

CITY AND COUNTY OF SAN FRANCISCO
GAVIN NEWSOM, MAYOR

**THE OLD MINT
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT**

between the

CITY AND COUNTY OF SAN FRANCISCO,

acting by and through its
OFFICE OF ADMINISTRATIVE SERVICES

and

SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY,
a California nonprofit corporation

for the delivery of a leasehold estate in real property located at 88 Fifth Street, in San Francisco,
California for the rehabilitation and development of a museum project

Dated as of December 7, 2006

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LIST OF EXHIBITS

<u>Exhibits</u>	<u>Description</u>
A	Legal Description of Site
B	Site Plan
C	Form of Certificate of Completion
D	Form of the Lease
E	Schedule of Performance
F	Form of Memorandum of Lease
G	Permitted Title Exceptions
H	Scope of Development /Schematic Drawings
I	Seismic Work Schedule of Performance
J-1	Demonstration of Property Maintenance Standard
J-2	Property Maintenance Schedule
K	Mitigation Measures
L	Form of Architect's Certificate
M	Prevailing Wage Agreement
N	Form of Budget
O	Financing Plan
P-1	Form of First Source Hiring Agreement
P-2	Workforce Hiring Program
Q	Form of Memorandum of Agreement
R	Form of DDA Permit to Enter

THE OLD MINT
LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

THIS OLD MINT LEASE DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement"), dated for reference purposes as of _____, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through its OFFICE OF ADMINISTRATIVE SERVICES, and the SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation (the "Developer").

RECITALS

THIS AGREEMENT is made with reference to the following facts and circumstances:

A. The United States Mint Building located at 88 Fifth Street in San Francisco (the "Old Mint") was designated as a National Historic Landmark on July 4, 1961, and included on the National Register of Historic Places on October 15, 1966. On February 11, 2003, the San Francisco Board of Supervisors designated the Old Mint as City Landmark No. 236.

B. In August 2003, after approval by the City's Mayor and Board of Supervisors, the United States of America, acting by and through the General Services Administration ("GSA") conveyed the Old Mint to the City at no cost. The conveyance documents negotiated by the City and the GSA include a quitclaim deed (the "Deed") and a programmatic agreement ("PA"). The Deed contains covenants requiring the City or any subsequent owners to comply with the Secretary of the Interior's Standards for the Rehabilitation and Guidelines for Rehabilitating Historic Buildings (the "Secretary's Standards") in any alteration or rehabilitation of the Old Mint. The Deed also requires approvals by the State's Historic Preservation Officer ("SHPO") regarding such alterations at various stages in the design and construction processes.

C. The PA, among other things, sets forth processes for securing SHPO's approvals under the Deed and resolving disputes, and designates specific roles for a Historic Preservation Consultant ("HP Consultant") in connection with any construction work. Both the Deed and the PA reference a Historic Structures Report dated June 26, 2002, that helps define the character defining spaces and features of the Old Mint ("Historic Structure Report").

D. On August 1, 2001, the City established the San Francisco Old Mint Task Force (the "Task Force") to gather public input and opinion from diverse communities of the City regarding development of the Old Mint, and to provide additional expertise to the Mayor and the Board of Supervisors regarding the rehabilitation and reuse of the Old Mint.

E. In April of 2002, with the concurrence of the Task Force, the City issued a Request for Proposals ("RFP") soliciting development plans for the rehabilitation and reuse of the Old Mint.

F. After a review committee established by the City evaluated all three (3) responses to the RFP, on January 29, 2003, the Task Force recommended that the City commence exclusive negotiations with the Developer for the development of the Old Mint, subject to the Board of Supervisors' and Mayor's review and approval of the resulting agreement. On June 10, 2003, the Board of Supervisors adopted Resolution No. 375-03, approved by the Mayor on June 20, 2003, which endorsed the City entering into the exclusive negotiating agreement (the "ENA") with the Developer. The City entered into the ENA with the Developer to negotiate

agreements related to development of the Project in accordance with the RFP and the Developer's response to the RFP.

G. The proposed Project will consist of developing the Old Mint into a mixed use space. The program is anticipated to consist of the elements set forth in Exhibit H. As described therein, the Project will include up to approximately 74,000 square feet of uses, anchored by an approximately 30,000 square foot museum celebrating San Francisco's history. The Project will include related spaces such as approximately 1,000 square feet of administrative offices for the San Francisco Museum and Historical Society, an approximately 1,900 square foot retail/gift shop component, and an approximately 1,500 square foot educational center (collectively, "San Francisco Museum"). It may also include various complementary uses such as one or more restaurants or cafés located in up to approximately 6,000 square feet of space in the aggregate, with public restrooms, an approximately 8,000 square foot space for a numismatic museum currently contemplated to be the American Money and Gold Rush Museum, a 501(c)(3) non-profit organization with approximately 2,400 square feet of related retail space, together with approximately 3,700 square feet of space for a visitor center to be used by the San Francisco Convention and Visitors Bureau and about 2,300 square feet of other complementary retail space. The remaining space will be used for circulation, courtyard, lobby, toilets, and support spaces. The development of the Project may also involve removal of the first floor courtyard floor of the Building and the addition of two elevators between the chimneys at the west side of the building and two ADA-compliant elevators with access from Fifth Street. It will also require seismic rehabilitation of the Building and other work necessary to remove asbestos and lead, the implementation of moisture protection measures, and the installation of fire safety, mechanical, electrical and plumbing systems. The Building will also be brought into compliance with the Americans with Disabilities laws and the Secretary's Standards.

