal to Change Use.

If Tenant reasonably determines during the Term that the Primary Uses are no longer the best use of the Powerhouse with respect to the Department's Mission, Tenant may submit in writing proposed new Primary Uses and Supporting Uses that are consistent with the Department's Mission for City's

consideration, together with a management plan for the operation of the Premises for the proposed new Primary Uses and Supporting Uses, supporting studies and analysis, and such other materials as Tenant would like City to consider regarding the proposed change of use ("**Tenant's Change in Use Proposal**").

If the General Manager, in his or her sole discretion, determines this Lease should be amended to allow Tenant to use the Premises as described in Tenant's Change in Use Proposal, then General Manager shall present such proposed change in use and negotiated lease amendment, if applicable, to the Commission for its review and consideration. The Board of Supervisors has delegated to the Commission the authority to approve amendments to this Lease documenting approved changes in use provided the uses so allowed are consistent with the Department's Mission.

5.3 Advertising and Signs; Approved Signage Program.

Tenant shall have the right to install signs and advertising inside the Premises that are not visible from the exterior of the Powerhouse. The Powerhouse is included on the National Register of Historic Places. At any time and from time to time during the Term, Tenant shall have the right to submit for the General Manager's written approval (which may be granted or withheld in the General Manager's reasonable discretion) a proposed signage program (or a proposed replacement signage program) for the Property, and following approval by the General Manager and such signage program (or replacement signage program) shall be deemed to be the "Approved Signage Program" from and after the date of such approval. Each Approved Signage Program shall (i) establish limitations on the number of signs permitted to be erected on the exterior of the Property, (ii) establish limitations on the size of any sign erected on the exterior of the Property, (iii) address construction, design standards, maintenance and removal obligations, and (iii) be compliant with the Secretary's Standards. Tenant may not place any advertisements or signs, including but not limited to awnings, canopies and banners, on the exterior of the Powerhouse, or any signs or advertising on the interior of the Powerhouse that are visible from the outside, except (i) in compliance with the requirements of California State Historic Preservation Office and the National Park Service and (ii) either (A) in compliance with the Approved Signage Program or (B) following written approval by the General Manager, which approval can be given or withheld in the reasonable discretion of the General Manager. Prior to any such installation Tenant shall obtain at Tenant's expense any required permits for such signage and installation.

5.4 Limitations on Uses by Tenant.

Tenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any waste on or about the Premises. Tenant shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by a standard form fire insurance policy or subject City to potential premises liability, and Tenant shall take commercially reasonable precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Tenant shall not conduct any business, place any sales or promotional display, or advertise in any manner in on the exterior portions of the Premises, except as set forth in Section 5.3 or as approved by City in its regulatory capacity in accordance with City's standard permitting process for the use of streets and sidewalks. Without limiting the foregoing, Tenant shall not conduct or permit on or about the Premises any of the following activities ("**Prohibited Activities**"): (i) any activity that creates a public nuisance; (ii) any activity that is not within the Permitted Uses or otherwise approved by General Manager in writing; (iii) any activity or object that will overload or cause damage to the Premises or include more persons than is permitted by the City's Fire Marshall; (iv) use of the Premises for sleeping or personal living quarters; or (v) any use by a group or organization that violates the nondiscrimination provisions set forth in this Lease.

5.5 Building Rules and Regulations.

Prior to the Delivery Date, Tenant shall establish and maintain reasonable rules and regulations for the Powerhouse consistent with industry standards and the permitted and required uses of the Premises pursuant to this Lease. After any Dissolution Event, City shall have the right to make reasonable additions or modifications to the rules and regulations for the Powerhouse, which shall be binding upon Tenant's users or licensees, provided that such additions or modifications shall not reduce City's

obligations hereunder nor materially adversely interfere with the Permitted Uses, and such additions or modifications are not in conflict with the provisions of this Lease and do not materially increase the burdens or obligations upon Tenant.

5.6 Security Matters.

Tenant at all times shall be responsible for on-site security in and about the Premises. Tenant shall have an affirmative obligation to use and operate the Premises in a safe and secure manner for all patrons and staff.

5.7 Name of Powerhouse and Areas within Premises.

Tenant acknowledges that any proposed change in the name of the Powerhouse shall be subject to the Commission's naming policy and the process and procedures established by the Commission in connection with such policy, and shall be subject to the approval of the Commission. In addition, Tenant acknowledges that if Tenant desires to name rooms or areas within the Premises to recognize major donors to the Project or to Tenant's programs conducted within the Premises, or to recognize other honorees approved by City, such naming shall be subject to the Commission's naming policy, gift policy, and donor recognition guidelines in effect at the time, and shall be subject to approval of the Commission. Any signage designating names of rooms, areas, or components of the Premises, and any plaques commemorating donations to Tenant, shall be removed by Tenant at Tenant's sole cost and expense at the expiration or termination of this Lease, except as otherwise specifically approved by the Commission in writing.

5.8 Americans with Disabilities Act.

Tenant acknowledges that the Americans with Disabilities Act (the "**ADA**") requires that programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Tenant further acknowledges its obligation to comply with the ADA and any other federal, state or local disability rights legislation. Without limiting Tenant's obligations under this Lease to comply with applicable Laws, Tenant warrants that it will fulfill that obligation, and that it will not discriminate against disabled persons in the provision of services, benefits or activities pursuant to this Lease.

5.9 Rates and Charges; Use of Profits.

The rates and charges for classes and services offered and goods sold by Tenant, Master Subtenant, any Subtenant, or others at the Premises shall be reasonable and competitively priced with similar businesses in San Francisco. Notwithstanding the foregoing, after the Dissolution Event, if any, classes and programs offered at the Premises shall be offered for free or at reduced prices, with family and other programs to be at a sliding scale basis to the extent funding is available, all to be generally consistent with the policy adopted by the Department or the Commission from time to time for eligibility for the Department's scholarship program for recreation programs offered by the Department. After the Dissolution Event, if any, all net profits earned by Tenant, Master Subtenant, and any Subtenant with respect to the Premises shall only be used for conducting the Permitted Uses, the performance of any of Tenant's obligations under this Lease, the performance of the Master Subtenant's obligations under the Master Sublease, or the performance of a Subtenant's obligations under its Sublease.

5.10 Prevailing Wages and Conditions for Specified Uses.

Tenant shall pay, and shall require its Subtenants, and contractors and subcontractors (regardless of tier) to pay, prevailing wages, including fringe benefits or the matching equivalents thereof, to persons performing services for the following activity on the Premises to the extent required by San Francisco Administrative Code Chapter 21C: a Public Off-Street Parking Lot, Garage or Storage Automobile Facility (as defined in Section 21C.3), a Show (as defined in Section 21C.4), a Special Event (as defined in Section 21C.8), and Broadcast Services (as defined in Section 21C.9).

If Tenant, or its Subtenants, contractors, and subcontractors fail to comply with the applicable obligations in San Francisco Administrative Code Chapter 21C, City shall have all available remedies set

forth in Chapter 21C and the remedies set forth in this Lease. City may inspect and/or audit any workplace, job site, books and records pertaining to the applicable services and may interview any individual who provides, or has provided, such services. Tenant shall provide to City (and to require any Subtenant, contractor or subcontractor who maintains such records to provide to City) immediate access to all workers' time sheets, payroll records, and paychecks for inspection on request to the extent they relate to such services.

The types of covered services related to a Show include, but are not limited to, individuals engaged in theatrical or technical services, including rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services. The types of covered services related to a Special Event include, but are not limited to, individuals engaged in on-site installation, set-up, assembly, and dismantling of temporary exhibits, displays, booths, modular systems, signage, drapery, specialty furniture, floor coverings, and decorative materials in connection with trade shows, conventions, expositions, and other special events on City property. The types of covered services related to Broadcast Services include, but are not limited to, individuals engaged in the electronic capture and/or live transmission of on-site video, digital, and/or video content for commercial purposes through the use of a remote production or satellite trust on-site, including any technical director, video controller, assistant director, and stage manager, and individuals engaged in audio, camera, capture and playback, graphics and utility functions.

5.11 Special Events.

The Parties agree that an important component of the annual operating budget of Tenant and its Subtenants will derive from renting facilities within the Premises for short term one time uses ("**Events**"). Tenant shall comply with the requirements of Section 18.1(d) below with respect to all Events.

5.12 Branded Products.

Tenant may, at its expense and with Department's consent, develop and sell products including clothing that are "branded" with some form of artwork, logos, trademarks or service marks, related to the Powerhouse or similar/related logo, artwork and/or words (collectively "**Logo**"). Tenant shall not use the Logo until it has been approved in writing by the Department. The Logo and any other original works of authorship or designs commissioned by Tenant, including but not limited to any domain names or website designs, source code, and content) exclusively related to the Powerhouse or Tenant's services or operations in or for the Powerhouse (collectively, "**Works**"), shall be works for hire under Title 17 of the United States Code, and all copyrights in such Logo and other Works are the City's property and City gives Tenant an exclusive, irrevocable right to use such Works and any such Logo during the Term. If the use of a Logo or any Work by the Tenant or any of its Subtenants or Agents creates trademark, service mark or trade dress rights in connection with the Logo or Works, the City shall also have an irrevocable right in such trademark, service mark, or trade dress, which right shall be non-exclusive during the Term. If any Logo or Works created by Tenant or any of its Subtenants or Agents with respect to this Lease or the Premises are not works for hire under federal law, Tenant hereby assigns, and shall cause its Subtenants and Agents to assign, all copyrights to such Logo and Works to City and further agrees to provide any material and execute any documents necessary to effectuate such assignment. The Department shall have the right to pre-approve or disapprove all products that are to receive the Logo, including the use and placement of such Logo on the products.

5.13 Operating Covenants.

(a) Continuous Use. Commencing no later than the date that is three (3) months after the Delivery Date, and subject to Permitted Programming Disruptions (defined below), Tenant shall continuously use, maintain and operate the entire Premises, or cause the entire Premises to be continuously used, maintained and operated, for the Primary Uses and the Supporting Uses, and shall not allow the Premises or major areas within the Premises to remain unoccupied or unused without City's prior written consent, which City may give or withhold in its sole discretion. Tenant shall use the Premises, and cause each Subtenant to use and operate its business in the Premises, in a professional manner, commensurate with the standard of use and operation of similar Department facilities.

"**Permitted Programming Disruptions**" means: (A) reasonable and periodic gaps, not to exceed one (1) month each, in continuous use of portions of the Premises or in providing full programming that result from (i) changes in or modifications to programming or staffing, or (ii) customary vacancies in sublease space that may arise from time to time in connection with retenanting; or (B) vacancies or programming disruptions resulting from required repairs or construction of alterations or improvements; or (C) vacancies or programming disruptions resulting from a casualty or condemnation event or other events not under Tenant's reasonable control. Tenant shall use reasonable diligence to minimize disruptions in programming or resulting from Permitted Programming Disruptions, including, as applicable, shifting the location of classes to portions of the Premises not impacted by the alterations, improvements or casualty where feasible and providing interim staff to temporarily replace outside staff for scheduled classes where practicable. Tenant shall provide City with prompt written notice of Permitted Programming Disruptions exceeding ten (10) business days.

(b) Programming Requirements. Subject to Permitted Programming Disruptions, Tenant shall use diligent and good faith efforts to provide a full program of classes and other programs and services that serve youth and other members of the public and promote strong attendance at the Premises. Tenant shall, or cause its Subtenants to, actively program the Building with cultural, recreational and educational programming by offering classes throughout the year, and including (1) daily arts-focused programming for area youth during weekday after-school and summer hours; (2) cultural, recreational and educational programming for adults and families during the evening and weekend hours; (3) weekly cultural, recreational and educational early childhood development classes for preschool students and caregivers; (4) quarterly public student and professional performances and exhibitions; (4) summer work-force development opportunities for high-school students. The minimum level of programming shall be as set forth in ***Exhibit C*** to this Lease (the "**Minimum Programming Standards**"). Tenant shall have the right to modify the Minimum Programming Standards to the extent approved in advance and in writing by the General Manager.

(c) Public Rentals and Community Meetings. Tenant shall cause the Premises to be available for use as a rehearsal space and community meetings at a City-approved rate and pursuant to a City-approved form of temporary use agreement. Such rates shall be on a sliding scale based on the finances of the using party, but shall not be less than Tenant's actual costs to open the Premises and monitor such rehearsal or community meeting if it occurs outside of the normal Building operating hours.

(d) Management, Staffing and Funding. Tenant shall provide appropriate management and development staff for the operation of the Premises with at least one full-time on-site program manager and an adequate team of program administrators and artists. Tenant shall adequately fund the use, maintenance and operation of the Premises consistent with Tenant's obligations under this Lease, including maintaining a reasonable annual repair and capital plan and budget and sufficient reserves to fund such plan in accordance with the budget and ensuring no less than sixty-five percent (65%) of the Powerhouse employees are from qualified low-income households (no more than eighty percent (80%) of San Francisco median income) as of the date of hire.

(e) Community Benefits. Tenant shall use good faith efforts to meet the service goals set forth in the attached Schedule 1.

(f) Promotion, Publicity and Fundraising. Tenant shall use reasonable efforts to promote and publicize the activities at the Premises and its availability for use as a rehearsal and community space, as well as to fundraise the funds needed for the Permitted Uses.

(g) Management and Operational Plans. Tenant has submitted to City PAW's management and operation plan describing its goals for staffing, operating, programming, promoting, and publicizing the Premises and for fundraising, which has been approved by City and is attached to this Lease as ***Exhibit D***. At City's request, Tenant shall provide to City an updated management and operation plan for the Premises. If the General Manager has reasonable concerns that the then-existing management and operation plan is not consistent with the Department's Mission or will not realistically allow Tenant to comply with the maintenance and operational requirements of this Lease, City shall provide Tenant with written notice of such concerns, and Tenant will consult with and carefully consider

the views of the General Manager or his or her designee regarding such concerns. In addition, on or before _____ of each year of the Term, Tenant shall submit to City a report detailing its management and operations during the prior year. Within sixty (60) days of such submittal (or such longer period of time as mutually agreed by the Parties), Tenant and the General Manager or his or her designee shall meet to discuss such report.

(h) Failure to Meet Minimum Programming Standards. Subject to Permitted Programming Disruptions, if Tenant fails to meet the Minimum Programming Standards, City may provide Tenant with written notice of such failure. Tenant shall attempt in good faith to correct such programming deficiency within ninety (90) calendar days of such notice (the "**Programming Cure Period**"). If the deficiency cannot be corrected within the Programming Cure Period, Tenant may at Tenant's election submit a written proposal for the correction along with a specific timeline for such cure (a "**Programming Cure Proposal**") no later than thirty (30) days after the date of the original notice from City. Tenant's Programming Cure Proposal shall be subject to approval by the General Manager. If Tenant timely submits a Programming Cure Proposal that is approved by the General Manager, the Programming Cure Period shall be extended as set forth in the approved Programming Cure Proposal.

If Tenant does not timely submit a Programming Cure Proposal and the deficiency is not corrected by the end of the Programming Cure Period, Tenant shall be in default of this Lease. If Tenant timely submits a Programming Cure Proposal and the General Manager disapproves of Tenant's Programming Cure Proposal, the General Manger shall provide Tenant with written notice of such disapproval, together with the reasons for such disapproval. Within thirty (30) days of receipt by Tenant of such written disapproval notice, Department staff and Tenant shall meet in good faith to consider methods and timing for curing the programming deficiency, and Tenant may at Tenant's election submit a revised proposal for the correction along with a specific timeline for such cure (a "**Revised Programming Cure Proposal**") no later than thirty (30) days after the date of such meeting. If Tenant timely submits a Revised Programming Cure Proposal and the General Manager disapproves of Tenant's Revised Programming Cure Proposal, the General Manger shall provide Tenant with written notice of such disapproval, together with the reasons for such disapproval. If the General Manager disapproves the original Programming Cure Proposal and Tenant does not thereafter timely submit a Revised Programming Cure Proposal and the deficiency is not corrected by the end of the original 60-day period, Tenant shall be in default of this Lease. If Tenant timely submits a Programming Cure Proposal or does not timely submit a Revised Programming Cure Proposal that is approved by the General Manager, and thereafter fails to cure the deficiency within the period provided in such proposal, Tenant shall be in default under this Lease. The foregoing opportunity to correct deficiencies in Minimum Programming Standards shall not apply to failure to comply with any other specific obligation under this Lease.

Section 6 TAXES AND ASSESSMENTS

6.1 Payment of Possessory Interest Taxes and Other Impositions.

(a) Payment of Possessory Interest Taxes; Reporting Requirements. Subject to Tenant's rights under Section 7, Tenant shall pay or cause to be paid, prior to delinquency, all possessory interest and property taxes legally assessed, levied or imposed by applicable Laws on the Premises or any of the improvements or personal property located on the Premises or arising out of Tenant's leasehold estate created by this Lease, to the full extent of installments or amounts payable or arising during the Term. All such taxes shall be paid directly to City's Tax Collector or other charging authority prior to delinquency, provided that if applicable Law permits Tenant to pay such taxes in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be charged or assessed for nonpayment or delinquent payment of such taxes. Tenant specifically recognizes and agrees this Lease creates a possessory interest which is subject to taxation, and that this Lease requires Tenant to pay any and all possessory interest taxes levied upon Tenant's interest pursuant to an assessment lawfully made by City's Assessor; provided, that Tenant shall have the right to contest the validity, applicability or amount of any such taxes in accordance with Section 7. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City, as landlord under

this Lease, report certain information relating to the creation, renewal, extension, assignment, sublease, or other transfer of this Lease to the County Assessor within sixty (60) days after any such transaction, and that Tenant report certain information relating to such matters to the County Assessor within thirty (30) days after the applicable transaction. Tenant agrees to comply with these requirements.

(b) Other Impositions. Subject to Tenant's rights under Section 7.1, Tenant shall pay or cause to be paid all Impositions to the full extent of installments or amounts payable or arising during the Term (subject to the provisions of Section 6.1(c)), which may be legally assessed, levied, confirmed or imposed on or in respect of or be a lien upon the Premises, any of the improvements or personal property now or hereafter located thereon, the leasehold estate created hereby, or any subleasehold estate permitted hereunder, including any taxable possessory interest which Tenant, or any Subtenant or any other person may have acquired pursuant to this Lease. Tenant shall pay all Impositions directly to the taxing authority, prior to delinquency, provided that if any applicable Law permits Tenant to pay any such Imposition in installments, Tenant may elect to do so in which event only those installments that are due and payable prior to the expiration or earlier termination of the Lease shall be payable by Tenant. In addition, Tenant shall pay any fine, penalty, interest or cost as may be assessed for nonpayment or delinquent payment of any such Imposition. Impositions shall include all such taxes, assessments, fees and other charges whether general or special, ordinary or extraordinary, foreseen or unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing of every character. The foregoing or subsequent provisions notwithstanding, Tenant shall not be responsible for any Impositions arising from or related to, City's interest as landlord under this Lease.

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

(d) Proof of Compliance. Within a reasonable time (but in any event, not more than fifteen (15) days) following City's written request which City may give at any time and give from time to time, Tenant shall deliver to City copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to City, evidencing the timely payment of such Impositions.

6.2 City's Right to Pay.

Unless Tenant is exercising its right to contest under and in accordance with the provisions of Section 7, if Tenant fails to pay and discharge any Impositions (including without limitation, fines, penalties and interest) prior to delinquency and fails to pay same thereafter for more than ten (10) days after written demand from City that Tenant pay same, City, at its sole and absolute option, may (but is not obligated to) pay or discharge the same, and the amount so paid by City (including any interest and penalties thereon paid by City), together with interest at the Default Rate computed from the date City makes such payment, shall be deemed to be and shall be payable by Tenant as Additional Rent, and Tenant shall reimburse such sums to City within thirty (30) days following demand.