H. The Project will have numerous public benefits. First, the Project will include the seismic rehabilitation of the Old Mint, a landmark structure that is currently in significant disrepair and is generally underutilized. Second, the Project will create a substantially improved use for the Old Mint, which is complimentary to its historic use. Third, the Project provides the opportunity to educate the public about the history of San Francisco and the unique history of the Old Mint as an institution. Fourth, the San Francisco Museum component will compliment the existing South of Market cultural centers and enhance this area as a cultural destination. Fifth, the Project provides the opportunity to house the San Francisco Convention and Visitors Bureau in appropriate, well-located space. Sixth, the Project will support other efforts underway and in the planning process to revitalize the currently blighted Mid-Market corridor, including by providing active street front uses and enlivening the proposed Jessie Street Pedestrian Plaza. Finally, the Project is projected to create a substantial number of new jobs. The Developer and its tenants will participate in the City's First Source Hiring Program and the Workforce Hiring Program approved by the City to enhance employment opportunities for persons receiving public assistance and other qualified economically disadvantaged persons.

I. Prior to the execution of this Agreement, the Developer and/or the City obtained a number of Regulatory Approvals related to the Project, including, without limitation, certification of a mitigated negative declaration by the Planning Commission, approval of the Schematic Drawings by the City's Planning Department, Arts Commission and SHPO, and approvals and authorizations to enter into this Agreement and the Lease by the City's Board of Supervisors.

J. In light of the substantial public benefits afforded by the Project and in furtherance of the public process and Regulatory Approvals that preceded this Agreement, the parties wish to enter into this Agreement for the purpose of providing for development and lease of the property by Developer, subject to all of the terms and conditions set forth below.

AGREEMENT

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

1. THE SITE, TERM, DEFINITIONS, RELATIONSHIP TO LEASE, FEES

1.1. Site

(a) **Generally.** The Old Mint occupies an entire City block (Block 3704, Lot 11), consisting of an approximately 1.09 acre parcel of land located at 88 Fifth Street, San Francisco, California, bounded by Mission Street to the south, Mint Street to the west and Jessie Street to the north, and is more particularly described in the legal description attached hereto as Exhibit A and as shown generally on the Site Plan attached hereto as Exhibit B (the "Site").

(b) **Building.** The building is a three (3)-story Unreinforced Masonry Building structure with approximately 100,300 square feet of gross area including approximately 8,100 square feet of attic space and approximately 4,300 square feet of area of the ground floor under the courtyard, and an approximately 4,300 square foot open courtyard that is approximately at the center of the first floor (the "Building"). The ground floor level is approximately two (2) feet below exterior grade. A small parking area is located on the Jessie Street side of the Building. A more detailed description is provided in Exhibit H.

(c) **Technical Corrections.** The Parties reserve the right, upon mutual agreement of the City Administrator and the Developer to enter into memoranda of technical corrections hereto to reflect any non-material changes in the actual legal description and square footages of the Site and the Building, and to adjust the site boundaries pursuant to an ALTA Survey to be prepared by or on behalf of the Developer, and upon full execution thereof, such memoranda shall be deemed to become a part of this Agreement. The Parties hereby agree to attach the legal description and corresponding revised Site Plan to this Agreement prior to the Close of Escrow pursuant to an ALTA Survey to be prepared by or on behalf of the Developer, and agree that in attaching a preliminary Site Plan to this Agreement in connection with the execution of this Agreement, it is not the intent of the City to authorize the Developer to use any public right-of-ways in connection with performing its obligations hereunder without obtaining permission therefor from the appropriate City departments, agencies or commissions.

1.2. Term of this Agreement

The term of this Agreement shall be from the Effective Date until the City records a Certificate of Completion for the Improvements pursuant to Section 6 below, substantially in the form of Exhibit C attached hereto, unless this Agreement is earlier terminated in accordance with its provisions (the "DDA Term").

1.3. Definitions

Initially capitalized terms used in this Agreement are defined in Section 13 below, or have the meanings given them when first defined. Any initially capitalized words or acronyms used but not defined in this Agreement shall have the meanings given them in the Lease.

1.4. Relationship of this Agreement to Lease

This Agreement (i) provides for an agreement to lease the Property subject to certain conditions, precedent and (ii) controls development of the Property during the DDA Term. Specifically, it addresses, among other matters, the conditions to the Close of Escrow and the Delivery of the Property under the Lease, the scope of the Developer's obligations to construct the Improvements, the Schedule of Performance for those obligations, certain First Source Hiring Program, Workforce Hiring Program, and Prevailing Wage provisions, and the financing for construction of the Improvements. If the conditions for the Close of Escrow set forth in Section 2 of this Agreement are satisfied, the City will lease the Property to the Developer, and the Developer will lease the Property from the City, pursuant to the terms and conditions of a

lease in substantially the form and substance of the lease attached hereto as Exhibit D (the "Lease"). No leasehold interest in the Property shall be granted to the Developer until the Close of Escrow. Before Completion of the Improvements (but after the Close of Escrow), both this Agreement and the Lease will apply, but this Agreement shall control in the event of any inconsistency between this Agreement and the Lease. Upon Completion of the Improvements, and subject to the other terms and conditions of this Agreement, this Agreement will terminate. From and after Completion of the Improvements, the Lease will govern the rights and obligations of the Parties with respect to use and occupancy of the Property. Completion of the Improvements will be conclusively evidenced by recordation of a Certificate of Completion as set forth in Section 6 below.