Section 7 CONTESTS

Tenant shall have the right to contest the amount, validity or applicability, in whole or in part, of any possessory interest tax, property tax, or other Imposition or other lien, charge or encumbrance, against or attaching to the Premises or any portion of, or interest in, the Premises, including any lien, charge or encumbrance arising from work performed or materials provided to Tenant or other person to improve the Premises or any portion of the Premises, or the application of any Law to Tenant or the Premises, by appropriate proceedings conducted in good faith and with due diligence. Tenant shall give notice to City within a reasonable period of time of the commencement of any such contest and of the final determination of such contest. Nothing in this Lease shall require Tenant to pay any Imposition as long as it contests the validity, applicability or amount of such Imposition or Law in good faith, and so long as it does not allow the portion of the Premises affected by such Imposition or Law to be forfeited to the entity levying such Imposition as a result of its nonpayment. If any Law requires, as a condition to such contest, that the disputed amount be paid under protest, or that a bond or similar security be provided, Tenant shall be responsible for complying with such condition as a condition to its right to

contest. Tenant shall be responsible for the payment of any interest, penalties or other charges that may accrue from any contest, and Tenant shall provide a statutory lien release bond or other security reasonably satisfactory to City in connection with any such contest. Without limiting Section 19, Tenant shall Indemnify City for any such fines, penalties, costs, expenses or fees, including Attorneys' Fees and Costs, resulting from Tenant's failure to pay any Imposition or Tenant's contest of an Imposition or Law.

Section 8 COMPLIANCE WITH LAWS

8.1 Compliance with Laws and Other Requirements.

Tenant shall promptly comply, at no cost to City, with all present or future Laws relating to the Premises or the use or occupancy thereof and with all recorded covenants, conditions and restrictions affecting any portion of the Property. Tenant understands and agrees that it is Tenant's obligation, at no cost to City, to cause the Premises and Tenant's uses thereof to be conducted in compliance with all Disabled Access Laws. The parties acknowledge and agree that Tenant's obligation to comply with all Laws and recorded covenants, conditions and restrictions provided herein is a material part of the bargained for consideration under this Lease. Tenant's obligation under this Section shall include, without limitation, the responsibility of Tenant to make repairs and alterations to the Premises (subject to City's obligations under Section 10.4 below and Tenant's termination rights under Section 10.6 below). Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

8.2 Regulatory Approvals.

(a) Responsible Party. Tenant understands and agrees that Tenant's use of the Premises hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Tenant shall be solely responsible for obtaining any and all such regulatory approvals. Tenant shall bear all costs associated with applying for and obtaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Tenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Tenant (subject to Tenant's right to contest pursuant to Section 7), and City shall have no liability, monetary or otherwise, for any such fines or penalties. Without limiting the other indemnification provisions of this Lease, Tenant shall Indemnify City and any Indemnified Party from and against any and all such fines and penalties, together with Attorneys' Fees and Costs, for which City may be liable in connection with Tenant's failure to obtain or comply with any Regulatory Approval or in connection with the litigation against or appeal or contest of, any Regulatory Approval or any conditions thereof.

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

Section 9 TENANT'S MANAGEMENT AND OPERATING COVENANTS

9.1 Operating Standards and Requirements; Management.

(a) Following completion of the Phase 1 Improvements, Tenant shall cause the Premises to be operated in a commercially reasonable manner consistent with achieving the Primary Uses and the Minimum Programming Standards. Tenant shall be exclusively responsible, at no cost to City, for the management and operation of the Premises. In connection with managing and operating the Premises, Tenant shall provide (or require others, including, without limitation, Subtenants, to provide) such

services as may be necessary or appropriate to achieve and maintain operating standards commensurate with that of facilities managed by the Department, including, but not limited to, (i) repair and maintenance of the Improvements, subject to City's obligations under Section 10.4 below (ii) those utility services that are Tenant's obligations hereunder, (iii) cleaning, janitorial, pest control, and trash and graffiti removal, (iv) landscaping and groundskeeping, (v) security services, (vi) marketing the Premises, selecting Subtenants, and negotiating Subleases and Event Permits (as defined in, and subject to the requirements of, Section 18.1(d) below), (vii) enforcing reasonable rules and regulations for the conduct of Subtenants and others present on the Premises, (viii) collecting rents and other receivables and preparing statements, (ix) using reasonable efforts to enforce, as fully as practicable, the compliance by Subtenants with the terms, covenants and conditions of their Subleases, (x) carrying insurance, paying premiums, and securing certificates of insurance from Subtenants and parties working on the Premises, if applicable, (xi) preparing a budget that permits Tenant to pay operating expenses and meet debt service obligations, and (xii) establishing and maintaining books and records and systems of account covering operations of the Premises in accordance with sound accounting practices.

(b) Tenant shall cause the proper management and marketing of the Premises in a commercially reasonable manner consistent with sound facility management practices. If City determines in its reasonable judgment that the Premises are not being operated, managed or subleased in accordance with the requirements and standards of this Lease, City may provide Tenant with written notice of such defect in operation, management or subleasing. Within thirty (30) days of receipt by Tenant of such written notice, City staff and Tenant shall meet in good faith to consider methods for improving the operating, management or subleasing of the Premises, and Tenant shall cure the defects in performance, which cure must begin as soon as practicable (which shall be no more than forty-five (45) days after City's notice) and must be completed within seventy-five (75) days after the date of City's notice, provided that if the deficiency cannot be corrected within the 75-day period, Tenant shall submit a written proposal for the correction along with a specific timeline for such cure no later than thirty (30) days after the date of the meeting between Tenant and City. Tenant's proposal shall be subject to approval by the Department at Department's sole discretion. If the deficiency is not corrected by the end of the 75-day period, or if the Department has not accepted Tenant's plan for cure by such date, Tenant shall be in default of this Lease. No contract for the operation or management or leasing of the Premises entered into by Tenant shall be binding on City and no act or omission of a manager pursuant to any management agreement, or otherwise, shall in any manner excuse Tenant's failure to perform any of its obligations under this Lease.

9.2 Books and Records; Annual Report; Audit Right.

Tenant shall keep, and cause its Subtenants to keep, accurate books and records according to generally accepted accounting principles with respect to all expenditures and revenues with respect to the Premises. On or before the date which is ninety (90) days following the close of each Tenant fiscal year during the Term and ninety (90) days following the end of the Term, Tenant shall deliver to City an itemized statement of income and expenditures with respect to the Premises for such year, which statement shall set forth income and expenditures for the year just concluded broken down by category (such as rentals and fees, event rental, income from classes, and donations received) and a cash flow table that itemizes expenditures on staff and consultant salaries, utilities and maintenance, capital improvements, and the like (the "**Annual Statement**"). Each Annual Statement of Tenant shall be certified as correct by an officer of Tenant and in form delivered to Tenant's board of directors, or if no such form which such detail was delivered to Tenant's board of directors, in a form satisfactory to City. Tenant agrees to make its books and records with respect to the Premises available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Tenant's reported earnings and expenses. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing. In addition, Tenant shall promptly provide its annual report and Form 990 tax form to City on request.

Tenant shall cause a Subtenant to deliver to City an itemized statement of such Subtenant's income and expenditures with respect to the Premises within thirty (30) days of City's written request for

such statement, which statement shall set forth income and expenditures for the period of time specified in such City request, broken down by category (such as rentals and fees, event rental, income from classes, and donations received) and a cash flow table that itemizes expenditures on staff and consultant salaries, utilities and maintenance, capital improvements, and the like. Such Subtenant statements shall be certified as correct by an officer of such Subtenant and in a form satisfactory to City. Tenant shall require each Subtenant to make its books and records with respect to the Premises available to City, or to any City auditor, or to any auditor or representative designated by City, for the purpose of examining such books and records to determine the accuracy of Subtenant's reported earnings and expenses. Such books and records shall be kept for four (4) years and shall be maintained and/or made available in San Francisco to City's representative for the purpose of auditing or re-auditing. In addition, Tenant shall cause each Subtenant to provide its annual report and Form 990 tax form to City on request.

Section 10 REPAIR AND MAINTENANCE

10.1 Tenant's Duty to Maintain and Repair.

Throughout the Term, Tenant shall maintain and repair, at no expense to City, the non-structural, interior components of the Premises, the improvements on the SFMTA Property, and the remainder of the SFMTA Property in good repair and working order and in a clean, secure, safe and sanitary condition. Such maintenance and repair shall include, to City's reasonable satisfaction, normal day-to-day maintenance such as light bulb replacement and maintaining kitchen sinks, faucets, windows, doors, and painting, keeping all furniture, fixtures and equipment at the Premises in a clean, neat, safe, sanitary and in good order, and routine janitorial service. Subject to Section 10.4, and Section 15 of this Lease, Tenant shall promptly make (or cause others to make) all necessary or appropriate non-structural, interior repairs, including repair of wear and tear. Tenant shall make such repairs with materials, apparatus and facilities with materials, apparatus and facilities at least equal in quality, appearance and durability to the materials, apparatus and facilities repaired or replaced. Without limiting the foregoing, Tenant shall promptly make all such repairs and replacements: (a) at no cost to City, (b) by licensed contractors or qualified mechanics, and (c) in accordance with any applicable Laws. In addition to the foregoing, subject to the provisions of Section 10.4 below, Tenant shall be responsible for regularly scheduled maintenance to the structural and exterior components of the improvements on the Premises, including but not limited to the exterior walls, windows, and roof of the Powerhouse (collectively, the "**Structural Components**"), as more particularly described in the Maintenance Budget, as defined below.

10.2 Capital Repair Budget; Replacement Reserve Account.

Prior to the Delivery Date, Tenant shall engage or cause the Master Subtenant to engage a qualified professional to develop a forty-five (45) year asset reserve analysis for the Premises (the "**Reserve Study**"), which Reserve Study shall include a schedule for repair, replacement, major maintenance, and improvement of Structural Components, Building Systems, and other capital improvements, fixtures or equipment that are located on or used in connection with (i) the operation or use of the Premises or the improvements on the Premises, and (ii) subject to wearing out during the useful life of the Powerhouse ("**Capital Repairs and Replacements**"). Tenant shall deliver a copy of the Reserve Study and, in consultation with the Department, develop a schedule for periodic deposits into a separate depository account (the "**Replacement Reserve Account**") in the amount reasonably adequate for the payment of all reasonably anticipated costs of Capital Repairs and Replacements, which schedule shall be subject to the reasonable approval or disapproval of the General Manager (as so approved, the "**Capital Repair Budget**"). Tenant shall cause the Replacement Reserve Account to be funded, at a minimum, to the levels proposed in the Capital Repair Budget from time to time or recommended by City's Controller, as provided below, if applicable.

If any party withdraws funds from the Replacement Reserve Account such that the resulting balance is $25,000 or less, as Indexed, Tenant shall cause the Replacement Reserve Account to be replenished to a minimum balance of $50,000, as Indexed, within twenty-four (24) months of the withdrawal. If any withdrawal of funds from the Replacement Reserve Account results in a balance is less than $50,000 as Indexed, but greater than $25,000, as Indexed, Tenant shall cause Replacement Reserve Account to be replenished to a minimum balance of $50,000, as Indexed, within twelve (12)

months of the withdrawal. The funds in the Replacement Reserve Account shall be used by Tenant or the Master Subtenant only for Capital Repairs and Replacements, and shall not be used to fund program costs or for any other purpose unless Tenant obtains the prior written consent of City, which consent may be withheld in City's sole discretion. Tenant shall fund, or cause the Master Subtenant to fund, the Replacement Reserve Account in the amount reasonably adequate to pay for all reasonably anticipated costs to be paid from such account, consistent with the practices of other prudently, well-managed facilities in the San Francisco Bay Area. City's Controller may review the adequacy of deposits to the Replacement Reserve Account periodically and if the Controller determines from time to time in his or her reasonable discretion that the amount in the Replacement Reserve Account is insufficient to fund the cost of the likely expenditures which will be required to be made from such account, City may require an increase in the amount of deposits into the Replacement Reserve Account upon one hundred eighty (180) days prior written notice to Tenant, and Tenant shall thereupon make or cause the Master Subtenant to make such adjustments, either by monthly payments or by capital campaign funds or otherwise, as reasonably agreed by City and Tenant. City's Controller shall include in its written notice to Tenant a written explanation of the reasons for requiring an increase in the monthly into the Replacement Reserve Account. Tenant shall deliver to City annually a statement from the depository institutions in which the Replacement Reserve Account is held, showing the then current balance in such account and any activity on such account which occurred during the immediately prior year. If any party has withdrawn funds from the Replacement Reserve Account within the immediately prior year, Tenant shall include with the delivery of such statement, an explanation of such withdrawal. In connection with any such expenditure, Tenant shall provide City with any other documentation related thereto, reasonably requested by City. The insufficiency of any balance in the Replacement Reserve Account shall not abrogate Tenant's obligation to fulfill all preservation and maintenance covenants in this Lease if either Tenant or Master Subtenant, as applicable, has failed to timely make the deposits it is scheduled to make under the Capital Repair Budget or as otherwise set forth in this Section.

Notwithstanding the foregoing, if Capital Repairs and Replacements are required during the final five (5) years of the Term, Tenant may propose that City and Tenant share the cost of such Capital Repairs and Replacements in a manner that takes into account the useful life of the repair or replacement and the remaining Term, such that Tenant is responsible only for that portion of the cost attributable to the time period prior to the expiration of the Term, and if City does not agree to fund the balance of the cost of the required Capital Repairs and Replacements, City shall so notify Tenant and Tenant may either terminate this Lease by providing written notice of termination to City, or Tenant may elect to make such Capital Repairs and Replacements at Tenant's cost.

10.3 Inspection Reports.

Not less frequently than once every seven (7) years, Tenant shall conduct an inspection and physical needs assessment for the Premises to identify replacements and repairs required to maintain the Premises and such improvements in good order and repair and to keep the Improvements and such improvements from deteriorating, and shall cause to be prepared a written report (the "**Inspection Report**") detailing the results of such inspection and assessment. The Inspection Report shall identify capital repairs and improvements that are reasonably required to preserve, repair or replace capital improvements, fixtures or equipment located on or used in connection with the operation of the Premises as well as routine maintenance and repairs. At City's request, Tenant shall cooperate with City to ensure maintenance and repair data is provided promptly to City's Capital Planning Committee staff for inclusion in the master City property database currently known as Facility Renewal and Replacement Model (FRRM).

10.4 Limited City Duty to Maintain.

Notwithstanding the other provisions of this Section 10, City shall maintain and make any necessary repairs to the Structural Components for the period between the Delivery Date and the tenth (10^{th}) anniversary of the Delivery Date (the "**City Structural Repair Period**"), except to the extent any such repairs are needed due to the negligence or willful misconduct to Tenant or any Subtenant or their respective Agents or Invitees. City shall have no obligation to maintain or repair the Improvements on

the Premises other than City's obligation with respect to the Structural Components during the City Structural Repair Period. During the City Structural Repair Period, at Tenant's reasonable request from time to time, City shall either enforce its agreements with design professionals and contractors with respect to the correction of defects in the Phase 1 Improvements or pursue the recovery of damages related to such defects. City shall further have the right to enforce such agreements at its own election from time to time.

10.5 Cooperation in Identifying Funding Sources.

City and Tenant shall use reasonable efforts to identify funding for any unexpected repairs not identified in the Maintenance Budget and not otherwise the obligation of Tenant under this Lease, and if such funding is identified, Tenant shall perform such repairs. Notwithstanding anything to the contrary in the foregoing sentence, City shall have no obligation to commit any City funds for such unexpected repairs.

10.6 Right to Terminate; Tenant Right to Perform Repairs.

If Structural Components require any repair after the termination of the City Structural Repair Period and there are not sufficient funds in the Capital Repair Budget for such repair, Tenant shall promptly notify City in writing of the needed Structural Component repair, the estimated cost of such repair, and the amount then available in the Capital Repair Budget. City shall have no obligation to fund the remaining funds needed for such repair, but if City elects to do so, City shall notify Tenant in writing of the amount of funds City will provide for such repair and City's requirements for such provision. If City does not agree to provide such funds, City shall notify Tenant in writing of such determination. If City offers to provide the needed balance of funds for a Structural Component repair and Tenant does not agree to City's requirements for providing such funds (which shall not be unreasonably withheld by Tenant) or City elects to not provide the additional funds needed for such repair, then Tenant shall so notify City if Tenant will use other funding to perform the needed repair at Tenant's sole cost. If Tenant does not elect to use such other funding, either City or Tenant may terminate this Lease by providing the other written notice of termination.

Tenant shall obtain at least three (3) quotes for the repair or replacement of a Structural Component from a party licensed to perform such repair or replacement; provided, however, that the General Manager shall have the right to reduce the number of such required quotes if it is commercially reasonable to do so. Any and all licenses and agreements entered into by Tenant for use of the Premises must acknowledge Tenant's and City's repair and termination rights as set forth in this Lease, and waive any rights against City in the event of any such repair or termination as permitted by this Lease. Tenant waives any and all claims for damages, injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss, if City exercises its right to repair the Premises or to terminate this Lease following damage or destruction or as otherwise permitted hereunder. In making any such repairs, City shall comply with the applicable requirements of the California State Historic Preservation Office and the National Park Service, and use commercially reasonable efforts to minimize disruption to Tenant's use of the Premises.

10.7 Tenant Waivers.

Except as expressly set forth in Section 10.4 above, (i) City shall have no obligation to make repairs or replacements of any kind or maintain any portion of the Premises, and (ii) Tenant waives the benefit of any existing or future law that would permit Tenant to make repairs or replacements at City's expense, or abate or reduce any of Tenant's obligations under, or terminate, this Lease, on account of the need for any repairs or replacements. Without limiting the foregoing, Tenant hereby waives any right to make repairs at City's expense as may be provided by Sections 1932(1), 1941 and 1942 of the California Civil Code, as any such provisions may from time to time be amended, replaced, or restated.

10.8 Notice.

Tenant shall deliver to City, promptly after receipt, a copy of any notice which Tenant may receive from time to time: (i) from any governmental authority having responsibility for the enforcement

of any applicable Laws, asserting that the Premises is in violation of such Laws; or (ii) from the insurance company issuing or responsible for administering one or more of the insurance policies required to be maintained by Tenant under this Lease, asserting that the requirements of such insurance policy or policies are not being met. City shall deliver to Tenant, promptly after receipt, a copy of any notice which City may receive from time to time from any governmental authority having responsibility for the enforcement of any applicable Laws, asserting that the Premises is in violation of such Laws.

Section 11 LEASEHOLD IMPROVEMENTS

11.1 Construction and Payment of Phase 1 Improvements.

Subject to Tenant's timely payment of Phase 1 construction costs pursuant to the Development Services Agreement between City and Tenant, dated as of_____ (the "**Development Services Agreement**"), City shall cause _____ [*name of City contractor*] or any other party selected by City (either, the "**Phase 1 Contractor**") to perform the work and make the installations in the Premises described in that certain _____ [*name of construction agreement*] between City and _____ [*name of City contractor*], dated _____ (the "**Construction Agreement**") prior to the Delivery Date in a good and professional manner in accordance with sound building practice. Such work and installations are referred to as the "**Phase 1 Improvement Work**" and "**Phase 1 Improvements**".

If Tenant fails to timely make each payment it is obligated to make to the Phase 1 Contractor or to City, if City is to be reimbursed for a payment it made to the Phase 1 Contractor, under the Development Services Agreement, City shall have the right to suspend the Phase 1 Improvement Work until Tenant cures such failure in the manner specified in the Development Services Agreement. If City elects to suspend the Phase 1 Improvement Work due to such Tenant failure, the Delivery Date shall be extended by the number of days of such suspension of the Phase 1 Improvement Work.

City shall notify Tenant of the approximate date on which the Phase 1 Improvement Work will be fully completed in accordance with the Construction Documents. When construction progress so permits, but not less than thirty (30) days in advance of anticipated completion, City shall notify Tenant of the approximate substantial completion date and immediately notify Tenant when City issues a Notice of Completion for the Phase 1 Improvement Work to the Phase 1 Contractor under the Construction Agreement. On such date or other mutually agreeable date as soon as practicable thereafter, Tenant and its authorized representatives shall have the right to accompany Landlord on an inspection of the Premises.

11.2 Title to Leasehold Improvements.

As used in this Lease, "**Leasehold Improvements**" means all Improvements erected, built, placed, installed or constructed upon or within the Premises after the Effective Date, including, but not limited to, the Phase 1 Improvements. Once installed, Tenant shall not remove any Leasehold Improvements from the Premises without the prior written consent of City, except to the extent Tenant removes any of its Personal Property pursuant to Section 12.19 above or Section 27.1 below. Except as otherwise set forth in this Section, until the expiration or earlier termination of this Lease, Tenant shall own all of the Leasehold Improvements, including all Material Alterations (as defined in Section 12 below) and all appurtenant fixtures, machinery and equipment installed therein (except for trade fixtures and the Personal Property of Subtenants). At the expiration or earlier termination of this Lease, title to the Leasehold Improvements, including appurtenant fixtures (but, except as otherwise set forth in this Lease, excluding Personal Property that Tenant is required to remove from the Premises under Section 27.1 below), will vest in City without further action of any Party, and without compensation or payment to Tenant. If City causes functional restrooms in the Office Building to the users of the Powerhouse prior to the expiration or earlier termination of this Lease, however, title to the modular restroom in the Restroom Area will vest in City without further action of any Party, and without compensation or payment to Tenant. Tenant and its Subtenants shall have the right at any time, or from time to time, including, without limitation, at the expiration or upon the earlier termination of the Term, to remove the Personal

Property that is not affixed or attached to the Building, and with City's prior written consent, any Personal Property affixed or attached to the Premises in the ordinary course of business; provided, however, that if the removal of any Personal Property damages any portion of the Premises, Tenant shall promptly cause the repair of such damage at no cost to City.

Section 12 ALTERATIONS

12.1 City's Approval Required.

(a) Alterations. Except for improvements required by the United States Secretary of the Interior under the approved Historic Preservation Certification Application Part 2 – Description of Rehabilitation (a "**Part 2 Alteration**"), Tenant shall not make or permit any Material Alterations (defined as follows) without City's prior written consent in each instance, which consent shall not be unreasonably withheld; provided, however, that the SFMTA may withhold or condition its permission to any requested Material Alteration on the SFMTA Property in its sole discretion. A "**Material Alteration**" means any construction, alteration, installation, addition, or improvement in, to or about the Premises (including the Powerhouse), but shall exclude any construction, alteration, installation, addition or improvement to any portion of the Premises (each, a "**Minor Alteration**") that (i) does not require approval from the State Historical Preservation Office ("**SHPO**"), and (ii) consists of (A) installing, repairing or replacing furnishings, fixtures, equipment or decorative improvements that do not materially affect the structural integrity of the Improvements, (B) recarpeting or repainting the interior of the Premises, or similar alterations, (C) an alteration that does not require a building permit or regulatory approval from the Planning Department or any other City department, and costs less than One Hundred Thousand Dollars ($100,000), as Indexed. At any time prior to a Dissolution Event, all Material Alterations and Minor Alterations shall be performed in a manner approved by SHPO and in compliance with the Secretary's Standards .

(b) Notice by Tenant; General Approval. At least thirty (30) days before commencing any Material Alteration that requires City's approval under Section 12.1(a) above, Tenant shall notify City of such planned Material Alteration. City shall have the right to object to any such Material Alteration, to the extent that it requires City's approval, by providing Tenant with written notice of such objection within thirty (30) days after receipt of such notice from Tenant. If City does not approve or object to the proposed Material Alteration within the thirty (30) day period described above, then Tenant may submit a second written notice to City that such objection was not received within the period provided by this Section 18.1(b) and requesting City's response. Tenant shall notify City of any planned Minor Alteration or Part 2 Alteration at least twenty (20) days before commencing such Minor Alteration or Part 2 Alteration, as applicable.

(c) Plans and Specifications; Contractors and Mechanics. All Material Alterations shall be done at Tenant's expense in accordance with plans and specifications approved by City (to the extent plans are reasonably required), only by duly licensed and bonded contractors or mechanics (which contractors or mechanics shall be subject to the prior approval of City if the proposed work exceeds One Hundred Thousand Dollars ($100,000), as Indexed, and if City's approval was required, subject to any conditions that City may reasonably impose at the time of approval.

12.2 Construction Documents in Connection with Material Alterations.

With regard to any Material Alteration, Tenant shall prepare and submit to City, for review and written approval hereunder, reasonably detailed schematic drawings. City may waive the submittal requirement of schematic drawings if it determines in its reasonable discretion that the scope of the Material Alteration does not warrant such initial review. Schematic drawings, if required, shall generally include perspective drawings sufficient to illustrate the Improvements to be constructed, a site plan at appropriate scale, building plans, floor plans and elevations sufficient to describe the development proposal, and the general architectural character, and the location and size of uses, of the proposed work, and building sections showing height relationships of the areas noted above. Tenant shall prepare and submit to City, for review and written approval hereunder (following City's approval of schematic drawings, if required) preliminary and final construction documents (collectively "**Construction**

Documents"), which are consistent with the approved schematic drawings, if applicable Construction Documents means plans, specifications and working drawings for Improvements, setting forth in detail all aspects of the design, function and construction of the proposed Material Alteration (including architectural, structural, mechanical, electrical, materials and such other elements as may be appropriate), in form sufficient for obtaining permits and bidding all elements of construction, and in otherwise in conformity with all of the requirements of this Lease. Construction Documents shall be prepared by a qualified architect or structural engineer duly licensed in California. City shall approve or disapprove schematic drawings and Construction Documents submitted to it for approval within thirty (30) days following receipt, and any disapproval shall state in writing the reasons for disapproval. If City deems the Construction Documents incomplete, City shall notify Tenant of such fact. If City disapproves Construction Documents, and Tenant revises or supplements, as the case may be, and resubmits such Construction Documents, City shall promptly review the revised or supplemented Construction Documents to determine whether the revisions satisfy the objections or deficiencies cited in City's previous notice of rejection. Upon receipt by Tenant of a disapproval of Construction Documents from City, Tenant (if it still desires to proceed) shall revise such disapproved portions of such Construction Documents in a manner that addresses City's written objections to the extent acceptable to Tenant. Tenant shall resubmit such revised portions to City as soon as possible after receipt of the notice of disapproval. City shall approve or disapprove such revised portions in the same manner as provided above for approval of Construction Documents (and any proposed changes therein) initially submitted to City.

12.3 Insurance in Connection with Material Alterations.

During any period of construction or installation of any Material Alteration, Tenant shall comply with the following requirements at no cost to City, which requirements can be reasonably modified by City's Risk Manager to reflect the particular circumstances of such Material Alteration:

(a) Contractor Insurance. Tenant shall require its contractor to maintain (i) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (ii) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; and (iii) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee. Tenant shall cause its Agents (other than Tenant's contractor) performing any Material Alteration to carry such insurance as shall be reasonably approved by City taking into account the nature and scope of the work and industry custom and practice.

(b) Builders Risk Insurance. Tenant shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the Improvements, against "all risk" and "special form" hazards.

(c) Professional Services. Tenant shall require all providers of professional services, including but not limited to architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Material Alterations, to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(d) General Requirements.

(i) The insurance to be carried by Tenant or its contractors or Agents pursuant to this Section shall comply with the requirements of Section 20.1(b), and Tenant shall require that such policies name Tenant and City as additional insureds.

(ii) In addition to the requirements of this Section, Tenant shall require all contractors and sub-contractors performing work in, on, under, around, or about the Premises for any Material Alterations to carry the insurance coverages required by the respective construction contract, sublease, or other agreement governing such party's activities that was approved by City, if applicable.

(iii) Tenant shall furnish City certificates with respect to the policies required under this Section, together with copies of each such policy (if City so requests) and evidence of payment of premiums, within thirty (30) days after the Delivery Date and, with respect to renewal policies, at least ten (10) business days after the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant this Section, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

12.4 Construction.

(a) Conditions. Tenant shall not commence any Material Alteration until the following conditions have been satisfied or waived by City: (i) except with respect to any Minor Alteration, City shall have approved the final Construction Documents; (ii) Tenant shall have obtained all permits and other regulatory approvals necessary to commence such construction; and (iii) Tenant shall have submitted to City in writing its good faith estimate of the anticipated total construction costs of the Material Alteration if such estimated cost exceeds Twenty Five Thousand Dollars ($25,000), as Indexed. If such good faith estimate exceeds One Hundred Thousand Dollars ($100,000), as Indexed, Tenant shall also submit, at City's request, evidence reasonably satisfactory to City, of Tenant's ability to pay such costs as and when due.

(b) Reports. During periods of construction, Tenant shall submit to City upon City's reasonable request (which shall not be made more than once a month), written progress reports, along with appropriate backup documentation.

12.5 Construction Standards.

All construction on the Premises shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. Tenant shall undertake commercially reasonably measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise and other effects of such work shall be controlled using commercially-accepted methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas.

12.6 General Conditions.

All construction on the Premises shall be subject to the following terms and conditions:

(a) All construction work shall be performed in compliance with all Laws, including but not limited to Disabled Access Laws and any historic preservation requirements.

(b) City shall have no responsibility for costs of any Material Alteration; Tenant shall pay (or cause to be paid) all such costs.

(c) Tenant shall be responsible for all required insurance.

(d) Tenant shall resolve all disputes arising out of the construction in a manner that allows work to proceed expeditiously.

(e) City and its Agents shall have the right to enter areas in which construction is being performed to inspect the progress of the work provided such inspections do not unreasonably interfere with the construction. City shall use reasonable efforts to provide prior written or telephonic notice of such entry. Such access shall be subject to Tenant's reasonable security and safety measures. Nothing in this Lease, however, shall be interpreted to impose an obligation upon City to conduct such inspections or any liability in connection therewith.

12.7 Construction Contracts.

Except as otherwise agreed by City in writing, which agreement shall not be unreasonably withheld, any construction contract for a Material Alteration (a "**Construction Contract**") shall include terms and conditions: (A) requiring contractor to obtain performance and payment bonds guaranteeing in full the contractor's performance and payment of subcontractors under the Construction Contract; (B) naming City and its boards, commissions, directors, officers, agents, and employees as co-indemnitees with respect to Tenant's contractor's obligation to indemnify and hold harmless Tenant and its directors, officers, agents, and employees from all Losses directly or indirectly arising out of, connected with, or resulting from the contractor's performance or nonperformance under the Construction Contract; (C) requiring Tenant and contractor (as applicable) to obtain and maintain insurance coverages reasonably acceptable to City, including general liability and builder's risk insurance coverage that names City and its directors, officers, agents, and employees as additional insureds under the terms of the policies, (D) identifying City as an intended third party beneficiary of the Construction Contract, with the right to enforce the terms and conditions of the Construction Contract and pursue all claims thereunder as if it were an original party thereto; (E) consenting to the assignment of the Construction Contact to the City, in whole or in part, including but not limited to the assignment of (i) all express and implied warranties and guarantees from the contractor, all subcontractors and suppliers, (ii) all contractual rights related to the correction of nonconforming work, and (iii) the right to pursue claim(s) for patent and latent defects in the work and the completed project; and (F) providing for the contractor's(s') obligation, for a period of at least one (1) year after the final completion of construction of the Improvements, to correct, repair, and replace any work that fails to conform to the Final Construction Documents (as the same may be revised during construction pursuant to properly approved change orders) and damage due to: (i) faulty materials or workmanship; or (ii) defective installation by such contractor(s) of materials or equipment manufactured by others.

12.8 Tenant's Duty to Notify City.

Tenant shall promptly notify City in writing of (i) any written communication that Tenant may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Powerhouse or any completed improvements fail in any respect to comply with applicable laws, rules and regulations; (ii) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; (iii) any known default by any contractor or subcontractor or material supplier; or (iv) any known material adverse change in the financial condition or business operations of any contractor or subcontractor or material supplier that is reasonably anticipated to interfere with the completion of the applicable construction.

12.9 Wages and Working Conditions.

Any undefined, initially-capitalized term used in this subsection shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "**Prevailing Wage Requirements**"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

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

12.10 Prevailing Local Hiring Requirements for Improvements and Alterations.

Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "**Local Hiring Requirements**"). Improvements and Alterations are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than Seven Hundred Fifty Thousand Dollars ($750,000) per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Improvement or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("**OEWD**") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "**Covered Project**").

Tenant shall include, and shall require its Subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its Subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

12.11 Tropical Hardwood and Virgin Redwood Ban.

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

12.12 Approvals.

Tenant understands and agrees that City is entering into this Lease in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of the plans for any construction (including the schematic design documents or Construction Documents) nor any other approvals by City hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals

or other determinations of City as landlord hereunder may be made by the General Manager unless otherwise specified herein.

12.13 Safety Matters.

Tenant, while performing any construction or maintenance or repair of the Powerhouse, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Premises and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of its work.

12.14 Construction Improvements that Disturb or Remove Exterior Paint.

Tenant, on behalf of itself and its Agents, employees, officers and contractors, shall comply with all requirements of the San Francisco Building Code Chapter 36 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Tenant, its Agents, employees, officers and contractors shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Tenant acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 36 of the San Francisco Building Code does not constitute notification to City as Tenant under the Lease and similarly that notice under the Lease does not constitute notice under Chapter 36 of the San Francisco Building Code. Further, Tenant and its Agents, employees, officers and contractors, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("**HEPA**") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Tenant covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 36 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

12.15 Preservative-Treated Wood Containing Arsenic.

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

12.16 Resource Efficient City Buildings.

Tenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 713 relating to green building requirements for the design, construction, and operation of buildings owned or leased by City. Tenant hereby agrees that it shall comply with all applicable provisions of such code sections.

12.17 As-Built Plans and Specifications.

Tenant shall furnish to City one copy of as-built plans and specifications for Material Alteration (reproducible transparencies and CAD files) within one hundred twenty (120) days following completion; provided, however, Tenant shall continue to own the rights to such as built plans and specifications until the expiration or earlier termination of the Lease. If Tenant fails to provide such as-built plans and specifications to City within the time period specified herein, and such failure continues for an additional thirty (30) days following written request from City, City will thereafter have the right to cause an architect or surveyor selected by City to prepare as-built plans and specifications showing such Material Alteration, and the reasonable cost of preparing such plans and specifications shall be reimbursed by Tenant to City as Additional Rent. Nothing in this Section shall limit Tenant's obligations, if any, to provide plans and specifications in connection with Material Alteration under applicable regulations adopted by City in its regulatory capacity.

12.18 Title to Improvements.

Tenant shall have the right to remove and safely store City's personal property on the Premises at any time during the Term, provided Tenant shall return the same to the Premises upon the expiration or earlier termination of the Lease. Notwithstanding anything to the contrary in the Lease, Tenant shall not remove any equipment, additions and other property attached or affixed to or installed in the Premises without City's prior written consent; provided, however, that Tenant shall remove such items from the Premises on the expiration or termination of this Lease if City requires such removal in writing within thirty (30) days of such expiration or termination. If Tenant removes any such items from the Premises, Tenant shall repair any damage to the Premises caused by such removal. Tenant shall not have the right to remove the Phase 1 Improvements, all of which shall be delivered to City upon Lease termination or expiration.

12.19 Removal of Personal Property.

All Personal Property that is not affixed or attached to the Building shall be and remain the property of Tenant or the Subtenants, as applicable. Tenant shall not remove or allow the removal of any Personal Property that is affixed or attached to the Building without the prior written consent of the General Manager; provided, however, that Tenant shall remove such affixed or attached Personal Property on the expiration or earlier termination of this Lease at City's request. Tenant and the Subtenants shall have the right to remove their respective unaffixed and unattached Personal Property at any time during the Term.

12.20 City Cooperation.

Upon Tenant's request, City, acting in its proprietary capacity as a landlord but not in any regulatory capacity, shall reasonably cooperate with Tenant, in accordance with industry custom for landlords, in connection with Tenant's applications for permits and other governmental approvals in connection with the operation of the Premises or construction of any improvements under this Lease. Nothing in the foregoing shall limit or alter City's discretion as landlord for approvals or consents as described elsewhere in this Lease.

12.21 Annual Report of Alterations.

Tenant shall submit an annual report to City detailing any Material Alteration (including any Minor Alterations) made to the Premises during the immediately preceding year.

Section 13 UTILITY AND OTHER SERVICES

13.1 Utilities and Services.

(a) City shall provide, up to a cost of Six Hundred Dollars ($600) per month, as Indexed, which amount shall be Indexed, electricity and water services to the Premises. Tenant shall be responsible, at its sole cost and expense, for any electricity, water, and sewer fees in excess of such monthly cap. Tenant shall reimburse City for any such excess fees within thirty (30) days of receiving City's invoice for such excess fees.

(b) Tenant shall pay for garbage and recycling disposal and all telephone, fax and internet connection charges for the entire Premises, including the cost of bringing any such service(s) to locations in the Premises.

13.2 Excess Use.

If Tenant requires any utilities or services not provided by City hereunder, Tenant shall pay all costs of such utilities and services. Without limiting the foregoing, Tenant shall not: (a) connect or use any apparatus, device or equipment that will impair the proper functioning or capacity of the Building Systems, (b) connect any apparatus, device or equipment through electrical outlets or facilities except in the manner for which such outlets or facilities are designed, or (c) maintain at any time an electrical demand load in excess of the amount the Powerhouse's electrical systems were designed to support.

13.3 Interruption of Services.

City's obligation to provide utilities and services for the Premises is subject to applicable Laws and shutdowns for maintenance and repairs, for security purposes, or due to strikes, lockouts, labor disputes, fire or other casualty, acts of God, or other causes beyond the control of City. If there is an interruption in, or failure or inability to provide any service or utility for the Premises for any reason, such interruption, failure or inability shall not constitute an eviction of Tenant, constructive or otherwise, or impose upon City any liability whatsoever, including, but not limited to, liability for consequential damages or loss of business by Tenant, however City shall use reasonable and diligent efforts to restore or to cause the restoration of the interrupted service if the cause of the interruption or failure is within City's reasonable control in its capacity as owner of the Premises. Further, Tenant agrees, with respect to any public utility services provided to the Premises by City's utility company (if applicable), that no act or omission of City in its capacity as a provider of public utility services shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of Tenant and City under this Lease, or entitle Tenant to terminate this Lease or to claim any abatement or diminution of Rent, except as expressly set forth herein to the contrary. Further, Tenant covenants not to raise as a defense to its obligations under this Lease, or assert as a counterclaim or cross-claim in any litigation or arbitration between Tenant and City relating to this Lease, any losses arising from or in connection with City's provision (or failure to provide) public utility services. Tenant hereby waives the provisions of California Civil Code Section 1932(1) or any other applicable existing or future Legal Requirement permitting the termination of this Lease due to such interruption, failure or inability. The foregoing shall not constitute a waiver by Tenant of any claim it may or may not in the future have (or claim to have) against any such utility provider including City's utility company.