1.5. Jessie Street Agreements.

(a) Jessie Street Pedestrian Plaza. Jessie Street is not part of the Site. However, the Developer has identified the portion of Jessie Street adjacent to the northern side of the Building as integral to the proposed development and programming of the Site, and proposes to use it for purposes of both commercial/retail and community space. The City also anticipates that as part of the revitalization of the Mid-Market Area, and in support of the Project, this adjacent area and an additional portion of Jessie Street immediately adjacent to the north will be closed to vehicular traffic for use as a pedestrian plaza ("Jessie Street Pedestrian Plaza"), to be constructed with money contributed by adjacent, privately owned parcels, likely through a Community Facilities District, or similar mechanism and to be maintained likely by a Community Benefits District or similar mechanism, in which the Property will be included.

(b) Use of Jessie Street Pedestrian Plaza and Assessment. The Developer agrees to use commercially reasonable efforts to enter into a memorandum of understanding reasonably approved by the City with the developer of the Jessie Street Pedestrian Plaza regarding the Developer's plan for the general location in the Jessie Street Pedestrian Plaza of the Developer's retail kiosks and outdoor restaurant seating area. The parties contemplate that the City will grant to Developer by separate instrument the right to occupy the portion of the Jessie Street Pedestrian Plaza adjacent to the northern side of the Building, subject to the terms and conditions further defined in such instrument (the "Jessie Street Pedestrian Plaza Use Instrument"). The Jessie Street Pedestrian Plaza Use Instrument would also set forth the process for the City's review and approval of any design, construction and maintenance plans and obligations for the Jessie Street Pedestrian Plaza, with reasonable rights of review and approval by Developer. The Developer acknowledges and agrees that the Property may be assessed in connection with a Community Benefits District or similar mechanism (the "CBD Assessment"). The Developer shall be responsible for full payment of that portion of any such assessment levied upon the Property as of the Commencement Date; provided that the initial annual CBD Assessment does not exceed \$200,000. If the initial annual CBD Assessment exceeds \$200,000, the Developer and the City shall meet and confer, and the Developer shall cooperate with the City, to determine how to reasonably resolve the CBD Assessment payment issue.

2. DISPOSITION OF LEASEHOLD ESTATE THROUGH ESCROW

2.1. Agreement to Lease

Subject to satisfaction of all applicable conditions to the Close of Escrow, the City agrees to lease the Property to the Developer, and the Developer agrees to lease the Property from the City, under the Lease for the development and operation of the Project, all in accordance with and subject to the terms, covenants and conditions of this Agreement.

2.2. Escrow

(a) Opening of Escrow. The Developer shall open an escrow for the Delivery of the Property through the Lease (the "Escrow") with Chicago Title Company in San Francisco, or the local office of such other title company as the Developer may select and the City may find reasonably satisfactory ("Title Company"). The Developer shall open the

Escrow not later than the date specified in the schedule of performance attached hereto as Exhibit E (the "Schedule of Performance").

(b) Close Date. Subject to Force Majeure, the "Close Date" shall be the date which is eighteen (18) months after the Effective Date. Notwithstanding the foregoing, the Close of Escrow may not occur earlier than the date by which all of the conditions precedent described in Sections 2.3 and 2.4 are either satisfied or waived by the Party which is benefited by such conditions. In the event that all of the conditions precedent described in Sections 2.3 and 2.4 are not satisfied or waived by the Close Date, the City may extend the Close of Escrow by giving the Developer prior written notice, but in no event shall such extension extend the Construction Completion Date set forth in the Schedule of Performance without the City's prior written approval, which may be granted, withheld, or conditioned in the City's sole discretion.

(c) Joint Escrow Instructions. Not later than thirty (30) days before the Close Date, the Developer shall prepare joint escrow instructions as are necessary and consistent with this Agreement. If the joint escrow instructions are acceptable to the City, the City shall execute and transmit the instructions to the Title Company within seven (7) days after their receipt.

(d) Recordation of Memorandum of Lease. The joint escrow instructions referred to in Section 2.2(c) above shall, among other things, provide that the Title Company will record the Memorandum of Lease in the Official Records, in the form attached hereto as Exhibit F (the "Memorandum of Lease"), as well as any other documents provided for in this Agreement which are to be recorded upon Close of Escrow, as further provided in Section 2.5 below.

(e) Costs of Escrow. The City shall not be required to pay any costs or expenses for or related to the Escrow. The Developer shall pay all fees, charges, costs and other amounts necessary for the Close of Escrow, including, but not limited to, any escrow fees, the costs of any title reports, surveys, inspections or premiums for any title insurance policies and endorsements obtained by the Developer recording fees, if any, and transfer taxes, if any (together, "Closing Costs"). The Developer shall pay any Closing Costs within the times necessary for the Close of Escrow, as set forth in a closing statement prepared by the Title Company.

2.3. Conditions to the City's Obligation to Close of Escrow

(a) City's Conditions Precedent. The following are conditions precedent to the City's obligation to approval of the Close of Escrow and thereby Deliver the Property to the Developer under the Lease:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on the Developer's part under this Agreement, and all of the Developer's representations and warranties made in Section 12.20 of this Agreement shall have been true and correct when made and shall be true and correct as of the Close Date. At the Closing, the Developer shall deliver to the City a certificate to confirm the accuracy of such representations and warranties.

(ii) The City shall have approved those aspects of the Construction Documents that are required under Section 5 below to be approved by the City prior to the Close of Escrow, in accordance with the Schedule of Performance.