13.4 Water and Energy Conservation; Mandatory or Voluntary Restrictions.

If any law, ordinance, code or governmental or regulatory guideline imposes mandatory or voluntary controls on City or any portion of the Premises relating to the use or conservation of energy, water, gas, light or electricity or the reduction of automobile or other emissions, or the provision of any other utility or service provided with respect to this Lease, or if City is required or elects to make alterations to any part of the Powerhouse in order to comply with such mandatory or voluntary controls or guidelines or to save power, water or other utility charges, such compliance and the making of such alterations shall not entitle Tenant to any damages, relieve Tenant of the obligation to pay the full Rent hereunder or to perform each of its other covenants hereunder or constitute or be construed as a constructive or other eviction of Tenant, provided that City shall consult with Tenant prior to the construction of any such alterations in order to minimize the effect of any such improvement on the operations of Tenant under this Lease. Without limiting the foregoing, Tenant acknowledges that City shall have the right to install, at City's cost, solar panels, wind turbines and other energy-generating equipment on the roof of the Powerhouse so long as: (i) the same shall not interfere with equipment installed by Tenant on the roof in accordance with the terms of this Lease; (ii) the same shall not adversely affect the stability of the roof or materially interfere with Tenant's operations at the Premises; (iii) the same shall be permitted by Law (including those relating to historic preservation); and (iv) the same shall not have an adverse effect on any tax credits that have been or will be issued with respect to the Premises.

13.5 Floor Load.

Without City's prior written consent, which City shall not unreasonably withhold, condition or delay, Tenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Powerhouse; provided that it shall not be unreasonable for City to withhold consent to any such placement or installation if City's engineers are not satisfied that the improvements suggested by Tenant are sufficient to support such placement or installation and not cause damage to the Powerhouse. If City consents to the placement or installation of any such machine or equipment in the Premises, Tenant, at no cost to City, shall reinforce the floor of the Premises, pursuant to plans and specifications approved by City and otherwise in compliance with the constructions provisions of this Lease, as necessary to assure that no damage to the Premises or the Powerhouse or weakening of any structural supports will be occasioned thereby.

13.6 Antennae and Telecommunications Dishes.

No antennae or telecommunications dish or other similar facilities may be installed on the roof or exterior of the Premises without the prior written approval of the General Manager, which approval shall not be unreasonably withheld, conditioned or delayed. Any wireless telecommunications systems shall be subject to City's approval pursuant to City's policies on the siting and requirements for wireless telecommunications, as the same may be amended or modified from time to time. No such antennae shall interfere with City's plans for solar panels or wind turbines on the roof of the Powerhouse or City's emergency communications and transmission facilities (if any) and, to the extent existing at the time approval to the same was requested, City's non-emergency communications and transmission facilities of City (if any).

Section 14 DAMAGE OR DESTRUCTION

14.1 General; Notice; Waiver.

(a) General. If at any time during the Term any damage or destruction occurs to any portion of the Premises, including the Improvements thereon, and including, but not limited to, any Major Damage and Destruction, the rights and obligations of the Parties shall be as set forth in this Section.

(b) Notice. If there is any damage to or destruction of any portion of the Premises or the Improvements thereon, that could materially impair use or operation of the Improvements for their intended purposes for a period of thirty (30) days or longer, Tenant shall promptly, but not more than ten (10) days after the occurrence of any such damage or destruction, give written notice thereof to City describing with as much specificity as is reasonable the nature and extent of such damage or destruction. Base Rent shall be abated to the extent such damage or destruction reduces the area of the Premises that is suitable for the Permitted Use.

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

14.2 Certain Defined Terms.

(a) Major Damage or Destruction means damage to or destruction of any portion of the Improvements on the Premises (a) to the extent that the hard costs of Restoration will exceed Five Hundred Thousand Dollars ($500,000) or (b) that cannot reasonably be repaired within one hundred eighty (180) days after the date of the damage or (c) during the last five (5) years of the Term.

(b) Restore and Restoration have the meanings set forth in Section 1.

(c) Tenant Force Majeure means events which result in delays in Tenant's performance of its obligations hereunder due to causes beyond Tenant's control and not caused by the acts or omissions of the Tenant, such as acts of nature or of the public enemy, fires, floods, earthquakes, strikes, freight embargoes, and unusually severe weather; delays of contractors or subcontractors due to any of these causes; the presence of Hazardous Materials or other concealed conditions on the Premises

that would substantially delay or materially and adversely impair the Tenant's ability to construct on the Premises; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Premises; archeological finds on the Premises; strikes, delay in the granting of permits and other governmental approvals beyond reasonable time periods and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that Tenant has ordered such materials on a timely basis and Tenant is not otherwise at fault for such inability to obtain materials). Force Majeure does not include failure to obtain financing or have adequate funds, or any event that could have been avoided by exercising that standard of foresight and due diligence that any ordinary, prudent and competent person would exercise under the circumstances. If there is any such delay, the time or times for performance of the obligations will be extended for the period of the delay; provided, however, (i) within thirty (30) days after the beginning of any such delay, Tenant shall have first notified City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay, and (ii) Tenant cannot, through commercially reasonable and diligent efforts (not including the incurring of overtime premiums or the like), make up for the delay. Under no circumstances shall an event of Tenant Force Majeure exceed twelve months without City's consent.

(d) Uninsured Casualty means any of the following: (1) an event of damage or destruction occurring at any time during the Term for which the costs of Restoration (including the cost of any required code upgrades) are not insured under the policies of insurance that Tenant is required to carry under Section 20 hereof, or (2) an event of damage or destruction occurring at any time during the Term, which is covered under Tenant's policies of insurance that Tenant is required to carry under Section 20 hereof, but where the cost of Restoration (including the cost of any required code upgrades) will exceed the net proceeds of any insurance payable (or which would have been payable but for Tenant's default in its obligation to maintain insurance required to be maintained hereunder) plus the amount of any applicable policy deductible. Damage or destruction due to flood or earthquake shall be deemed an Uninsured Casualty notwithstanding that there may be insurance coverage.

14.3 Tenant's Restoration Obligations.

If any portion of the Improvements is damaged or destroyed by an event not constituting an Uninsured Casualty or Major Damage or Destruction for which Tenant elects to terminate this Lease under Section 14.4, then Tenant shall, subject to Section 14.4 hereof, within a reasonable period of time, commence and diligently, subject to Tenant Force Majeure, Restore the damaged or destroyed Premises, as applicable, to substantially the condition it was in immediately before such damage or destruction, to the extent possible in accordance with then applicable Laws. Except as set forth below, all insurance proceeds received by Tenant for the repair or rebuilding of the Premises shall be used by Tenant for such repair or rebuilding. All restoration performed by Tenant shall be in accordance with the procedures set forth in Section 12 relating to Material Alteration and shall be at Tenant's sole expense. Such destruction, in and of itself, shall not terminate this Lease.

14.4 Major Damage and Destruction or Uninsured Casualty.

(a) Tenant's Election to Restore or Terminate. If an event of Major Damage or Destruction or Uninsured Casualty occurs at any time during the Term, then Tenant shall provide City with a written notice (the "**Casualty Notice**") either (1) electing to commence and complete Restoration of the Premises to substantially the condition it was in immediately before such Major Damage or Destruction or Uninsured Casualty to the extent possible in accordance with then applicable Law and in accordance with any restoration work to be performed by City in accordance with the terms of this Lease; or (2) electing to terminate this Lease (subject to Section 14.4(b)). Tenant shall provide City with the Casualty Notice no later than ninety (90) days following the occurrence of such Major Damage or Destruction or Uninsured Casualty. If Tenant elects to Restore the Improvements, all of the provisions of Section 12 that are applicable to Material Alteration of the Improvements shall apply to such Restoration of the Improvements to substantially the condition they were in prior to such Major Damage or Destruction as if such Restoration were Material Alteration.

(b) Condition to Termination; Payment of Insurance Proceeds. As a condition precedent to Tenant's right to terminate the Lease upon the occurrence of either of the events set forth in Section 14.4(a) above, Tenant, in its election to terminate described in Section 14.4(a), shall state the estimated cost of Restoration of the Premises and the amount by which the estimated cost of Restoration exceeds insurance proceeds payable. Upon receipt by Tenant of any insurance proceeds paid on account of such casualty for the repair or rebuilding of the Premises, Tenant shall promptly pay or cause to be paid to City such insurance proceeds recoverable by Tenant after first reimbursing any Mortgagee for the outstanding balance of any loan secured by Tenant's interest in this Lease and reimbursing Tenant for the reasonable costs it incurs to obtain the insurance proceeds. Upon such event, Tenant shall provide to City a statement of such costs and the remaining debt, certified as true and correct, together with appropriate backup documentation.

14.5 Effect of Termination.

If Tenant elects to terminate the Lease under Section 14.4 above, then this Lease shall terminate on the date that Tenant shall have fully complied with all provisions of the first sentence of Section 14.4(b). On such termination, the Parties shall be released thereby without further obligations to the other party as of the effective date of such termination subject to payment to City of accrued and unpaid Rent, up to the effective date of such termination; provided, however, that the indemnification provisions hereof shall survive any such termination with respect to matters arising before the date of any such termination and City's right to receive insurance proceeds under this Lease shall survive the termination or expiration of the Lease.

14.6 Distribution on Lease Termination.

If Tenant is obligated to restore the Premises as provided herein and the Lease is terminated as a result of an Event of Default by Tenant, then at the time of termination Tenant shall transfer to City all remaining insurance proceeds for the repair or rebuilding of the Premises, or the right to such proceeds if not yet received, in order to allow City to complete the restoration of the Premises.

14.7 Subject to Leasehold Deed of Trust.

The City's and the Tenant's rights under this Section shall be subject and subordinate to the rights of the Leasehold Deed of Trust Beneficiaries with respect to damage and destruction under the Leasehold Deed of Trust so long as it remains in effect.

Section 15 CONDEMNATION

15.1 Definitions.

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

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

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

(d) "**Improvements Pertaining to the Realty**" means machinery or equipment installed for use on the Premises that cannot be removed without a substantial economic loss or without substantial damage to the property on which it is installed, regardless of the method of installation, but excluding all of Personal Property. In determining whether particular property can be removed "without a substantial economic loss," the value of the property in place considered as part of the realty should be compared with its value if it were removed and sold.

15.2 General.

If during the Term or during the period between the execution of this Lease and the Effective Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties under this Lease shall be determined pursuant to this Section. City and Tenant intend that the provisions hereof govern fully if there is a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

15.3 Total Taking; Automatic Termination.

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

15.4 Partial Taking; Election to Terminate

If there is a Taking of any portion (but less than all) of the Premises, Tenant shall have the right to terminate this Lease if (i) the partial Taking renders the remaining portion of the Premises untenantable or unsuitable for continued use by Tenant, or (ii) the Taking is of areas that are necessary for Tenant to derive sufficient income to perform its obligations hereunder. If there is a partial Taking of a substantial portion of the Premises, either City or Tenant shall have the right to terminate this Lease. Either party electing to terminate under the provisions of this Section shall do so by giving the other party written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30^{th}) day after such written notice is given or the Date of Taking.

15.5 Rent; Award.

On termination of this Lease pursuant to an election under Section 15.4 above, City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease and any Improvements Pertaining to the Realty), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant shall receive any Award made specifically to Tenant for Tenant's relocation expenses, the interruption of or damage to Tenant's business, or damage to Tenant's Personal Property.

15.6 Partial Taking; Continuation of Lease.

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 15.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) any Award shall be payable first to City to be applied to the restoration or repair of the balance of the Premises not taken, to the extent required to render such portion of the Premises tenantable, and (b) City shall be entitled to that portion of the balance of the Award attributable to the Premises (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses, the interruption of or damage to Tenant's business, or damage to Tenant's Personal Property.

15.7 Temporary Takings.

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected by such temporary Taking and the entire Award for the temporary Taking shall be paid to Tenant.

Section 16 LIENS AND LEASEHOLD MORTGAGES

16.1 Liens.

Tenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Tenant. If Tenant does not, within thirty (30) days following

the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, City shall have, in addition to all other remedies, the right, but not the obligation, to cause the lien to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by City and all expenses incurred by it in connection therewith (including, without limitation, Attorneys' Fees and Costs) shall be payable to City by Tenant upon written demand, accompanied by supporting invoices. City shall have the right to post on the Premises any notices that City may deem proper for the protection of City, the Premises, and the Powerhouse, from mechanics' and materialmen's liens. Tenant agrees to indemnify, defend and hold City and its Agents harmless from and against any claims for mechanic's, materialmen's or other liens in connection with any repairs or construction on the Premises, or materials furnished or obligations incurred by or for Tenant.

City shall not Encumber its interest in any portion of the Premises, the Powerhouse, the Improvements, or this Lease prior to any Dissolution Event unless the Mortgagees of any Tenant Encumbrances (including but not limited to the Leasehold Deed of Trust Beneficiaries to the extent the Leasehold Deed of Trust remains in effect at such time) agree in writing to be subject to and bound by the terms of such City Encumbrance.

16.2 Leasehold Encumbrances.

(a) Tenant's Right to Mortgage Leasehold. Except for the Leasehold Deed of Trust, an assignment of leases and rents, and a perfected security interest in Tenant's personal property, and as expressly otherwise permitted in this Section 16.2, Tenant shall not Encumber Tenant's leasehold interest in any portion of the Premises, the Powerhouse, the Improvements, or this Lease. Any Mortgage that is not permitted hereunder shall be deemed to be a violation of this Lease on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced. Pursuant to the terms and to the extent permitted by this Section 16.2, Tenant shall have the right to Encumber Tenant's leasehold estate created by this Lease by way of a leasehold Mortgage if Tenant obtains City's prior written consent to such leasehold Mortgage; provided that, notwithstanding any foreclosure thereof, Tenant shall remain liable for the payment of Rent and for the performance of all other obligations under this Lease. Tenant shall promptly notify City of any lien or encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise.

(b) Leasehold Mortgage Subject to this Lease. With the exception of the rights expressly granted to Mortgagees in this Lease, the execution and delivery of a Mortgage shall not give or be deemed to give a Mortgagee any greater rights than those granted to Tenant hereunder. Notwithstanding anything to the contrary set forth herein, any rights given hereunder to Mortgagees shall not apply to more than one Mortgagee at any one time. If at any time there is more than one Mortgage constituting a lien on any portion of the Premises, the lien of the Mortgage prior in time to all others shall be vested with the rights under this Section 16 to the exclusion of the holder of any junior Mortgage.

(i) No Invalidation of Mortgage by Tenant Default. No failure by Tenant or any other party to comply with the terms of any Mortgage, including, without limitation, the use of any proceeds of any debt, the repayment of which is secured by the Mortgage, shall be deemed to invalidate, defeat or subordinate the lien of the Mortgage. Notwithstanding anything to the contrary in this Lease, neither the occurrence of any default under a Mortgage, nor any foreclosure action or conveyance in-lieu-of foreclosure, nor any action taken by a Mortgagee as permitted under the terms of the Mortgage or to cure any default of Tenant under this Lease, shall, by itself, constitute an Event of Default under this Lease, however such matters may be evidence of Tenant's failure to operate the Premises in accordance with the operating standards set forth herein.

(ii) Purpose of Mortgage; Protections Limited to Permitted Mortgagees. A Mortgage may be given only to a Bona Fide Institutional Lender, or to any other lender approved by City in its sole discretion (it being agreed that such other lender may include a philanthropic organization that engages in philanthropic lending, if such organization is otherwise acceptable to City). A Mortgage shall be made only to finance any Material Alteration or to refinance a permitted Mortgage, and shall not be

cross-collateralized or cross defaulted with any other debt of Tenant or any other party. Tenant shall not be permitted to refinance a permitted Mortgage in order to take out cash for application to property other than the Premises or for application to the obligations of Tenant other than those created under this Lease.

(iii) Rights Subject to Lease; Restoration Obligations. All rights acquired by the Mortgagee under a Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and to all rights of the City hereunder. None of such covenants, conditions and restrictions is or shall be waived by City by reason of the giving of the Mortgage, except as expressly provided in this Lease or otherwise specifically waived by City in writing. Except as set forth below, no Mortgagee shall be obligated to restore any damage to the Premises; provided, however, (i) that nothing in this Section shall be deemed or construed to permit or authorize any such holder to devote the Premises or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements permitted under this Lease, and (ii) if the Mortgagee obtains title to the leasehold and chooses not to complete or restore the improvements where Tenant otherwise has the obligation to so restore, it shall so notify City in writing of its election within forty-five (45) days following its acquisition of the tenancy interest in this Lease and shall sell its tenancy interest with reasonable diligence to a purchaser that shall be obligated to restore the improvements as required under this Lease, but in any event the Mortgagee shall cause such sale to occur within six (6) months following the Mortgagee's written notice to City of its election not to restore. If Mortgagee fails to sell its tenancy interest using good faith efforts within such six (6) month period, it shall not constitute a default hereunder, but the Mortgagee shall be obligated by the provisions of this Lease to restore the improvements to the extent Tenant is required under this Lease to so restore, and all such work shall be performed in accordance with all the requirements set forth in this Lease.

(iv) Required Notice Provision in Mortgage. Tenant agrees to have any Mortgage provide: (a) that the Mortgagee shall by registered or certified mail give written notice to City of the occurrence of any event of default under the Mortgage; (b) that City shall be given notice at the time any Mortgagee initiates any foreclosure action; and (c) that the disposition and application of insurance and condemnation awards shall be in accordance with the provisions of this Lease.

16.3 Notices to Mortgagee and Tax Credit Investor.

(a) Copies of Notices. Subject to subsection (b) below, City shall give a copy of each default notice City gives to Tenant from time to time of the occurrence of a default or an Event of Default, to a Mortgagee or Tax Credit Investor that has given to City written notice substantially in the form provided in subsection (b). Copies of such notices shall be given to the Mortgagee and Tax Credit Investor at the same time as notices are given to Tenant by City, addressed to the Mortgagee and Tax Credit Investor at the address last furnished to City. City's delay or failure to give such notice to the Mortgagee or Tax Credit Investor shall not be deemed to constitute a default by City under this Lease, but such delay or failure shall extend for the number of days until such notice is given, the time allowed to the Mortgagee to cure any default by Tenant. Any such notices to Mortgagee shall be given in the same manner as provided in Section 29 below.

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

> "The undersigned does hereby certify that it is the [Mortgagee][Tax Credit Investor], as such term is defined in that certain Lease entered into by and between the City and County of San Francisco, as landlord, and _____, as tenant, dated as of _____ (the "**Master Lease**"), of Tenant's interest in the lease of the premises known as the Geneva Power House, a legal description of which is attached hereto as Exhibit A. The undersigned hereby requests that copies of any and all default notices from time to time given under the Master Lease by City to Tenant be sent to the undersigned at the following address:
> _____."

16.4 Mortgagee's and Tax Credit Investor's Right to Cure.

The following provisions shall apply (i) if Tenant enters into a Mortgage in compliance with the provisions of this Lease and such Mortgage remains unsatisfied of record, and (ii) with respect to the Tax Credit Investor:

(a) Cure Periods. In the case of any notice of default given by City to Tenant (a copy of which shall have been delivered to any Mortgagee and Tax Credit Investor pursuant to Section 16.3(a)), the Mortgagee and Tax Credit Investor shall each have the same concurrent cure periods as are given Tenant under this Lease for remedying a default or causing it to be remedied plus an additional fifteen (15) days thereafter for a monetary default or an additional thirty (30) days thereafter for a nonmonetary default, and City shall accept such performance by or at the instance of the Mortgagee or Tax Credit Investor as if the same had been made by Tenant within the applicable cure periods under the Lease.

(b) Foreclosure. Notwithstanding anything contained in this Lease to the contrary, upon the occurrence of an Event of Default, other than an Event of Default due to a default in the payment of money or other default reasonably susceptible of being cured prior to Mortgagee obtaining possession, City shall take no action to effect a termination of this Lease if, within thirty (30) days after notice of such Event of Default is given to Mortgagee, a Mortgagee shall have (x) obtained possession of the Premises (including possession by a receiver), or (y) notified City of its intention to institute foreclosure proceedings or otherwise acquire Tenant's interest under the Lease or have a receiver take possession of the Premises, and thereafter promptly commences and prosecutes such proceedings with diligence and dispatch and completes such proceedings no later than six (6) months thereafter. If the Dissolution Event has occurred, a Mortgagee, upon acquiring Tenant's interest under this Lease, shall be required promptly to cure all monetary defaults and all other defaults then reasonably susceptible of being cured by such Mortgagee. The foregoing provisions of this subsection (b) are subject to the following: (i) no Mortgagee shall be obligated to continue possession or to foreclosure proceedings after the defaults or Events of Default hereunder referred to are cured; (ii) nothing herein contained shall preclude City, subject to the provisions of this Section, from exercising any rights or remedies under this Lease (other than a termination of this Lease to the extent otherwise permitted hereunder) with respect to any other Event of Default by Tenant during the pendency of such foreclosure proceedings; and (iii) the Mortgagee shall agree with City in writing to comply during the period City forebears from terminating this Lease with the terms, conditions and covenants of this Lease that are reasonably susceptible of being complied with by the Mortgagee. Notwithstanding anything to the contrary, the Mortgagee shall have the right at any time to notify City that it has relinquished possession of the Premises to Tenant, or that it will not institute foreclosure proceedings or, if such foreclosure proceedings have commenced, that it has discontinued them, and, in such event, the Mortgagee shall have no further liability from and after the date it delivers such notice to City, and, thereupon, City shall be entitled to seek the termination of this Lease and/or any other available remedy as provided in this Lease. If Mortgagee is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition, provided that Mortgagee shall (i) have fully cured any Event of Default due to a default in the payment of money, (ii) continue to pay currently such monetary obligations as and when the same become due, and (iii) perform all other obligations of Tenant under this Lease to the extent that they are reasonably susceptible of being performed by the Mortgagee. Notwithstanding anything herein to the contrary, to the extent the Mortgagee is not reasonable capable of performing an obligation under this Lease, such obligations shall apply to and remain effective on a prospective basis to any assignee or transferee of the Mortgagee notwithstanding Mortgagee's inability to perform. Notwithstanding anything to the contrary above, if the Premises are not used by Tenant, a Subtenant, a Mortgagee, or a designee of Mortgagee as required in Section 5 above and such non-use continues for a period of twelve (12) months, then City shall have the right to terminate this Lease by providing thirty (30) days' notice of termination, subject to Tenant's and/or Mortgagee's right to

cure by commencing operations during the thirty (30) day period and continuing thereafter in accordance with Section 5.

(c) Construction. Subject to subsection (b) above, if an Event of Default occurs following any damage but prior to restoration of the improvements, the Mortgagee, either before or after foreclosure or action in lieu thereof, shall not be obligated to restore the improvements beyond the extent necessary to preserve or protect the improvements or construction already made, unless the Mortgagee expressly assumes Tenant's obligations to City by written agreement reasonably satisfactory to City, to restore, in the manner provided in this Lease, the improvements. Upon assuming Tenant's obligations to restore, the Mortgagee or any transferee of Mortgagee shall not be required to adhere to the existing construction schedule, but instead all dates set forth in this Lease for such restoration or otherwise agreed to shall be extended for the period of delay from the date that Tenant stopped work on the restoration to the date of such assumption.

(d) New Lease. If there is any the termination of this Lease before the expiration of the Term, except as a result of damage or destruction to the Premises as in Section 14 or a Taking as set forth in Section 15, City shall deliver written notice of such termination to the Mortgagee, together with a statement of any and all sums that would be due under this Lease at that time but for such termination, and of all other defaults, if any, under this Lease then known to City. The Mortgagee shall thereupon have the option to obtain a New Lease (a "**New Lease**") in accordance with and upon the following terms and conditions:

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

(ii) Such New Lease shall be entered into at the sole cost of the Mortgagee, shall be effective as of the date of termination of this Lease, and shall be for the remainder of the Term and at the Rent and upon all the agreements, terms, covenants and conditions hereof, in substantially the same form as this Lease (provided however, that Mortgagee shall not be required to comply with any Laws or ordinances adopted by the City after the Effective Date hereof to the extent that such Laws or ordinances would not have been applicable to Tenant under this Lease). Such New Lease shall require the Mortgagee to perform any unfulfilled obligation of Tenant under this Lease. Upon the execution of such New Lease, the Mortgagee shall pay any and all sums which would at the time of the execution thereof be due under this Lease but for such termination, and shall pay all expenses, including Attorneys' Fees and Costs incurred by City in connection with such defaults and termination, the recovery of possession of the Premises, and the preparation, execution and delivery of the New Lease. Effective upon the commencement of the term of any New Lease, any sublease or contract then in effect shall be assigned and transferred to Mortgagee.

(e) Nominee. Any rights of a Mortgagee under this Section 16 may be exercised by or through its nominee or designee (other than Tenant) which is an affiliate of the Mortgagee; provided, however, no Mortgagee shall acquire title to the Lease through a nominee or designee which is not a person otherwise permitted to become Tenant hereunder; provided, further that the Mortgagee may acquire title to the Lease through a wholly owned (directly or indirectly) subsidiary of the Mortgagee.

(f) Limited to Permitted Mortgagees. Notwithstanding anything herein to the contrary, the provisions of this Section 16 shall inure only to the benefit of the holder of a Mortgage that is permitted hereunder.

(g) Consent of Mortgagee. No material modification, termination or cancellation of this Lease (herein, a "**change**") shall be effective as against a permitted Mortgagee unless a copy of the proposed change shall have been delivered to the Mortgagee and such Mortgagee shall have approved the change in writing, which approval shall not be unreasonably withheld, conditioned or delayed. Any Mortgagee shall either approve or disapprove the proposed modification, termination, cancellation or

surrender, as applicable, with specified reasons for any disapproval together with reasonable requirements that if satisfied would obtain Mortgagee's approval, in writing within thirty (30) days after delivery of a copy thereof. Mortgagee's failure to deliver an approval or disapproval notice within such thirty (30) day period shall be deemed approval.

(h) Limitation on Liability of Mortgagee. Notwithstanding anything herein to the contrary, no Mortgagee shall be liable to perform Tenant's obligations under this Lease unless and until the Mortgagee acquires Tenant's rights under this Lease.

16.5 Assignment by Mortgagee.

The foreclosure of any Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in the Mortgage, or any conveyance of the leasehold estate hereunder from Tenant to any Mortgagee or its designee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not require the consent of City or constitute a breach of any provision of or a default under this Lease, and upon such foreclosure, sale or conveyance City shall recognize the Mortgagee or other transferee in connection therewith as the tenant under this Lease. Such Mortgagee's or transferee's right thereafter to transfer, assign or sublet this Lease or a New Lease shall be subject to the restrictions of Section 18.

16.6 Transfer of Mortgage.

City hereby consents to the transfer of a Mortgage, provided such transfer is to a Bona Fide Institutional Lender and otherwise satisfies the requirements of this Lease, and if there is any such transfer, the new holder of the Mortgage shall have all the rights of its predecessor Mortgagee hereunder until such time as the Mortgage is further transferred or released from the leasehold estate.

16.7 Bankruptcy of City.

If the City becomes subject to any bankruptcy or insolvency proceeding during the term of this Lease, any rights, elections, or actions available to the Tenant therein shall be subject to the rights of the Leasehold Deed of Trust Beneficiaries under the Leasehold Deed of Trust to consent to, or to exercise on behalf of the Tenant, such rights, elections, or actions. Without limiting the foregoing, no consent or acquiescence by the Tenant to any rejection of this Lease by the City or any successor or trustee in such proceeding shall be binding or effective without the prior, written consent thereto by each Leasehold Deed of Trust Beneficiary, and the rights, liens, and claims of Leasehold Deed of Trust Beneficiaries shall extend to, encumber, and include all rights to damages for any such rejection and all rights to continued possession of the Premises pursuant to this Lease. This Section shall automatically terminate on the effective date of any Dissolution Event.

16.8 Termination of Tax Credit Investor Rights.

City's obligation to provide any notice and cure periods to the Tax Credit Investor, and the Tax Credit Investor's rights under this Articles 16, shall automatically terminate on the effective date of the Dissolution Event.

16.9 Memorandum of Lease.

Tenant shall have the right to at its sole cost to record a memorandum of this Lease (a "**Memorandum of Lease**") confirming the existence of this Lease, and commencement and expiration dates and option dates, and referencing the actual Lease for all other provisions in the form attached as ***Exhibit E***. On or before the Effective Date, City shall execute and acknowledge such Memorandum of Lease in recordable form and deliver the Memorandum of Lease to Tenant for Tenant's execution and recordation at Tenant's cost. If such a Memorandum of Lease is recorded, then upon expiration or earlier termination of this Lease, Tenant agrees promptly to execute, acknowledge and deliver to City, upon written request by City, a termination of such Memorandum of Lease in such form as City may reasonably request, for the purpose of terminating any continuing effect of the previously recorded Memorandum of Lease as a cloud upon title to the Premises, and Tenant shall indemnify, defend and hold harmless City from and against any and all claims, demands, liabilities, actions, losses, costs and

expenses, including (but not limited to) reasonable attorneys' fees, arising out of or in connection with Tenant's failure to so promptly execute such termination of Memorandum of Lease.

Section 17 ASSIGNMENT OF RENTS

Tenant hereby assigns to City, as security for Tenant's performance of its obligations under this Lease, all of Tenant's right, title and interest in and to all rents and fees due or to become due from any present or future Subtenant, concessionaire, or other person occupying or providing services or goods on or to the Premises (collectively, "Assigned Rents"), but such assignment shall be subject to the right of Tenant to collect such rents until the date of any default hereunder and subordinate to the Tax Credit Investor's security interest pursuant to the Leasehold Deed of Trust. City shall apply any amount collected hereunder to the Rent due under this Lease. The foregoing assignment shall be subject and subordinate to any assignment made to a Mortgagee under Section 16.2 of which City has been made aware in writing until such time as City has terminated this Lease, at which time the rights of City in all rents and other payments assigned pursuant to this Section 17.1 shall become prior and superior in right. Such subordination shall be self-operative. However, in confirmation thereof, City shall, upon the request of a Mortgagee, execute a subordination agreement reflecting the subordination described in this Section in form and substance reasonably satisfactory to such Mortgagee and to City. Notwithstanding the foregoing, if this Lease terminates by reason of an Event of Default, any Mortgagee which actually collected any rents from any Subtenants pursuant to any assignment of rents or subleases made in its favor shall promptly remit to City the rents so collected (less the actual and reasonable cost of collection) to the extent necessary to pay City any Rent, through the date of termination of this Lease.

Section 18 ASSIGNMENT AND SUBLETTING

18.1 Assignments and Subleases.

(a) Generally; Consent of City. Except as otherwise specifically permitted under subsection (d) and Section 18.9 below, Tenant shall not directly or indirectly (including, without limitation, by merger, acquisition, sale or other transfer of any controlling interest in Tenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Improvements or its leasehold estate hereunder ("**Assign**" or an "**Assignment**"), or permit any portion of the Premises or any Improvements to be occupied by anyone other than itself, or sublet any portion of the Premises or any permitted Improvements thereon ("**Sublet**" or a "**Sublease**"), any time after the Dissolution Event without the prior written consent of the General Manager or the Commission, as applicable, in each instance.

(b) Assignment. Tenant may not Assign any portion of its rights under the Lease any time after the Dissolution Event other than pursuant to Section 3.4 or to a Mortgagee in accordance with Section 16 without the prior written consent of the Commission, which it may withhold in its sole and absolute discretion. If City rejects a proposed assignment, City shall provide Tenant with written notice of its reasons for doing so. If City fails to respond to a request for consent to a proposed Assignment within sixty (60) days, City shall be deemed to have refused to give its consent.

(c) Sublease. The Parties agree that an important component of Tenant's annual operating budget will derive from Tenant subletting facilities within the Premises. Except to the extent Tenant is required to sublease the Premises pursuant to Section 18.9 below, Tenant shall have the right to sublet all or a portion of the Premises at any time, provided, however, (i) Tenant shall have provided prior written notice to City of a proposed Sublease of one year or more, and (ii) the proposed use of the sublet space shall be consistent with the Primary Uses. In addition to the foregoing conditions, if there has been a Dissolution Event, City shall have the right to reasonably object to such Sublease within forty-five (45) days of receipt of notice. The rent charged to each Subtenant shall be determined by Tenant, in its sole and absolute discretion, and shall accrue solely to Tenant, except as otherwise specifically provided herein. If City fails or declines to respond to Tenant within the applicable forty-five (45) day period described above, then Tenant may at Tenant's election provide written notice to City that no disapproval was received, and provided that such notice displays prominently on the envelope enclosing such notice and the first page of such notice, substantially the following words: "SUBLEASE APPROVAL

REQUEST FOR GENEVA CAR BARN. IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED," the Sublease shall be deemed approved if City does not disapprove the Sublease within ten (10) days of such notice.

(d) Event Permits. Tenant shall have the right to rent any facility within the Premises for an Event or consecutive Events without obtaining City's consent, provided such Event complies with the City's then-current event permitting requirements, which include obtaining all necessary approvals, if any, from the San Francisco Fire, Police, and Alcoholic Beverage Control Departments as well as any specialized licenses, and is at a commercially reasonable rate (which rate shall be adjusted if the user is a non-profit party benefitting the public through such Event). Tenant shall also obtain a Dance Hall Keeper Permit from the San Francisco Police Department, if applicable. Tenant shall develop a template for the written agreement to be used by Tenant for such Events (the "**Event Permit**"), and shall submit such template to the City for the approval or reasonable disapproval of the General Manager or his or her designee prior to entering into any Event Permits. The provisions of Section 18.2 below shall apply to such rentals as if they were subleases.

18.2 Conditions to Assignment or Sublet.

If there has been a Dissolution event, any Assignment of this Lease or Sublease or Event Permit is further subject to the satisfaction of the following conditions precedent (or written waiver thereof by the General Manager, which waiver may be withheld in the sole discretion of the General Manager), each of which is hereby agreed to be reasonable as of the date hereof:

(a) any assignee, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney), for itself and its successors and assigns, and expressly for the benefit of City, must agree to be subject to all of the conditions and restrictions to which Tenant is subject and must expressly assume all of the obligations of Tenant under this Lease, and any Subtenant, by instrument in writing reasonably approved by the General Manager (in consultation with the City Attorney) must agree to be subject to all of the applicable conditions and restrictions of this Lease as they relate to the subtenancy. It is the intent of this Lease, to the fullest extent permitted by Law and excepting only in the manner and to the extent specifically provided otherwise in this Lease, that no transfer of this Lease, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, may operate, legally or practically, to deprive or limit City of or with respect to any rights or remedies or controls provided in or resulting from this Lease with respect to the Premises and the construction of the Improvements that City would have had, had there been no such transfer or change;

(b) other than with respect to a Minor Event Permit, all instruments and other legal documents involved in effecting the transfer shall have been submitted to City for review, including the agreement of sale, transfer, Sublease, Event Permit or equivalent, and City shall have approved such documents, and with respect to an Event Permit for use of part of the Premises for a period of two (2) weeks or less (a "**Minor Event Permit**"), the form of the permit and other legal document shall have been approved by City and Tenant shall have the right to make commercially reasonable modifications to such form in the course of negotiations with the applicable assignee so long as such modification does not materially adversely affect City's rights;

(c) there shall be no Event of Default or Unmatured Event of Default on the part of Tenant under this Lease;

(d) if there is an Assignment, the proposed transferee has the qualifications and has demonstrated to City's reasonable satisfaction that it is capable, financially and otherwise, of performing each of Tenant's obligations under this Lease and any other documents to be assigned;

(e) any assignee, Subtenant or permittee is subject to the jurisdiction of the courts of the State of California;

(f) the proposed Assignment is not in connection with any transaction for the purposes of syndicating the Lease, such as a security, bond or certificates of participation financing as determined by City in its sole discretion;

(g) the permitted uses are consistent with this Lease, including without limitation, the Permitted Uses;

(h) the Subtenant and the Sublease or the permittee and the Event Permit (including a Minor Event Permit), as applicable, are expressly subject to all applicable terms and provisions of this Lease;

(i) the term of any Sublease not requiring City's approval hereunder, including any extension options, shall not exceed one (1) year and does not extend beyond the Term;

(j) the Subtenant or permittee under an Event Permit (including a Minor Event Permit) indemnifies City for any loss or damage arising in connection with the Sublease in form set forth in ***Exhibit F***;

(k) the Subtenant or permittee under an Event Permit (including a Minor Event Permit) provides liability and other insurance reasonably requested by City, naming City as an additional insured, in form and amounts reasonably approved by City; and

(l) the Sublease includes the general sublease provisions set forth in ***Exhibit F***.

18.3 Pre-Execution Deliveries to City.

Prior to executing a Sublease that requires City's consent, Tenant shall submit a summary of the key terms of the proposed Sublease (i.e., location, proposed use, square footage of the demised premises, length of term, rental rate, tenant improvement allowances and leasing concessions) to City for review by the City for conformance with Permitted Uses and the sublease requirements attached hereto as ***Exhibit F***.

18.4 Effect of Sublease or Assignment.

No Sublease or Assignment by Tenant nor any consent by City thereto shall relieve Tenant of any obligation to be performed by Tenant under this Lease, unless City expressly agrees to a release in writing in connection with a City consent to an Assignment and then only to the extent set forth in such release. Any Sublease or Assignment not in compliance with this Section shall be void and, at City's option, shall constitute a material default by Tenant under this Lease. The acceptance of any Rent or other payments by City from a proposed transferee shall not constitute consent to such Sublease or Assignment by City or a recognition of any transferee, or a waiver by City of any failure of Tenant or other transferor to comply with this Section. If there is an Assignment or Sublet, whether in violation of or in compliance with this Section, on the occurrence and during the continuance of an Event of Default if there is any default by any transferee or successor of Tenant in the performance or observance of any of the terms of this Lease, City may proceed directly against Tenant without the necessity of exhausting remedies against such transferee or successor except to the extent City has released Tenant in writing at the time of City's consent to such transferee or successor.

18.5 Assumption by Assignee.

Each Assignee shall assume all obligations of Tenant under this Lease and, except as provided in Section 18.4, shall be liable jointly and severally with Tenant for the payment of the Rent, and for the performance of all the terms, covenants and conditions to be performed on Tenant's part hereunder. No Assignment shall be binding on City unless Tenant or Transferee has delivered to City a counterpart of the Assignment and an instrument that contains a covenant of assumption by such Assignee reasonably satisfactory in form and substance to City. However, the failure or refusal of such Assignee to execute such instrument of assumption shall not release such Transferee from its liability as set forth above.

18.6 Indemnity for Relocation Benefits.

Without limiting Section 18.5 above, Tenant shall cause every Assignee and Subtenant to expressly waive entitlement to all relocation assistance and benefits in connection with this Lease. Tenant shall Indemnify City and the Indemnified Parties for all Losses arising out of any relocation assistance or benefits payable to any Assignee or Subtenant.