(iii) The City shall have approved, under the standard set forth in Section 7 below, those aspects of the evidence of adequate financing for the Project (based on the Budget for Completion of the Improvements in accordance with the Construction Documents) that are required under Section 7 below, including evidence of the Construction Contract described in Section 7.1(h) below, in accordance with the Schedule of Performance.

(iv) The Developer shall have submitted into Escrow the Lease, in the form attached hereto as Exhibit D, duly executed by the Developer.

(v) In accordance with the Schedule of Performance, the Developer shall have submitted to the City for review for Consistency, draft and final versions of a

management document which sets forth the standards and procedures for the operation of the San Francisco Museum and the Property by the Developer and/or a management team selected by the Developer, including, without limitation a Property Manager ("Management Plan"), which Management Plan shall reflect the provisions set forth in Section 7.1(c) of the Lease and shall otherwise be acceptable in form and substance to the City in its reasonable discretion. Any changes between the draft and final versions of the Management Plan must be redlined and delivered to the City with the final version of the document to be approved by the City. The Developer shall have submitted the final Management Plan approved by the City into Escrow, duly executed by the Developer.

(vi) In accordance with the Schedule of Performance, the Developer shall have submitted to the City for review for Consistency, draft and final versions of the memorandum of understanding for subleasing a portion of the Property between the Developer and the San Francisco Convention and Visitors Bureau ("SF Convention and Visitors Bureau Memorandum of Understanding"), which shall be acceptable in form and substance to the City in its reasonable discretion. Any changes between the draft and final versions of the San Francisco Convention and Visitors Bureau Memorandum of Understanding must be redlined and delivered to the City with the final version of the document to be approved by the City. The Developer shall have submitted the final SF Convention and Visitors Bureau Memorandum of Understanding, into Escrow, duly executed by the Developer and the San Francisco Convention and Visitors Bureau, following such approval by the City.

(vii) In accordance with the Schedule of Performance, the Developer shall have submitted to the City for review for Consistency, draft and final versions of the memorandum of understanding for subleasing a portion of the Property between the Developer and a numismatic museum, currently contemplated to be the American Money and Gold Rush Museum ("American Money and Gold Rush Museum Memorandum of Understanding"), which shall be acceptable in form and substance to the City in its reasonable discretion. Any changes between the draft and final versions of the American Money and Gold Rush Museum Memorandum of Understanding must be redlined and delivered to the City with the final version of the document to be approved by the City. The Developer shall have submitted the final American Money and Gold Rush Memorandum of Understanding into Escrow, duly executed by the Developer and the American Money and Gold Rush Museum, following such approval by the City.

(viii) In accordance with the Schedule of Performance, the Developer shall have submitted to the City for review for Consistency, draft and final versions of one or more memoranda of understanding for subleasing a portion of the Property between the Developer and one or more restaurant or café operators with a successful track record of operating restaurants or cafés (each, a "Restaurant Memorandum of Understanding"), which shall be acceptable in form and substance to the City in its reasonable discretion. Any changes between the draft and final versions of the Restaurant Memorandum of Understanding must be redlined and delivered to the City with the final version of the document to be approved by the City. The Developer shall have submitted the final Restaurant Memorandum of Understanding, duly executed by the Developer and the restaurant or café operator, as applicable, following such approval by the City.

(ix) The Developer shall have submitted to the City evidence that the Developer has submitted a final Historic Preservation Certification Application, Part 2 – Description of Rehabilitation to the National Park Service ("NPS") and NPS shall have approved such application and issued a tax credit certification only on the completion of construction in the manner set forth in the application.

(x) The Developer shall have submitted to the City an executed operating agreement or limited partnership agreement with all related authority and governing documents or such other evidence that is reasonably satisfactory to the City, indicating that the Developer has entered or has a binding commitment to enter into an agreement with an investor

to utilize in such partnership or limited liability company, the Historic Preservation Tax Credit in eligible Project costs.

(xi) The Developer shall have submitted to the City evidence that the Developer's New Markets Tax Credit investor has received the allocation of New Markets Tax Credits necessary to fund the portion of the Budget allocated to New Markets Tax Credits.

(xii) The Developer shall have submitted to the City an executed operating agreement or limited partnership agreement with all other related authority and governing documents in connection with the New Markets Tax Credits investment process, and such other evidence that is reasonably satisfactory to the City, indicating that the Developer has entered or has a binding commitment to enter into an agreement with an investor to utilize in such partnership or limited liability company, the New Markets Tax Credit in eligible Project costs.

(xiii) The Developer shall have obtained all Regulatory Approvals for construction of the Improvements, including without limitation, any approvals by SHPO as required by the PA and the Deed, and such Regulatory Approvals shall be Finally Granted. Building Permits for the Improvements shall have been Finally Granted, or, in the case of the Site Permit Process, the Site Permit and any addendum or addenda to the Site Permit which are required for the commencement of Construction of the Improvements shall have been Finally Granted.

(xiv) The Title Company shall be irrevocably committed to issue to the City the title insurance policy required by Section 2.7(a) (ii) to be delivered to the City, if any.

(xv) The City shall have approved the submissions the Developer is required to make regarding the Special City Requirements, in accordance with Section 11 below, and the Developer shall have executed and delivered to the City a certification of compliance with San Francisco Administrative Code Chapters 12B and 12C on the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101), together with supporting documentation, and shall have secured approval of the form by the City's Human Rights Commission.