18.7 Reasonable Grounds for Withholding Consent.

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

18.8 Nondisturbance.

From time to time upon the request of Tenant, City shall enter into agreements with Subtenants providing generally, with regard to a given Sublease, that if there is any termination of this Lease, City will not terminate or otherwise disturb the rights of the Subtenant under such Sublease, but will instead honor such Sublease as if such agreement had been entered into directly between City and such Subtenant ("**Non-Disturbance Agreements**"). City shall provide a Non-Disturbance Agreement to a Subtenant only if all of the following conditions are satisfied: (i) the performance by Tenant of its obligations under such Sublease will not cause an Event of Default to occur under this Lease; (ii) the term of the Sublease, including options, does not extend beyond the scheduled Term; (iii) the Sublease contains provisions whereby the Subtenant agrees to comply with applicable provisions of this Lease; (iv) if Tenant is then in default of any of its obligations under this Lease, City may condition its agreement to provide a Non-Disturbance Agreement on the cure of such defaults as City may specify either in a notice of default given under this Lease or in a notice conditionally approving Tenant's request for such Non Disturbance Agreement (and if an Event of Default on the part of Tenant then exists, then City may withhold or condition the giving of a Non-Disturbance Agreement); and (v) the Subtenant shall have delivered to City an executed estoppel certificate certifying such matters as may be reasonably required by City. In addition, City may condition its agreement to provide a Non-Disturbance Agreement on its reasonable approval of the form and material business terms of the Sublease in light of market conditions existing at the time such Sublease is executed. Each Non-Disturbance Agreement shall be substantially in form and substance agreed upon by Tenant and City, not to be unreasonably withheld by either Party, provided that form shall, at a minimum, provide that (i) the Subtenant agrees that if this Lease expires, terminates or is canceled during the term of the Sublease, the Subtenant shall attorn to City (provided City agrees not to disturb the occupancy or other rights of the Subtenant and to be bound by the terms of the Sublease), and (ii) the Sublease shall be deemed a direct lease agreement between the Subtenant and City, provided, however that (a) at the time of the termination of this Lease no uncured default shall exist under the Sublease which at such time would then permit the termination of the Sublease or the exercise of any dispossession remedy provided for therein, and (b) City shall not be liable to the Subtenant for any security deposit or prepaid rent previously paid by such Subtenant to Tenant unless such deposits are transferred to City and except for rent for the current month, if previously paid, shall not be responsible for any prior act or omission of Tenant, and shall not be subject to any offsets or defenses that the Subtenant may have against Tenant.

18.9 Waiver of Claims; Subrogation.

Notwithstanding anything to the contrary set forth in Section, each of the City and the Tenant releases the other, and its employees, agents, and representatives, from liability, and waives its entire right of recovery against the other for loss or damage occurring in or about the Premises to the extent such loss or damages is covered under fire, casualty and all risk insurance policies, including extended coverage endorsements, carried by such party. Each party agrees that each such insurance policy obtained by it with respect to the Premises or any Personal Property shall include a waiver by the insurer of its subrogation rights for such losses and damages. The foregoing mutual waivers shall be effective only so long as such waivers are available in the State of California and do not invalidate the insurance coverage required under Section 19.

Section 19 INDEMNIFICATION OF CITY

19.1 Indemnification of City.

Tenant agrees to and shall Indemnify the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any such Indemnified Party, the Premises or City's interest therein in connection with the occurrence or existence of any of the following: (i) any accident, injury to or death of persons or loss of or damage to property occurring in or on the Premises or any part thereof, except to the extent caused by City or its Agents; (ii) any accident, injury to or death of persons or loss or damage to property occurring in or on the Premises which is caused directly or indirectly by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (iii) any use, possession, occupation, operation, maintenance, or management of the Premises or any part thereof by Tenant or any of its Assignees, Subtenants, Agents or Invitees, (iv) any matter relating to the condition of the Premises caused by Tenant or any of its Assignees, Subtenants, Agents or Invitees; (v) any failure on the part of Tenant or its Agents, Assignees or Subtenants, as applicable, to perform or comply with any of the terms of this Lease or with applicable Laws, rules or regulations, or permits as required under this Lease (subject to any express written release by City in connection with an Assignment, as set forth above); (vi) performance of any labor or services or the furnishing of any materials or other property in respect of the Premises or any part thereof by Tenant or any of its Assignees, Subtenants, Agents or Invitees; and (vii) any legal actions or suits initiated by any user or occupant of the Premises to the extent it relates to such use and occupancy of the Premises or Tenant's operations at the Premises; except in each case to the extent caused by the negligence or willful misconduct of City, City or any of its Agents or a breach of City's obligations under this Lease and except to the extent City is required to Indemnify Tenant for the same under this Lease.

19.2 Immediate Obligation to Defend.

Tenant specifically acknowledges that it has an immediate and independent obligation to defend the Indemnified Parties from any claim which is actually or potentially within the scope of the indemnity provision of Section 19.1 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant by an Indemnified Party and continues at all times thereafter. If any action, suit or proceeding is brought against any Indemnified Party by reason of any occurrence for which Tenant is obliged to Indemnify such Indemnified Party, such Indemnified Party will notify Tenant of such action, suit or proceeding within a reasonable time of such Indemnified Party obtaining notice of such claim, or obtaining facts sufficient to constitute inquiry notice for a reasonable person, and thereafter shall cooperate in good faith with Tenant in the defense of such claim at no cost to City or such Indemnified Party. Tenant may, and upon the request of such Indemnified Party will, at Tenant's sole expense, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Tenant and reasonably approved by such Indemnified Party in writing. If Tenant incurs costs defending the Indemnified Parties and it is later adjudicated that the Losses resulted from the actions or negligent omission of an Indemnified Party, then such Indemnified Party shall be obligated to reimburse Tenant for all costs of such defense and shall pay such reimbursement within thirty (30) days following Tenant's written demand for such reimbursement.

19.3 Not Limited by Insurance.

The insurance requirements and other provisions of this Lease shall not limit Tenant's indemnification obligations under this Lease.

19.4 Survival.

Tenant's obligations under this Section and any other Indemnification in this Lease shall survive the expiration or sooner termination of this Lease for a period of four (4) years. All such Indemnifications are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Tenant may have to City in this Lease, at common law or otherwise.

19.5 Defense.

Tenant shall, at its option but subject to the reasonable consent and approval of City, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Tenant's own choice (so long as such counsel is reasonably satisfactory to City); provided, however, in all

cases City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Tenant shall fail, however, in City's reasonable judgment, within a reasonable time following notice from City alleging and describing in reasonable detail the nature of such failure, to take reasonable and appropriate action to defend such suit or claim, City shall have the right promptly to use City Attorney or to hire outside counsel to carry out such defense, at Tenant's sole expense, which expense shall be due and payable to City within thirty (30) days after receipt by the Tenant of an invoice therefore.

19.6 Release of Claims and Losses Against City.

Tenant, as a material part of the consideration of this Lease, hereby waives and releases any and all claims against City from any Losses including damages to or loss of goods, wares, goodwill, merchandise, business opportunities, and equipment and by persons in, upon or about the Premises for any cause arising at any time including, without limitation, all claims arising from any joint or concurrent negligence of City, but excluding any gross negligence or willful misconduct of City or other Indemnified Parties or breach of the City's obligations under the Lease or claims for which City has otherwise agreed to indemnify Tenant hereunder, and further excluding any claims, demands, or causes of action Tenant may now or hereafter have against City for rights of contribution or equitable indemnity under applicable Laws.

Section 20 INSURANCE

20.1 Premises and Liability Coverage.

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

(i) Premises Insurance. Tenant shall maintain property insurance policies with coverage at least as broad as Insurance Services Office ("**ISO**") form CP 10 30 06 07 ("Causes of Loss -Special Form", or its replacement) in an amount not less than 100% of the then-current full replacement cost of the Powerhouse and other Improvements and other property being insured pursuant thereto (including building code upgrade coverage), with any deductible (other than earthquake or flood, which may not be covered by such insurance) not to exceed Ten Thousand Dollars ($10,000.00).

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

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

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

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

(vi) Professional Liability. Tenant shall require all architectural, design, engineering, geotechnical, environmental, and accounting professionals under contract with Tenant with respect to the Premises or this Lease to maintain professional liability (errors and omissions) insurance on an occurrence basis, with limits not less than One Million And No/100 Dollars ($1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefore and a deductible of not more than Ten Thousand Dollars ($10,000) per claim, during any period for which such professional services are engaged.

(vii) Environmental Liability Insurance. During the course of any Hazardous Materials Remediation activities, Tenant shall maintain, or cause its contractor or consultant to maintain, environmental pollution or contamination liability insurance, on an occurrence form, with limits of not less than Two Million Dollars ($2,000,000) each occurrence combined single liability for Bodily Injury, Property Damage and clean-up costs, with the prior written approval of City (such approval not to be unreasonably withheld, conditioned or delayed).

(viii) Other Insurance. Tenant shall obtain such other insurance as reasonably requested by City's Risk Manager and reasonably customary for similar premises and uses in the San Francisco Bay Area.

(b) Periods of Material Alterations. During any period of construction of Tenant's construction of Material Alterations subject to Section 12, Tenant shall also comply with the following requirements at no cost to the City:

(i) Tenant shall require its contractor to maintain (a) commercial general liability insurance with limits of not less than Three Million Dollars ($3,000,000) combined single limit for bodily injury and property damage (including personal injury and death), and contractor's protective liability; and products and completed operations coverage in an amount not less than Five Hundred Thousand Dollars ($500,000) per incident, One Million Dollars ($1,000,000) in the aggregate; (b) comprehensive automobile liability insurance with a policy limit of not less than One Million Dollars ($1,000,000) each accident for bodily injury and property damage, providing coverage at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, "any auto", and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned; and (c) worker's compensation with statutory limits and employer's liability insurance with limits of not less than One Hundred Thousand Dollars ($100,000) per accident, Five Hundred Thousand Dollars ($500,000) aggregate disease coverage and One Hundred Thousand Dollars ($100,000) disease coverage per employee; provided, however, that foregoing

insurance requirements are subject to modification by the City's Risk Management Division as conditions warrant for the subject Material Alteration. Tenant shall cause its Agents (other than Tenant's contractor) to carry such insurance as shall be reasonably approved by City taking into account the nature and scope of the work and industry custom and practice.

(ii) Tenant or Tenant's contractor shall carry "Builder's All Risk" insurance on a form reasonably approved by City, in the amount of one hundred percent (100%) of the completed value of all new construction, insuring all new construction, including all materials and equipment incorporated in, on or about the Premises, and in transit or storage off-site, that are or will be part of the Improvements, against "all risk" and "special form" hazards.

(iii) Tenant shall require all providers of professional services, including architectural, design, engineering, geotechnical, and environmental professionals under contract with Tenant for any Improvements or any Alterations to maintain professional liability (errors or omissions) insurance, with limits not less than One Million Dollars ($1,000,000.00) each claim and aggregate, with respect to all professional services provided to Tenant therefor.

(iv) If hiring any licensed professionals for such Improvements or Alterations, Licensed professionals (i.e., architects, engineers, certified public accountants, etc.) shall provide professional liability insurance with limits not less than One Million Dollars ($1,000,000) each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Lease or to the Premises.

(c) General Requirements. All insurance provided for pursuant to this Section:

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

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

(iii) Shall be evaluated by City for adequacy not less frequently than every five (5) years from the anniversary date of Delivery Date. City may, upon not less than ninety (90) days prior written notice, require Tenant to increase the insurance limits for all or any of its general liability policies if, in the reasonable judgment of the City's Risk Manager, it is the prevailing commercial practice in the San Francisco Bay Area to carry insurance for facilities similar to the Premises in amounts greater than the amounts carried by Tenant with respect to risks comparable to those associated with use of the Premises.

(iv) Shall provide that the insurer shall endeavor to provide thirty (30) days' prior written notice (ten (10) days' prior written notice for nonpayment of premiums) to City of any cancellation, reduction or material modification, or termination of such insurance for any reason;

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

(vi) Each policy of property insurance required hereunder shall provide for waivers of any right of subrogation that the insurer of such party may acquire against each party hereto with respect to any losses and damages that are of the type covered under the policies required by Sections 20.1(a)(i), (ii), or (v);

(vii) Shall be subject to the reasonable approval of City;

(viii) Except for professional liability insurance which shall be maintained on an occurrence basis as provided above, if any of the liability insurance required to be carried by Tenant hereunder is provided under a claims-made form of policy, Tenant shall maintain such coverage continuously throughout the Term, and following the expiration or termination of the Term, Tenant shall maintain, without lapse for a period of three (3) years beyond the expiration or termination of this Lease, coverage with respect to occurrences during the Term that give rise to claims made after expiration or termination of this Lease; and

(ix) Shall for property insurance only, provide that all losses payable under all such policies that are payable to City shall be payable notwithstanding any act or negligence of Tenant.

20.2 Certificates of Insurance; Right of City to Maintain Insurance.

Tenant shall furnish City certificates with respect to the policies required under this Section, together with copies of each such policy (if City so requests) and evidence of payment of premiums, within thirty (30) days after the Delivery Date and, with respect to renewal policies, at least ten (10) business days after the expiration date of each such policy. If at any time Tenant fails to maintain the insurance required pursuant to Section 20.1, or fails to deliver certificates or policies as required pursuant to this Section, then, upon five (5) days' written notice to Tenant, City may obtain and cause to be maintained in effect such insurance by taking out policies with companies satisfactory to City. Within ten (10) days following demand, Tenant shall reimburse City for all amounts so paid by City, together with all costs and expenses in connection therewith and interest thereon at the Default Rate.

20.3 Insurance of Others.

If Tenant requires liability insurance policies to be maintained by Subtenants, contractors, subcontractors or others in connection with their use or occupancy of, or their activities on, the Premises, including with respect to any Material Alterations, Tenant shall require that such policies name Tenant and City as additional insureds. Notwithstanding the foregoing, Tenant shall require all contractors and sub-contractors performing work in, on, under, around, or about the Premises and all operators and Subtenants of any portion of the Premises to carry the insurance coverages required by the respective construction contract, sublease, or other agreement governing such party's activities that was approved by City, if applicable.

20.4 City Entitled to Participate.

City shall be entitled to participate in and consent to any settlement, compromise or agreement with respect to any claim for any loss in excess of Fifty Thousand and No/100 Dollars ($50,000.00) covered by the insurance required to be carried hereunder, but only to the extent that its interest may appear; provided, however, that City's consent shall not be unreasonably withheld.

20.5 City's Self Insurance.

Tenant acknowledges that City self-insures against casualty, property damage and public liability risks and agrees that City may at its sole election, but shall not be required to, carry any third party insurance with respect to the Powerhouse, the Premises or otherwise.

20.6 Release and Waiver.

Each party hereby waives all rights of recovery and causes of action, and releases each other party from any Losses occasioned to the property of each such party, which Losses are of the type that are covered under the property policies required by Section 20.1(a)(i) to the extent that such loss is reimbursed by an insurer.

Section 21 HAZARDOUS MATERIALS

21.1 Hazardous Materials Compliance.

(a) Compliance with Hazards Materials Laws. Tenant shall comply and use commercially reasonable efforts to cause (i) its Agents, (ii) its Subtenants or operators, and (iii) all of Tenant's Invitees entering upon the Premises (other than City and its Agents), to comply with all

Hazardous Materials Laws and prudent business practices. Without limiting the generality of the foregoing, Tenant covenants and agrees that it will not Handle, nor will it permit the Handling of Hazardous Materials on, under or about the Premises, except for (A) standard building materials and equipment that do not contain asbestos or asbestos-containing materials, lead or polychlorinated biphenyl (PCBs), (B) gasoline and other fuel products used to transport and operate vehicles and equipment, (C) any Hazardous Materials which do not require a permit or license from, or that need not be reported to, a governmental agency, which Hazardous Materials are used in the construction and operation of any Material Alteration, and which are reported to, and approved by City prior to any such Handling and, in any case, are used in strict compliance with all applicable laws, (D) janitorial supplies or materials in such limited amounts as are customarily used for such purposes so long as such Handling is at all times in full compliance with all Hazardous Material Laws; and (E) all food and food products and cleaning and other supplies which are customarily used in similar venues, so long as in each case such Handling is at all times in full compliance with all Hazardous Material Laws.

(b) Notice. Except for Hazardous Materials permitted by Section 20.1(a) above, Tenant shall advise City in writing promptly (but in any event within five (5) days) upon learning or receiving notice of (i) the presence of any Hazardous Materials on, under or about the Premises, (ii) any action taken by Tenant in response to any (A) Hazardous Materials on, under or about the Premises or (B) Hazardous Materials Claims, and (iii) Tenant's discovery of the presence of Hazardous Materials on, under or about any real property adjoining the Premises. Tenant shall inform City orally as soon as possible of any emergency or non-emergency regarding a Release or discovery of Hazardous Materials. In addition, Tenant shall provide City with copies of all communications with federal, state and local governments or agencies relating to Hazardous Materials Laws (other than privileged communications, so long as any non-disclosure of such privileged communication does not otherwise result in any non-compliance by Tenant with the terms and provisions of this Section 21) and all communication with any person relating to Hazardous Materials Claims (other than privileged communications; provided, however, such non-disclosure of such privileged communication shall not limit or impair Tenant's obligation to otherwise comply with each of the terms and provisions of this Lease, including, without limitation, this Section 21).

(c) City's Approval of Remediation. Except as required by law or to respond to an emergency, Tenant shall not take any Remediation in response to the presence, Handling, transportation or Release of any Hazardous Materials on, under or about the Premises unless Tenant shall have first submitted to City for City's approval, which approval shall not be unreasonably withheld or delayed, a written remediation plan and the name of the proposed contractor which will perform the work. If City disapproves of any such remediation plan, City shall specify in writing the reasons for its disapproval. Any such Remediation undertaken by Tenant shall be done in a manner that minimizes any impairment to the Premises and the operations and use thereof. If Tenant undertakes any Remediation with respect to any Hazardous Materials on, under or about the Premises, Tenant shall conduct and complete such Remediation (i) in compliance with all applicable Hazardous Materials Laws and the directives of applicable governmental authorities, and (ii) to the reasonable satisfaction of City. If and to the extent required, City shall sign a manifest indicating City ownership of any existing Hazardous Material removed from the Property by Tenant in connection with the construction or installation of any Material Alteration; provided, Tenant and its Agents shall be responsible for the proper Handling, transportation and disposal of the Hazardous Material and any failure to properly Handle, transport or dispose of such material shall be covered by the Hazardous Materials Indemnity set forth in Section 20.2 below.

(i) Pesticide Prohibition. Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. Tenant shall not use or apply or allow the use or application of any pesticides on the Premises or contract with any party to provide pest abatement or control services to the Premises without first receiving City's written approval of an IPM plan that (i) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the term of this Lease, (ii) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the IPM Ordinance, and (iii)

identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. Tenant shall comply, and shall require all its contractors of Tenant to comply, with the IPM plan approved by the City and shall comply with the requirements of Sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if Tenant were a City department. Among other matters, such provisions of the IPM Ordinance: (a) provide for the use of pesticides only as a last resort, (b) prohibit the use or application of pesticides on property owned by the City, except for pesticides granted an exemption under Section 303 of the IPM Ordinance (including pesticides included on the most current Reduced Risk Pesticide List compiled by City's Department of the Environment), (c) impose certain notice requirements, and (d) require Tenant to keep certain records and to report to City all pesticide use at the Premises by Tenant's staff or contractors.

If Tenant or Tenant's contractor will apply pesticides to outdoor areas at the Premises, Tenant must first obtain a written recommendation from a person holding a valid Agricultural Pest Control Advisor license issued by the California Department of Pesticide Regulation ("CDPR") and any such pesticide application shall be made only by or under the supervision of a person holding a valid, CDPR-issued Qualified Applicator certificate or Qualified Applicator license. City's current Reduced Risk Pesticide List and additional details about pest management on City property can be found at the San Francisco Department of the Environment website, http://sfenvironment.org/ipm.