(xvi) The City shall have approved such evidence of the Developer's authority to enter into the Lease, the Management Plan, the SF Convention and Visitors Bureau Memorandum of Understanding, the American Money and Gold Rush Museum Memorandum of Understanding, the Restaurant Memorandum of Understanding (each, a "Memorandum of Understanding," and collectively, the "Memoranda of Understandings"), and this agreement and the transactions which the Lease, the Management Plan, the Memoranda of Understandings and this Agreement contemplate, as the City and the Title Company may reasonably require, including, without limitation, legal opinions regarding due authorization and execution.

(xvii) The City shall have reasonably approved such evidence of Property Manager's authority to enter into the Management Plan and of each sublessee's authority to enter into the applicable Memorandum of Understanding, and the Contractor's authority to enter into the Construction Contract, as the City and the Title Company may reasonably require, including, without limitation, legal opinions regarding due authorization and execution.

(xviii) The Developer shall have in place all insurance required under this Agreement and the Lease and shall have deposited evidence thereof into Escrow.

(xix) The Developer shall have deposited into Escrow a duly executed and authorized Performance Bond.

(xx) The City shall have approved the Construction Contract for Consistency.

(xxi) The Developer shall have prepared and the City shall have approved the supplemented Historic American Building Survey documentation regarding the Old Mint pursuant to the terms of the PA.

(xxii) The City's Board of Supervisors authorization and approval required for this Agreement, the Lease, and, any other agreements contemplated by this Agreement to be executed by City which require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(xxiii) The City and the Developer shall have agreed upon the legal description for the Site.

(xxiv) The Developer shall have obtained approval by the Landmarks Preservation Advisory Board of a certificate of appropriateness.

(xxv) The Developer shall have prepared and delivered to the City and the City shall have reasonably approved an updated Workforce Hiring Program that covers the workforce in connection with the operation of the San Francisco Museum and the Project.

(b) Satisfaction of City's Conditions. The conditions precedent set forth above are intended solely for the benefit of the City. If any such condition precedent is not satisfied on or before the Close Date, subject to the provisions of Section 12.1, the City, acting through the City Administrator, shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, (ii) unless any such condition precedent is not satisfied due to City's breach of Section 5.8(b) hereunder, to terminate this Agreement, and exercise all of its rights and remedies hereunder, or (iii) unless any such condition precedent is not satisfied due to City's breach of Section 5.8(b) hereunder extend the Close Date for a reasonable period of time specified in writing by the City not to exceed sixty (60) days, to allow such conditions precedent to be satisfied, subject to City's right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied, and to exercise all of its rights and remedies hereunder.

2.4. Conditions to the Developer's Obligation to Close Escrow

(a) Developer's Conditions Precedent. The following are conditions precedent to the Developer's obligation to approve the Close of Escrow and thereby accept Delivery of the Property under the Lease:

(i) No uncured Event of Default (or Unmatured Event of Default) exists on the City's part under this Agreement.

(ii) The Title Company shall be irrevocably committed to issue to the Developer, upon payment by the Developer of the premium thereunder, the title insurance policy required by Section 2.7 to be delivered to the Developer.

(iii) There shall have been no Adverse Change.

(iv) The City shall have approved the Construction Documents required to be approved by the Close of Escrow in accordance with the Schedule of Performance.

(v) All Regulatory Approvals required to commence construction of the Project shall have been issued without conditions reasonably unacceptable to the Developer, including approval of the final conceptual design of the Project, as set forth in the Schematic Drawings, by the City's Landmarks Preservation Advisory Board, the City's Arts Commission, and any approvals by SHPO as required by the PA and the Deed, and such Regulatory Approvals shall be Finally Granted.

(vi) Building Permits for the Project shall have been issued, or, in the case of the Site Permit Process, the Site Permit and any addendum or addenda to the Site Permit which are required for the commencement of construction of the Improvements shall have been Finally Granted, and the City shall have executed any such permits which the City is required to execute as co-permittee.

(vii) The City's Board of Supervisors authorizations and approvals required for this Agreement, the Lease, and, any other agreements contemplated by this Agreement to be executed by the City which require such approval, shall have been completed and shall have become and remain effective, and such approvals shall be Finally Granted.

(viii) The Developer shall have obtained commitments for, and the City shall have approved the evidence of, the financing required to be approved by the City under Section 7 of this Agreement by the Close of Escrow in accordance with the Schedule of Performance, including the Construction Contract.

(ix) The City shall have approved the Developer's submissions in accordance with the Special City Requirements, as set forth in Section 11 below.

(x) The Developer and the City shall have entered into the Jessie Street Pedestrian Plaza Use Instrument described in Section 1.5 above and approvals therefor shall have been Finally Granted.

(b) Satisfaction of the Developer's Conditions Precedent. The conditions precedent set forth above are intended solely for the benefit of the Developer. If any such condition precedent is not satisfied on or before the Close Date, subject to Force Majeure, the Developer shall have the right in its sole discretion to (i) waive in writing the condition precedent in question and proceed with the Close of Escrow, (ii) unless any such condition precedent is not satisfied due to the Developer's breach of Section 12.22 hereunder, to terminate this Agreement, and exercise all of its rights and remedies hereunder, subject to the other provisions of this Agreement which expressly survive a termination hereof, or (iii) unless any such condition is not satisfied due to the Developer's breach of Section 12.22 hereunder, extend the Close Date for a reasonable period of time specified in writing by the Developer not to exceed sixty (60) days, to allow such conditions precedent to be satisfied, subject to the Developer's right to terminate this Agreement upon the expiration of the period of any such extension if all such conditions precedent have not been satisfied, and to exercise all of its rights and remedies hereunder, subject to the other provisions of this Agreement which expressly survive a termination hereof.

2.5. Delivery of the Property

(a) Obligation to Close Escrow. Provided that the conditions to the City's obligations with respect to the Close of Escrow and Delivery of the Property as set forth in Section 2.3 and the conditions to the Developer's obligations with respect to Close of Escrow and acceptance of the Delivery of the Property as set forth in Section 2.4 have been satisfied or expressly waived on or before the Close Date, the City and the Developer shall instruct the Title Company to complete the Close of Escrow, as set forth below. Upon the Close of Escrow the City shall Deliver the Property to the Developer, and the Developer shall accept the Delivery of the Property, under the Lease.

(b) Steps to Close Escrow. The Close of Escrow shall be completed as follows:

(i) On or before the Close of Escrow, the City shall execute and acknowledge, or cause to be executed and acknowledged, as necessary, and deposit into Escrow with the Title Company the following: (1) the Lease, (2) the Memorandum of Lease, and (3) copies of the resolutions of the Board of Supervisors authorizing and approving the Lease and this Agreement.

(ii) On or before the Close of Escrow, the Developer shall (A) pay into Escrow with the Title Company all Closing Costs, and (B) execute and acknowledge (or cause to be executed and acknowledged), as necessary, and deposit into Escrow with the Title Company the following: (1) the Lease, (2) the Memorandum of Lease, (3) the Management Plan, (4) the Memoranda of Understanding, and (5) the certificate as to the accuracy of the representations and warranties under this Agreement required by Section 2.3(a)(i).

(iii) The City and the Developer shall instruct the Title Company to consummate the Escrow according to the joint escrow instructions described in Section 2.2(c). Upon the Close of Escrow, the Title Company shall record in the Official Records the Memorandum of Lease, and any other documents reasonably required to be recorded under the terms of any Regulatory Approvals or under the terms hereof and shall deliver to the respective Parties executed counterparts of the applicable documents. In addition, on or before the Close of Escrow, a Memorandum of this Agreement in the form of Exhibit Q attached hereto (a "Memorandum of Agreement") shall have been recorded in the Official Records.

(iv) The Title Company shall issue title policies to the Developer and the City as required under Section 2.7.

(c) **Waiver of Conditions to Close of Escrow.** Unless the Parties otherwise expressly agree at the time of Close of Escrow, all conditions to the Close of Escrow of the Parties shall, upon the Close of Escrow, be deemed waived by the Party benefited by such condition.

2.6. Condition of Title to the Property

(a) **Permitted Title Exceptions.** Except for those "Permitted Title Exceptions" shown on Exhibit G attached hereto (collectively, the "Permitted Title Exceptions"), and such other matters as the Developer shall cause to arise, which arise in connection with the Developer's use or operation of the Property, and which the Developer agrees to hereunder such as the CBD Assessments, the City shall Deliver to the Developer the Property under and subject to the provisions of the Lease for the term specified in the Lease, free and clear of (i) possession and rights of possession of the Property by others, and (ii) liens, encumbrances, covenants, assessments, easements, leases and taxes.

(b) **Title Defect.** If at the time scheduled for the Close of Escrow under Section 2.2, there remains (i) any possession and rights of possession of the Property by others, or (ii) any lien, encumbrance, covenant, assessment, easement, lease, tax, judgment, or other right, title or interest in the Property, which in either case, is not a Permitted Title Exception, that encumbers the Property and would materially and adversely affect the development or operation of the Project (a "Title Defect"), the City will have up to thirty (30) days from the time scheduled for the Close of Escrow under Section 2.2 to remove the Title Defect (the "Title Defect Cure Period"). In such event, the time scheduled for the Close of Escrow under Section 2.2 will be extended to the earlier of seven (7) business days after the Title Defect is removed or the expiration of the Title Defect Cure Period. If the Title Defect can be removed by bonding and the City has not so bonded within the Title Defect Cure Period, the Developer may in its sole discretion cause a bond to be issued. If the Developer causes a bond to be issued in accordance with this Section 2.6(b), the City at its option shall either reimburse the Developer for the cost of the bond within thirty (30) days of written demand therefor, or the City may elect to offset such amount against the Net Revenues payable under the Lease.

(c) **Developer's Remedies for an Uncured Title Defect.** If by expiration of the Title Defect Cure Period, subject to Force Majeure, unless the Parties mutually agree to extend such date, a Title Defect still exists and all other of the City's Conditions Precedent have been satisfied, the Developer may by written notice to the City either (i) terminate this Agreement or (ii) accept Delivery of the Property under the Lease. If the Developer elects to accept Delivery, the Title Defect will be deemed waived but solely with respect to any action by the Developer against the City. If the Developer does not accept Delivery and fails to terminate this Agreement within seven (7) days after the expiration of the Title Defect Cure Period, or any extension thereof as provided above, the City may terminate this Agreement upon three (3) days written notice to the Developer. If the Agreement is terminated under this Section, the Developer shall have no further remedies against the City with respect to such termination. In the event that the Developer does not accept Delivery and fails to terminate this Agreement within such seven (7) days after the expiration of the Title Defect Cure Period, or any extension thereof as provided above, and City elects not to terminate this Agreement as set forth in this

Section, this Agreement shall continue in full force and effect and any Title Defect will be deemed waived and City shall have all of its rights and remedies under this Agreement, at law and in equity.