21.2 Hazardous Materials Indemnity.

Without limiting the indemnity in Section 18.1 (except to the extent the same relates to Hazardous Materials), Tenant shall Indemnify the Indemnified Parties from and against any and all Losses which arise out of or relate in any way to any use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in or on the Premises at any time during the Term of the Lease and before the surrender of the Premises by Tenant, any Subtenant, Agent or Invitee of Tenant (but excluding City, its Agents or invitees) directly or indirectly arising out of (a) the Handling, transportation or Release of Hazardous Materials by Tenant, or its Subtenants, Agents or Invitees, (b) any failure by Tenant or its Subtenants, Agents or Invitees to comply with Hazardous Materials Laws in connection with their use, Handling, production, transportation, disposal, storage or Release of any Hazardous Materials in, on or about the Premises at any time during the Term of the Lease and before their surrender of the Premises; or (c) any failure by Tenant to comply with the obligations contained in Section 20.1. All such Losses within the scope of this Section shall constitute Additional Rent owing from Tenant to City hereunder and shall be due and payable from time to time immediately upon City's request, as incurred. Tenant understands and agrees that its liability to the Indemnified Parties shall arise upon the earlier to occur of (i) discovery of any such Hazardous Materials on, under or about the Premises or the discovery of the disturbance or exacerbation of the pre-existing condition, or (ii) the institution of any Hazardous Materials Claim with respect to such Hazardous Materials, and not upon the realization of loss or damage.

Notwithstanding anything to the contrary in the Lease, Tenant shall not be liable under the Lease with respect to any Hazardous Materials located in, on or under the Premises as of the Effective Date of this Lease ("**Pre-Existing Hazardous Material**") except for liability resulting from the disturbance or exacerbation of Pre-Existing Hazardous Material by Tenant, its Subtenants, or Agents, including but not limited to any disturbance or exacerbation by Tenant in connection with any Material Alteration. City shall comply with all Hazardous Material Laws with respect to all Pre-Existing Hazardous Material except for any compliance that is required or triggered as a result of any act of Tenant, its Subtenants, or Agents, including but not limited to the construction of any Material Alteration, or any disturbance or exacerbation of the Pre-Existing Hazardous Material.

21.3 Hazardous Substance Disclosure.

California law requires landlords to disclose to tenants the presence or potential presence of certain Hazardous Materials. Accordingly, Tenant is hereby advised that occupation of the Premises may lead to exposure to Hazardous Materials such as, but not limited to, gasoline, diesel and other vehicle fluids, vehicle exhaust, office maintenance fluids, tobacco smoke, methane and building materials containing chemicals, such as formaldehyde. Further, there are Hazardous Materials located on the Premises, which are described in due diligence materials that have been delivered to or made available to

Tenant, a summary of which is attached as Schedule 2. By execution of this Lease, Tenant acknowledges that the notices and warnings set forth above satisfy the requirements of California Health and Safety Code Section 25359.7 and related statutes.

Section 22 EVENTS OF DEFAULT

The occurrence of any one or more of the following events shall constitute an "**Event of Default**" under the terms of this Lease:

(a) Tenant fails to pay any Rent to City when due, which failure continues for ten (10) days following written notice from City; provided, however, City shall not be required to give such notice on more than three (3) times during any Lease Year, and failure to pay any Rent thereafter when due shall be an immediate Event of Default without need for further notice;

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

(c) A writ of execution is levied on the leasehold estate which is not released within sixty (60) days, or a receiver, trustee or custodian is appointed to take custody of all or any material part of the property of Tenant, which appointment is not dismissed within one hundred sixty (60) days;

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

(e) Tenant abandons the Premises within the meaning of California Civil Code Section 1951.3 (or its successor), which abandonment is not cured within fifteen (15) days after notice of belief of abandonment or vacation from City;

(f) Tenant fails to maintain any insurance required to be maintained by Tenant under this Lease, which failure continues without cure for ten (10) days after written notice from City of such failure;

(g) Tenant violates any other covenant, or fails to perform any other obligation to be performed by Tenant under this Lease when such performance is due, and such violation or failure continues without cure for more than thirty (30) days after written notice from City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if Tenant does not within such thirty (30)-day period commence such cure, or having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter;

(h) Tenant violates any covenant, or fails to perform any other obligation to be performed by Tenant under the Master Sublease when such performance is due, and such violation or failure is not cured within the cure period specified in the Master Sublease;

(i) Master Subtenant violates any covenant, or fails to perform any other obligation to be performed by Master Subtenant under the PAW Sublease when such performance is due, and such violation or failure is not cured within the cure period specified in the PAW Sublease;

(j) Tenant violates any covenant, or fails to perform any other obligation to be performed by Tenant under the _____**[list the relevant tax credit documents]** when such performance is due, and such violation or failure is not cured within the cure period specified in the Master Sublease;

(k) Tenant suffers or permits an Assignment, Sublease or other transfer of this Lease or any interest therein to occur in violation of this Lease, which event is not cured by Tenant within thirty (30) days after written demand by City by an effective rescission of the Assignment, Sublease or transfer or through City's consent; or

(l) Tenant engages in or allows any use not permitted hereunder which event is not cured by Tenant within ten (10) days after written demand by City, or, if such cure cannot reasonably be completed within such ten (10)-day period, if Tenant does not within such ten (10)-day period commence

such cure, and having so commenced, does not diligently prosecute such cure to completion within a reasonable time thereafter and in all events within sixty (60) days.

Section 23 REMEDIES

23.1 City's Remedies Generally.

Upon the occurrence and during the continuance of an Event of Default under this Lease, City shall have all rights and remedies provided in this Lease or available at law or equity that are not otherwise specifically waived or limited pursuant to the terms of this Lease. All of City's rights and remedies granted pursuant to this Lease shall be cumulative, and except as may be otherwise provided by applicable Law or specifically limited pursuant to this Lease, the exercise of any one or more rights shall not preclude the exercise of any others.

23.2 Right to Keep Lease in Effect.

(a) Continuation of Lease. Upon the occurrence of an Event of Default hereunder, City may continue this Lease in full force and effect pursuant to Civil Code Section 1951.4.

(b) No Termination. No act by City allowed by this Section 23.2, nor any appointment of a receiver upon City's initiative to protect its interest under this Lease, nor any withholding of consent to a subletting or assignment or termination of a subletting or assignment in accordance herewith, shall terminate this Lease, unless and until City notifies Tenant in writing that City elects to terminate this Lease.

(c) Application of Proceeds of Reletting. If there is any such subletting, rents received by City from such subletting shall be applied (i) first, to the payment of the costs of maintaining, preserving, altering and preparing the Premises for subletting, the other costs of subletting, including but not limited to brokers' commissions, Attorneys' Fees and Costs, and expenses of removal of the Personal Property, and alterations; (ii) second, to the payment of Rent then due and payable hereunder; (iii) third, to the payment of future Rent as the same may become due and payable hereunder; and (iv) fourth, the balance, if any, shall be paid to Tenant upon (but not before) expiration of the term of this Lease. If the rents received by City from such subletting, after application as provided above, are insufficient in any month to pay the rent due and payable hereunder for such month, Tenant shall pay such deficiency to City monthly upon demand. Notwithstanding any such subletting for Tenant's account without termination, City may at any time thereafter, by written notice to Tenant, elect to terminate this Lease by virtue of a previous Event of Default.

23.3 Right to Perform Tenant's Covenants.

City may cure the Event of Default at Tenant's expense, it being understood that such performance shall not waive or cure the subject Event of Default. If City pays any sum or incurs any expense in curing the Event of Default, Tenant shall reimburse City upon demand for the amount of such payment or expense with interest at the Interest Rate from the date the sum is paid or the expense is incurred until City is reimbursed by Tenant. Any amount due City under this subsection shall constitute additional rent hereunder. Without limiting any other provision of this Lease, and in addition to any other rights or remedies available to City under this Lease, if at any time Tenant fails to pay any sums required to be paid by Tenant pursuant to this Lease to any person other than City, or if Tenant fails to perform any obligation on Tenant's part to be performed under this Lease, which failure continues without cure following any applicable cure period specified above, then City may, at its sole option, but shall not be obligated to, pay such sum or perform such obligation for and on behalf of Tenant.

23.4 Right to Terminate Lease.

(a) Damages. City may terminate this Lease at any time after the occurrence (and during the continuation) of an Event of a Default by giving written notice of such termination. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon City's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by City

other than giving notice of termination to Tenant in writing shall terminate this Lease. On termination of this Lease, City shall have the right to recover from Tenant all sums allowed under California Civil Code Section 1951.2, including, without limitation, the following: (i) the worth at the time of the award of the unpaid Rent which had been earned at the time of termination of this Lease; (ii) the worth at the time of the award of the amount by which the unpaid Rent which would have been earned after the date of termination of this Lease until the time of the award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate City for all detriment proximately caused by the default of Tenant, or which in the ordinary course of things would be likely to result therefrom. "The worth at the time of the award" shall be computed by allowing interest at a rate per annum equal to the Default Rate; provided, however, for purposes of subclause (iii) above only, "the worth at the time of the award" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus one percent (1%).

(b) Interest. Rent not paid within twenty (20) days following written demand for payment of such Rent shall bear interest from the date due until paid at the Default Rate.

(c) Waiver of Rights to Recover Possession. If City terminates Tenant's right to possession of the Premises, and if such termination is contested by Tenant and City successfully prevails, and in any appeal thereof, Tenant hereby waives any rights to recover or regain possession of the Premises under any rights of redemption to which it may be entitled by or under any present or future Law, including, without limitation, California Code of Civil Procedure Sections 1174 and 1179 or any successor provisions.

(d) No Rights to Transfer or Sublet. Upon the occurrence and continuation of an Event of Default, notwithstanding Section 18, Tenant shall have no right to Assign or Sublease the Premises in whole or in part or to enter into any Event Permits without City's written consent, which may be given or withheld in City's sole and absolute discretion.

23.5 Equitable Relief.

In addition to the other remedies provided in this Lease, City shall be entitled at any time after a default or threatened default by Tenant to seek injunctive relief, an order for specific performance (but not specific performance in connection with Tenant's obligation to continue to occupy and operate the Premises; provided that the foregoing shall not limit the City's rights under Section 22.2 above), or any other equitable relief, where appropriate to the circumstances of such default.

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

23.6 Continuation of Subleases and Agreements.

If this Lease is terminated prior to the expiration thereof, and subject to any non-disturbance agreements entered into by City pursuant to the terms of this Agreement, City shall have the right, at its sole option, to assume all agreements by Tenant for the maintenance or operation of the Premises, to the extent assignable by Tenant. Tenant hereby further covenants that, upon request of City following an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to City such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in City the then existing agreements then in force, as above specified, but only to the extent assignable by Tenant.

Section 24 NO WAIVER

24.1 No Waiver.

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No failure by City to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing. No waiver of any breach shall affect or alter this Lease, but every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof.

24.2 No Accord or Satisfaction.

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

Section 25 ESTOPPEL CERTIFICATES.

25.1 Tenant Certificate.

Tenant shall execute, acknowledge and deliver to City, within fifteen (15) business days after a request, a certificate stating to Tenant's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications or, if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which any Rent and other sums payable hereunder have been paid, (c) that no notice has been received by Tenant of any default hereunder which has not been cured, except as to defaults specified in such certificate, (d) Tenant is not aware of any defaults by City, except any defaults specified in such certificate, and (e) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and Tenant shall attach such copy to the certificate). Any such certificate may be relied upon by City or any successor agency, and any prospective purchaser or mortgagee of City's interest in the Premises or any part thereof. Tenant will also use commercially reasonable efforts (including inserting a provision similar to this Section into every Sublease) to cause Subtenants under Subleases to execute, acknowledge and deliver to City, within twenty (20) business days after request, an estoppel certificate covering the matters described above with respect to such Sublease.

25.2 City Certificate.

City shall execute, acknowledge and deliver to Tenant, within fifteen (15) business days after a request, a certificate stating to City's knowledge (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications or if this Lease is not in full force and effect, so stating), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) whether or not, to the knowledge of City, there are then existing any defaults under this Lease (and if so, specifying the same), and (d) attached to the certificate is a true, correct and complete copy of the Lease and any amendments thereto (and City shall attach such copy to the certificate). Any such certificate may be relied upon by Tenant, any Mortgagee, any Tax Credit Investor or an approved transferee of Tenant's interest under this Lease.

Section 26 APPROVALS BY CITY

Wherever this Lease requires or permits the giving by City of its consent or approval, or whenever an amendment, waiver, notice, or other instrument or document is to be executed by or on behalf of City, the General Manager, or his or her designee, shall be authorized to execute such instrument on behalf of City, except as otherwise provided by applicable law, including City's Charter.

Section 27 SURRENDER OF PREMISES

27.1 Condition of Premises.

On the expiration or earlier termination of this Lease pursuant to any provision of this Lease, Tenant shall quit and surrender to City the Premises, and all Improvements, repairs, alterations, additions, substitutions and replacements to the Premises, in good order and condition, but with reasonable wear and tear (consistent with Tenant's maintenance obligations under this Lease), casualty and condemnation excepted, if applicable. Tenant hereby agrees to execute all documents that City deems necessary to evidence or confirm any such other termination. Upon expiration or termination of this Lease, Tenant and the Subtenants and the Agents of Tenant or any Subtenant shall have the right to remove their respective Personal Property consistent with Section 12.17, but any damage to the Improvements that is caused by their removal shall be repaired at Tenant's expense. At City's request, Tenant shall remove, at no cost to City, any Personal Property of Tenant, any Subtenant, and any Agent of Tenant or Subtenant that then remains on the Premises.

27.2 Termination of Subleases.

Upon any termination of this Lease, all Subleases or other rights of parties acting by and through Tenant shall terminate without further action; subject to any non-disturbance agreement between City and a Subtenant that provides for the continuation of such Subtenant's Sublease on the terms of such agreement.

Section 28 HOLD OVER

28.1 Holdover Without Consent.

If Tenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Lease, then unless City expressly agrees to the holdover in writing, Tenant shall pay City, on a month-to-month basis base rent equal to one hundred twenty percent (120%) of the fair market rental (as reasonably determined by City's Director of Real Estate, acting in good faith) for the Premises, together with the Additional Rent payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Any failure by Tenant to surrender, discontinue using, or, if required by City, any failure to remove any property or equipment following written demand for the same by City, shall constitute continuing possession for purposes hereof. Tenant acknowledges that the foregoing provisions shall not serve as permission for the Tenant to hold over, nor serve to extend the term of this Lease beyond the end on the Term. Any holding over without City's consent shall constitute a default by Tenant and entitle City to exercise any or all of its remedies as provided herein, notwithstanding that City may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term.

28.2 Holdover With Consent.

Any holding over after the expiration of the Term with the express written consent of City shall be construed to automatically extend the Term on a month-to-month basis at a base rent equal to the base rent, if any, specified by City in such written consent, together with Additional Rent payable under this Lease, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term). Tenant's obligations under this Section shall survive the expiration or termination of this Lease.

Section 29 NOTICES

Any notice given under this Lease shall be effective only if in writing and given by delivering the notice in person or by sending it first-class mail or certified mail with a return receipt requested or by

overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant, at Tenant's address set forth in the Basic Lease Information; or (b) City, at City's address set forth in the Basic Lease Information; or (c) to such other address as either City or Tenant may designate as its new address for such purpose by notice given to the other in accordance with the provisions of this Section at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given three (3) business days after the date when it is mailed if sent by first class or certified mail, one (1) business day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. Tenant shall promptly provide City with copies of all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

Section 30 CITY ENTRY

Tenant shall permit City and its Agents to enter the Premises during regular business hours (and at any time in if there is an emergency) upon one (1) business days' prior notice (except if there is an emergency) for the purpose of (i) inspecting the same for compliance with any of the provisions of this Lease, (ii) performing any work therein that City may have a right to perform under this Lease, (iii) inspecting, sampling, testing and monitoring the Premises or the Improvements or any portion thereof, including buildings, grounds and subsurface areas, as City reasonably deems necessary or appropriate, and (iv) showing the Premises to prospective tenants or other interested parties during the last one hundred eighty (180) days of the Term, and to post notices of non-responsibility; provided, however, City agrees in performing or undertaking any of the foregoing activities to use reasonable efforts to minimize interference with the activities of Tenant. Such access shall be subject to Tenant's reasonable security and safety measures. Tenant shall provide City with a set of keys to all doors in the Premises, and shall provide replacement keys if and when any locks are changed. City shall have the right to use any means that it deems proper to open doors in an emergency in order to obtain access to any part of the Premises, and any such entry shall not be construed or deemed to be a forcible or unlawful entry into or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portion thereof. All locks installed in the Premises (excluding Tenant's vaults, safes or special security areas, if any) shall be keyed to the Powerhouse master key system, and City shall at all times have a key with which to unlock all such doors.

Section 31 EMPLOYMENT

31.1 First Source Hiring Ordinance.

Tenant and City are parties to the First Source Agreement attached to this Lease as ***Exhibit G*** pursuant to San Francisco Administrative Code, Chapter 83 (the "**First Source Agreement**"). Any default by Tenant under the First Source Agreement shall be a default under this Lease.

31.2 Supervision of Minors.

Tenant shall comply and shall require its Subtenants, contractors and subcontractors to comply with the obligations in California Public Resources Code Section 5164 if Tenant, or any Subtenant, contractor, or subcontractor is providing services at a City park, playground, recreational center or beach, Tenant shall not hire, and shall prevent any Subtenant, contractor or subcontractor from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Tenant or any Subtenant, contractor or subcontractor, is providing services to the City involving the supervision or discipline of minors, Tenant and any Subtenant, contractor or subcontractor shall comply with all applicable requirements under federal or state law mandating criminal history screening for positions involving the supervision of minors. If there is a conflict between this Section and Section 31.5 below, this Section shall control.

31.3 Employee Signature Authorization Ordinance.

Under San Francisco Administrative Code Sections 23.50-23.56, employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees are required to enter into a "card check" agreement with a labor union regarding the preference of employees to be represented by a

labor union to act as their exclusive bargaining representative, if the City has a proprietary interest in the hotel or restaurant project. Tenant acknowledges and agrees that Tenant shall comply, and it shall cause each Subtenant to comply, with the requirements of such Ordinance to the extent applicable to operations within the Premises.

31.4 Criminal History in Hiring and Employment Decisions.

(a) Unless exempt, and subject to the provisions of Section 31.3 above, Tenant agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "**Chapter 12 T**"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Tenant who would be or are performing work at the Premises.

(b) Tenant shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, and shall require all Subtenants to comply with such provisions, subject to the provisions of Section 31.5 above. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Tenant and Subtenants shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

(g) Tenant and Subtenants understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of $50 for a second violation and $100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Lease.

(h) If Tenant has any questions about the applicability of Chapter 12T, it may contact the Department for additional information. The Department may consult with the Director of the City's Office of Contract Administration, who may also grant a waiver as set forth in Section 12T.8.

31.5 Tenant Control; No Joint Venture.

Tenant shall have complete control over its employees in the method of performing their work under this Lease. Subject to the provisions of this Lease, Tenant retains the right to exercise full control

and supervision of the services and full control of the employment, direction, compensation and discharge of all its employees and Tenant agrees to be solely responsible for all matters relating to its employees. All personnel employed by Tenant shall be employees of Tenant and not of City. Nothing contained in this Lease shall be deemed or construed as creating a partnership or joint venture between City and Tenant or between City and any other person, or cause City to be responsible in any way for the debts or obligations of Tenant. The subject of this Lease is a lease with neither party acting as the Agent of the other party in any respect.

Section 32 REPRESENTATIONS AND WARRANTIES OF TENANT

32.1 Tenant Representations.

Tenant represents, warrants and covenants to City as follows, as of the date hereof and as of the Effective Date:

(a) Valid Existence, Good Standing. Tenant is a limited liability company duly organized and validly existing under the laws of the State of California. Tenant has the requisite power and authority to own its property and conduct its business as presently conducted. Tenant is in good standing in the State of California.

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

(c) No Limitation on Ability to Perform. Neither Tenant's articles of organization or operating agreement, nor any applicable Law, prohibits Tenant's entry into this Lease or its performance hereunder. No consent, authorization or approval of, and no notice to or filing with, any governmental authority, regulatory body or other person is required for the due execution and delivery of this Lease by Tenant and Tenant's performance hereunder, except for consents, authorizations and approvals which have already been obtained, notices which have already been given and filings which have already been made. There are no undischarged judgments pending against Tenant, and Tenant and its members have not received notice of the filing of any pending suit or proceedings that might materially adversely affect Tenant's ability to perform under this Lease.

(d) Valid Execution. The execution and delivery of this Lease and the performance by Tenant hereunder have been duly and validly authorized. When executed and delivered by City and Tenant, this Lease will be a legal, valid and binding obligation of Tenant.

(e) Defaults. The execution, delivery and performance of this Lease (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default by Tenant under (A) any agreement, document or instrument to which Tenant is a party or by which Tenant is bound, (B) any law, statute, ordinance, or regulation applicable to Tenant or its businesses, or (C) the articles of incorporation or bylaws of Tenant, and (ii) do not result in the creation or imposition of any lien or other encumbrance upon the assets of Tenant, except as contemplated hereby.

(f) Financial Matters. Except to the extent disclosed to City in writing, neither Tenant nor any of its members (i) have knowledge of a material default under, or received notice asserting that it is in default under, any lease or management agreement or the like, (ii) have filed a petition for relief under any chapter of the U.S. Bankruptcy Code, and (iii) have suffered any material adverse change to its financial condition that could reasonably effect its ability to perform its obligations under this Lease.

The representations and warranties herein shall survive any termination of this Lease to the extent specified in this Lease.

Section 33 SPECIAL PROVISIONS

33.1 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Lease, Tenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color,

creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Tenant, in any of Tenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant.

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

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

(i) CMD Form. As a condition to this Lease, Tenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD 12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division. Tenant hereby represents that prior to execution of this Lease, (i) Tenant executed and submitted to the CMD Form CMD-12B-101 with supporting documentation, and (ii) the CMD approved such form.

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

33.2 MacBride Principles - Northern Ireland.

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

33.3 Tobacco Product Sales and Advertising Prohibition.

Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of City, including the Premises and the Property. This advertising prohibition includes the placement of the name of a company producing

cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product.

33.4 Conflict of Interest.

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

33.5 Drug-Free Workplace.

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

33.6 Waiver of Relocation Assistance Rights.

Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 *et seq.*).

33.7 Public Records; Sunshine Ordinance.

Tenant understands and agrees that City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Government Code Section 6250 et seq.) (together with any amendments, supplements and successor statutes and ordinances, are hereinafter referred to as the "**Public Records Laws**") apply to this Lease, and all records, information, and materials submitted to City. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with Public Records Laws, subject to any exceptions or exemptions set forth in the Public Records Laws.

33.8 Requiring Health Benefits for Covered Employees.

Unless exempt, (i) Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time and (ii), the provisions of this Section 33.8 shall apply. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Lease as though fully set forth. The text of the HCAO is available on the web at http://www.sfgov.org/olse/hcao. Capitalized terms used in this Section and not defined in this Lease shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(c) Tenant's failure to comply with the HCAO shall, subject to applicable notice and cure periods under this Lease, constitute a material breach of this Lease. City shall notify Tenant if such a breach has occurred. If, within thirty (30) days after receiving City's written notice of a breach of this

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

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

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

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

(i) Tenant shall keep itself informed of the current requirements of the HCAO.

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

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

(iv) City may conduct random audits of Tenant to ascertain its compliance with HCAO. Tenant agrees to cooperate with City when it conducts such audits.

33.9 Intellectual Property; Music Broadcasting Rights.

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

33.10 Notification of Limitations on Contributions.

Through its execution of this Lease, Tenant 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 City for the selling or leasing of any land or building to or from City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the

date the contract is approved. Tenant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Tenant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Tenant's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer (or, if not a corporation, then the equivalent person that directs or participates in directing the affairs or actions of the entity); any person with an ownership interest of more than 20 percent in Tenant; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Tenant. Additionally, Tenant acknowledges that Tenant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

33.11 Food Service and Packaging Waste Reduction.

Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service and Packaging Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Lease as though fully set forth herein. This provision is a material term of this Lease. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Tenant agrees that the sum of One Hundred Dollars ($100.00) liquidated damages for the first breach, Two Hundred Dollars ($200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars ($500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

33.12 Bottled Water.

Tenant agrees to comply with San Francisco Environment Code Chapter 24 ("**Chapter 24**"). Tenant shall not sell, provide or otherwise distribute Packaged Water, as defined in Chapter 24 (including bottled water), in the performance of this Agreement or on City property unless Tenant obtains a waiver from the City's Department of the Environment. If Tenant violates this requirement, the City may exercise all remedies in this Agreement and the Director of the City's Department of the Environment may impose administrative fines as set forth in Chapter 24.

33.13. Graffiti Removal.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Tenant shall remove all graffiti from the Property within forty eight (48) hours of the earlier of Tenant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected

as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 *et seq.*) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 *et seq.*). Any Tenant failure to comply with this Section shall constitute an Event of Default of this Lease.

33.14 Vending Machines; Nutritional Standards.

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

33.15 All-Gender Toilets.

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

Section 34 GENERAL

34.1 Time of Performance.

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

(b) Weekend; Holiday; Business Day. A performance date that falls on a Saturday, Sunday or City holiday is deemed extended to 5:00 pm on the next business day. For purposes of this Lease, a business day means any day except Saturday, Sunday, or a day on which City and County of San Francisco is closed for business.

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

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

34.2 Interpretation of Agreement.

Whenever an "**Exhibit**" is referenced, it means an attachment to this Lease unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease.

Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

34.3 Successors and Assigns.

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

34.4 Interpretation of Lease; Approvals.

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. If there is more than one Tenant, the obligations and liabilities under this Lease imposed on Tenant shall be joint and several. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference and such captions in no way define or limit the scope or intent of any provision of this Lease. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the General Manager unless otherwise provided in this Lease, subject to applicable Law. Except as otherwise specifically provided in the Lease, whenever the Lease requires an approval or consent by either City (acting in its proprietary capacity) or Tenant, such approval or consent shall not be unreasonably withheld, and each party shall at all times act in good faith.

34.5 No Third Party Beneficiaries.

This Lease is for the exclusive benefit of the parties hereto and not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

34.6 Real Estate Commissions.

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

34.7 Counterparts.

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

34.8 Entire Agreement.

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

34.9 Amendment.

Neither this Lease nor any of the terms hereof may be terminated, amended or modified except by a written instrument executed by the Parties.

34.10 Governing Law; Selection of Forum.

This Lease shall be governed by, and interpreted in accordance with, the laws of the State of California. As part of the consideration for City's entering into this Lease, Tenant agrees that all actions or proceedings arising directly or indirectly under this Lease may, at the sole option of City, be litigated in courts having situs within the State of California, and Tenant consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon Tenant wherever Tenant may then be located, or by certified or registered mail directed to Tenant at the address set forth herein for the delivery of notices.

34.11 Extensions by City.

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

34.12 Attorneys' Fees and Costs.

If either party hereto fails to perform any of its respective obligations under this Lease or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Lease, then the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, reasonable Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either party in enforcing a judgment in its favor under this Lease shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Lease and to survive and not be merged into any such judgment. For purposes of this Lease, the reasonable fees of attorneys of City's Office of City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office. The "prevailing party" shall be determined based upon an assessment of which party's major arguments or positions taken in the action or proceeding could fairly be said to have prevailed (whether by compromise, settlement, abandonment by the other party of its claim or defense, final decision, after any appeals, or otherwise) over the other party's major arguments or positions on major disputed issues. Any Attorneys' Fees incurred in enforcing a judgment shall be recoverable separately from any other amount included in the judgment and shall survive and not be merged in the judgment. The Attorneys' Fees shall be deemed an "actual pecuniary loss" within the meaning of Bankruptcy Code Section 365(b)(1)(B), and notwithstanding the foregoing, all Fees incurred by either party in any bankruptcy case filed by or against the other party, from and after the order for relief until this Lease is rejected or assumed in such bankruptcy case, will be "obligations of the debtor" as that phrase is used in Bankruptcy Code Section 365(d)(3).

34.13 Severability.

If any provision of this Lease, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Lease or the application of such provision to any other person or circumstance, and the remaining

portions of this Lease shall continue in full force and effect, unless enforcement of this Lease as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Lease, in which case, the parties will negotiate in good faith a replacement provision which is not invalid to accomplish substantially the same intention as the provision held invalid.

34.14 Limitation on Liability.

No elective or appointive board, commission, member, officer, director, employee or other Agent of City shall be personally liable to Tenant, its successors and assigns, in the event of any default or breach by City or for any amount that may become due to Tenant, its successors and assigns, or for any obligation of City under this Agreement. No member, officer, director, employee or other Agent of Tenant shall be personally liable to City, its successors and assigns, in the event of any default or breach by Tenant or for any amount that may become due to City, its successors and assigns, or for any obligation of Tenant under this Agreement.

34.16 Tax Ownership.

Notwithstanding anything to the contrary contained in this Lease, City and Tenant hereby agree and acknowledge that, notwithstanding the form of this transaction as a lease for local and state law purposes, it is the intent of each that this transaction be treated effectively as a sale of the Premises from City to Tenant for federal income tax purposes only between the Effective Date and the earlier to occur of a Dissolution Event and the termination of this Lease, and for Tenant to be treated as the beneficial owner of the Premises, for federal income tax purposes; provided, however, that City shall remain the fee owner of the Premises. For federal income tax and accounting purposes, City recognizes and shall continue to recognize Tenant as the owner of the Premises pursuant to this Lease, and this Lease as a sale of beneficial ownership, and Tenant and City shall not take any tax reporting position to the contrary. In furtherance and not in limitation of the foregoing, the City and Tenant agree that (i) to the greatest extent possible, the risk of loss and the benefits of profit and appreciation with respect to the Premises shall reside with Tenant, (ii) it is not City's intent to realize any meaningful residual value from the Premises on or after the date hereof, and it is Tenant's intent to bear any residual value risk associated with the Premises, and (iii) Tenant alone shall be entitled to all of the tax attributes of ownership of the Premises, including, without limitation, the right to claim depreciation or cost recovery deductions.

The provisions of the foregoing paragraph shall automatically terminate as of the effective date of any Dissolution Event. Further, the City makes no warranty to Tenant regarding the availability or treatment of this Lease as a sale of the Premises under the Internal Revenue Code of 1986, as amended, including all regulations thereunder (the "Code"), and Tenant assumes all risk associated with any disallowance by the Internal Revenue Service of this Lease as a sale of the Premises under the Code.

[No further text this page.]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the day and year first above written.

TENANT

CAST POWERHOUSE, LLC
a California limited liability company

By: _____
Its: _____
Date: _____

By: _____
Its: _____
Date: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
PHILIP GINSBURG, General Manager
Recreation and Park Department

Date: _____

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

_____
Margaret McArthur, Commission Liaison

Board of Supervisors Resolution No. _____ Adopted on _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By _____
Carol Wong, Deputy City Attorney

EXHIBIT A

Depiction and Description of Premises and SFMTA Property

EXHIBIT B

Form Assignment of Lease

EXHIBIT C

Minimum Programming Standards

1. 365 hours of free thrice-weekly after-school and weekend programming in dance, music, theater, capoeira, and poetry/spoken word for approximately 140 area middle and high school student;
2. 230 hours of free thrice-weekly and weekend Early Childhood performing arts-focused classes for approximately 130 children ages 2-5 and their teachers/caregivers and Community Early Childhood serving parents and exempt/unlicensed family, friend, neighbor providers in the neighborhood from the following zip codes: (zip codes 94110, 94112, 94124, 94127, 94132 and 94134);
3. 210 hours of free or low-cost twice-weekly visual arts programming for approximately 60 youth in partnership with local arts organizations;
4. 100 hours of free performing arts-focused weekend family classes for approximately 200 youth and family members;
5. 200 hours of twice-weekly evening below-market rate classes for approximately 55 adults in dance, music, poetry and improvisational theater on a sliding-scale fee basis ($5-$20/hour, subject to CPI) in partnership with local arts organizations;
6. Weekly evening below-market rate rehearsal space for performing arts organizations and bi-monthly community meeting space on a sliding scale basis ($20-$30/hour, subject to CPI); and
7. Monthly teaching artist professional development sessions, and semiannual professional development for classroom teachers and other arts educators.

EXHIBIT D

Management and Operation Plan

EXHIBIT E

Memorandum of Lease

EXHIBIT F

Sublease Conditions; Form of Indemnity

EXHIBIT G

First Source Agreement

1. Phase I Environmental Site Assessment for Geneva Car Barn and Powerhouse dated February 2012, prepared by Ecology and Environment, Inc. for U.S. Environmental Protection Agency, Region 9 and The Friends of the Geneva Office Building and Powerhouse (Project No. 002693.6015.01BR)

2. Targeted Brownfields Assessment Report for Geneva Car Barn and Powerhouse dated June 2013, prepared by Ecology and Environment, Inc. for U.S. Environmental Protection Agency, Region 9 and the Friends of the Geneva Office Building and Powerhouse (Project No. EE-002693-6015)

3. Field Sampling Plan for Targeted Brownfields Assessment of Geneva Car Barn and Powerhouse dated April 2012, prepared by Ecology and Environment, Inc. for U.S. Environmental Protection Agency, Region 9 and the Friends of the Geneva Office Building and Powerhouse (Project No. EE-002693-6015)

3. Final Analysis of Brownfields Cleanup Alternatives Geneva Car Barn and Powerhouse Targeted Brownfields Assessment dated August 2015, prepared by Weston Solutions, Inc. for U.S. Environmental Protection Agency Region 9 (Document Control No. 20074.063.520.0005)

Schedule 1

Community Benefits

1. Tenant shall provide, or shall cause the Master Subtenant or PAW to provide, the following at the Premises: (a) arts programming for area youth, ages 3-18 during daytime hours; (b) arts programming for adults and families during the evening and weekend hours; and (c) community accessibility to the Premises during non-arts programming time. Some examples of programs that may be offered within these areas are preschool, youth and adult arts programming throughout the year, quarterly student and professional arts performances and exhibitions, rehearsal and community meeting space, and event rentals.

2. Tenant shall use, or shall cause the Master Subtenant or PAW to use, diligent and good faith efforts to:

(a) Provide a dedicated performance and exhibition space for San Francisco District 11;

(b) Provide easily accessible arts programming and community gathering space to the new affordable housing development to be built across the street from the Premises;

(c) Expand programming at the Premises to enhance, develop and strengthen partnerships with neighborhood schools in San Francisco Unified School District, including Balboa High School, Denman Middle School, Guadalupe Elementary, June Jordan School for Equity, Leadership High School, Longfellow Elementary School, Monroe Elementary School, Jose Ortega Elementary School, Sheridan Elementary School, eight of which are Title 1 schools, over the next seven years;

(d) House administrative operations and program staff to deliver 5,000 hours of free off-site performing arts-focused programing to 4,200 pre-school and public middle and high school students, and participants in the County of San Francisco's First 5 Preschool for All (PFA) program for low-income families; and

(e) Upon written request, provide written evidence of documented effort to target youth oriented programming with consideration to residents living in the following zip codes: of San Francisco's District 11 community (zip codes 94110, 94112, 94124, 94127, 94132 and 94134), residents of new market tax credit eligible census tracts in San Francisco and other City of San Francisco residents.

3. Tenant shall use, or shall cause the Master Subtenant or PAW to use, diligent and good faith efforts to:

(a) Consult with local stakeholders, residents, civic organizations and institutions, businesses, funders, customers, partners, clients, businesses, government officials, in the local San Francisco area;

(b) Incorporate planning efforts resulting from City and County of San Francisco government and other community planning processes such as the San Francisco Board of Supervisor-approved Balboa Station Transit Area Development Plan;

(c) Partner with community based organizations, targeting organizations like, but not limited to, OMI Family Resource Center, Mission Beacon, Excelsior Boys and Girls Club, Visitacion Valley Beacon, Sunnydale Boys & Girls Club, San Miguel Early Childhood Development Center, City College of San Francisco, Youth Arts Exchange, SFUSD and the Department (collectively, "Partners") to enhance, develop and strengthen opportunities for area preschoolers, youth and adults;

(d) Market programs and events at the Premises to people in Partners; and

(e) Three (3) months prior to the Rent Commencement Date, develop a comprehensive outreach program in concert with Partners, where possible, that targets San Francisco low-income communities.

4. Tenant shall use, or shall cause the Master Subtenant or PAW to use, diligent and good faith efforts to:

(a) Provide quarterly access for student exhibition and performances by partner organizations by, and performances by professional artists;

(b) Provide daily access to the Premises for approximately 2,400 community members per year, including preschoolers, youth and adults; and

(c) Provide access to approximately 10,500 individuals attending one-time special events.

Schedule 2

Due Diligence Materials

Member, Board of Supervisors
District 11

City and County of San Francisco

AHSHA SAFAÍ

November 14, 2017

Angela Calvillo, Clerk of the Board
City and County of San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached please find an original and two copies of a proposed resolution submitted for the Board of Supervisors approval, which will authorize a 55-year lease for the Powerhouse building of the Geneva Car Barn and Powerhouse and a portion of adjacent City property with $0 initial rent with an affiliate of the Community Arts Stabilization Trust; affirming the Planning Department's determination under the California Environmental Quality Act; and finding the lease is in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1.

The following is a list of accompanying documents (three sets):

- Proposed Resolution

Special Timeline Requirement: The legislation is scheduled for introduction to The City and County of San Francisco Board of Supervisors on November 14, 2017 with final adoption by the Board of Supervisors during the December 12, 2017 meeting to meet qualifying deadlines.

The following person may be contacted regarding this matter:

Manu Pradhan, Deputy City Attorney
Office of the City Attorney
1 Dr. Carlton B. Goodlett Place, City Hall, Room 234
San Francisco, CA 94102-4682
tel: (415) 554-4658, fax: (415) 554-4699
email: manu.pradhan@sfgov.org

Respectfully Submitted,

Ahsha Safai
District 11 Supervisor

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2017 NOV 14 PM 3:56
Time stamp
BY ~~or meeting date~~

I hereby submit the following item for introduction (select only one):

- [x] 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- [ ] 2. Request for next printed agenda Without Reference to Committee.
- [ ] 3. Request for hearing on a subject matter at Committee.
- [ ] 4. Request for letter beginning :"Supervisor [ ] inquiries"
- [ ] 5. City Attorney Request.
- [ ] 6. Call File No. [ ] from Committee.
- [ ] 7. Budget Analyst request (attached written motion).
- [ ] 8. Substitute Legislation File No. [ ]
- [ ] 9. Reactivate File No. [ ]
- [ ] 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission

☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

District 11 Supervisor Ahsha Safai

Subject:

Geneva Car Barn and Powerhouse - CAST Powerhouse LLC - Development Services Agreement

The text is listed:

Resolution authorizing a 55-year lease for the Powerhouse building of the Geneva Car Barn and Powerhouse and a portion of adjacent City property with $0 initial rent with an affiliate of the Community Arts Stabilization Trust; affirming the Planning Department's determination under the California Environmental Quality Act; and finding the lease is in conformance with the General Plan and the eight priority policies of Planning Code Section 101.1.

Signature of Sponsoring Supervisor: [signature]

For Clerk's Use Only