(d) Covenants of City Regarding the Site Before the Close of Escrow. In addition to its obligations under Section 2.6(a) above, and not in limitation of the Developer's rights under Section 2.4, the City will not intentionally take any actions that materially alters the condition of title to the Property existing as of the date of this Agreement except as specifically contemplated hereunder or under the Lease. Between the Effective Date of this Agreement and the Close of Escrow or earlier termination of this Agreement as permitted hereunder, the City shall not (i) make any material physical alterations to the Property or (ii) enter into any lease, license or other agreement for the use or occupancy of the Property without the Developer's prior written consent.

2.7. Title Insurance

(a) Title Insurance to be Issued at the Close of Escrow. The joint escrow instructions described in Section 2.2(c) will provide that concurrently with the Close of Escrow, the Title Company will issue and deliver:

(i) to the Developer an A.L.T.A. extended coverage title insurance policy issued by the Title Company, with such coinsurance or reinsurance and direct access agreements as the Developer may request reasonably, in an amount reasonably designated by the Developer which is satisfactory to the Title Company, insuring that the leasehold estate in the Property is vested in the Developer subject only to the Permitted Title Exceptions, and with such C.L.T.A. form endorsements and such other endorsements as may be requested reasonably by the Developer, all at the sole cost and expense of the Developer; and

(ii) to the City an A.L.T.A. extended coverage title insurance policy issued by Title Company in an amount specified by the City and satisfactory to the Title Company, insuring the City's fee interest in the Property subject to the Lease and those Permitted Title Exceptions which are applicable to the fee, and with such C.L.T.A. endorsements as the City may reasonably request, provided that subject to Section 2.7(c) below, the City pays any incremental cost for such policy (including endorsements) in excess of the cost of the title policy and endorsements referred to in clause (i) above.

(b) Surveys. The Developer is responsible for securing any and all surveys and engineering studies at its sole cost and expense, as needed for the title insurance required under this Agreement or as otherwise required to consummate the transactions contemplated by this Agreement. The Developer shall provide the City with complete and accurate copies of all such final surveys (which shall be certified to City in a form reasonably satisfactory to City) and engineering studies.

(c) Construction Endorsement. In the event that the title insurance policy described in Section 2.7(a)(ii) above is issued to the City, and in the event that the Developer obtains an endorsement to its title insurance policy with respect to the Property insuring the Developer that the Improvements have been completed free and clear of all mechanics' and materialmen's liens, the Developer shall also obtain such an endorsement for the City with respect to City's title insurance policy, all at the sole cost and expense of the Developer.

2.8. Taxes and Assessments

(a) Ad Valorem Taxes and Assessments Before and After Delivery. For any period before the Close of Escrow, the Developer is responsible for any ad valorem taxes (including, but not limited to, possessory interest taxes) assessed by reason of this Agreement, its entry upon the Property under a Permit to Enter, or otherwise. Ad valorem taxes and assessments levied, assessed, or imposed for any period on or after the Close of Escrow, including but not limited to, possessory interest taxes, are the sole responsibility of the Developer, as further provided in the Lease.

(b) Possessory Interest Taxes. The Developer recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that the Developer may be subject to the payment of property taxes levied on such interest. San Francisco Administrative Code Sections 23.38 and 23.39 require that the City and County of San Francisco report certain information relating to this Agreement, and any renewals of this Agreement, to the County Assessor within sixty (60) days after any such transaction, and that the Developer report certain information relating to any assignment, sublease or transfer under this Agreement to the County Assessor within sixty (60) days after such assignment transaction. The Developer agrees to provide such information as may be requested by the City to enable the City to comply with this requirement.

2.9. Compliance with Laws

(a) Compliance with Laws and Other Requirements. At its sole cost and expense, the Developer shall comply (taking into account any variances or the terms of other Regulatory Approvals properly obtained) at all times throughout the DDA Term, with: (i) all Laws; (ii) all of the Mitigation Measures described in Section 11.2 below; (iii) all requirements of all policies of insurance required under Section 5.14 hereof, and under Section 18 of the Lease and such other insurance policies of the Developer which may be applicable to the Site, the Improvements or the Developer's personal property; (iv) the Lease (to the extent that it is then in effect); (v) all applicable requirements for qualification of the Project for the Historic Preservation Tax Credit; (vi) all applicable requirements for qualification of the Project for the New Markets Tax Credit and (vii) all other applicable Project Requirements. It is expressly understood and agreed that the performance required of the Developer by the preceding sentence shall include the obligation to make, at the Developer's sole cost and expense, all additions to, modifications of, and installations on the Property that may be required by any Laws regulating the Site or any insurance policies covering the Site, the Improvements or the Developer's personal property. The Developer shall, promptly upon request, provide the City with evidence of compliance with the Developer's obligations under this Section.

(b) Regulatory Approvals.

(i) The Developer understands and agrees that the City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Property and not as a regulatory agency with certain police powers. The Developer understands and agrees that neither entry by the City into this Agreement nor any approvals given by the City under this Agreement shall be deemed to imply that the Developer will obtain any required approvals from City departments, boards or commissions which have jurisdiction over the Property. By entering into this Agreement, the City is in no way modifying or limiting the obligations of the Developer to develop the Project in accordance with all Laws, as provided in this Agreement.

(ii) The Developer understands that its Construction of the Improvements on the Site and development of the Project will require approvals, authorizations and permits from governmental agencies with jurisdiction, which may include, without limitation, the City's Planning Commission and/or Zoning Administrator, the Art Commission the Department of Building Inspection and SHPO. The Developer shall use good faith efforts to obtain and shall be solely responsible for obtaining any Regulatory Approvals required for the Project in the manner set forth in this Section. The Developer shall not seek any Regulatory Approval without first notifying the City. Throughout the permit process for any Regulatory Approval, the Developer shall consult and coordinate with the City in the Developer's efforts to obtain such permits. The City shall cooperate reasonably with the Developer in its efforts to obtain such permits. However, the Developer shall not agree to the imposition of conditions or restrictions in connection with its efforts to obtain a permit from any other regulatory agency if the City is required to be a co-permittee under such permit, the conditions or restrictions could create any obligations on the part of the City whether on or off of the Site, or the conditions or restrictions could otherwise encumber, restrict or change the use of the Site, unless in each instance the City has previously approved such conditions in writing and in the City's sole and absolute discretion. No such approval by the City shall limit the Developer's obligation to pay

all the costs of complying with such conditions under this Section. Subject to the conditions of this Section, the City shall join any application by the Developer for any required Regulatory Approval and in executing such permit where required, provided that the City shall have no obligation to join in any such application or sign any such permit if the City does not approve the conditions imposed by the regulatory agency under such permit as set forth above. The Developer shall bear all costs associated with applying for and obtaining any necessary Regulatory Approval. The Developer shall comply with any and all conditions or restrictions imposed by regulatory agencies as part of a Regulatory Approval, at no cost to City, whether such conditions are on-site or require off-site improvements as a result of the Project. The Developer shall have the right to reasonably appeal or contest any adverse decision and/or imposition of any condition in any manner permitted by Law imposed upon any such Regulatory Approval. The Developer shall pay or discharge any fines, penalties or corrective actions imposed as a result of the failure of the Developer to comply with the terms and conditions of any Regulatory Approval. Without limiting any other indemnification provisions of this Agreement, the Developer shall Indemnify the City and the other Indemnified Parties from and against any and all Losses which may arise in connection with the Developer's failure to seek to obtain in good faith, or to comply with, the terms and conditions of any Regulatory Approval or to pursue in good faith the appeal or contest of any conditions of any Regulatory Approval initiated in connection with the Project, except to the extent such Losses are caused by the gross negligence or willful misconduct of City acting in its proprietary capacity. The provisions of this Section shall survive any termination of this Agreement.

2.10. Period to Cure Defaults Prior to the Close of Escrow

If Escrow is not in condition to close at the Close Date due to an Event of Default, either Party who has performed fully the acts to be performed by it before Close of Escrow, or whose performance has been excused, may terminate this Agreement by written notice, demand the return of its money, papers or documents deposited in Escrow and exercise all of its rights and remedies hereunder; provided, however, the other Party will have thirty (30) days after such notice to perform any acts required of it to permit Close of Escrow. If neither the City nor the Developer has performed fully with respect to the Close of Escrow before the time established therefor, the Title Company will have been instructed in the joint instructions described in Section 2.2(c), to return all documents and funds deposited with it to the respective Parties thirty (30) days after such time, unless within such thirty (30)-day period both Parties shall have performed fully all their obligations with respect to Close of Escrow, in which case the Title Company will be instructed to carry out its instructions without regard to such thirty (30)-day delay.

3. AS IS CONDITION OF THE SITE; INDEMNIFICATION

3.1. Site As Is; Risk of Loss

(a) Acceptance of Site in "AS IS WITH ALL FAULTS" Condition; Risk of Loss. The City shall not prepare the Property for any purpose whatsoever related to the Developer's obligations to Construct the Improvements. Subject to the terms of Section 2.6(a), the Developer agrees to accept the Site in its "AS IS WITH ALL FAULTS" condition on the date of the Close of Escrow as further described in Section 3.1(c); provided that between the Effective Date and the Close of Escrow, there is no discovery of a physical condition of the Property not created by the acts or omission of the Developer or its Agents that was not known to the Developer prior to the Effective Date, or would not have been discovered by a prudent developer with the same access and usage rights to the Property and documents related to the Property as the Developer has had since entering into the ENA, that would, in either case, materially adversely interfere with Construction of the Project for its intended uses (an "Adverse Change"). It shall be a condition precedent to the Developer's obligation to Close of Escrow and to accept Delivery of the Property, that there be no such Adverse Change. Notwithstanding the foregoing, the City will not under any circumstances be liable to the Developer for any monetary damages caused by an Adverse Change.

(b) Independent Investigation by Developer. The Developer acknowledges that it has been afforded a full opportunity to inspect all of the public records of the City in the possession of the City's project manager for the Old Mint and the City Administrator that relate to the physical condition of the Premises. The City makes no representation or warranty as to the accuracy or completeness of any matters contained in such records. All information contained in such records is subject to the limitations set forth in subsection d) below. The Developer represents and warrants to the City that the Developer has performed a diligent and thorough inspection and investigation of the Property, either independently or through its own experts including, without limitation, (i) the quality, nature, adequacy and physical condition of the Project, and all other physical and functional aspects of the Property; (ii) the quality, nature, adequacy, and physical, geotechnical and environmental condition of the Property (including Hazardous Materials conditions with regard to the soils and any groundwater); (iii) the suitability of the Property for the Project; (iv) the zoning, land use regulations, historic preservation laws and other Laws governing use of or construction on the Property; and (v) all other matters of material significance affecting the Property and its development under this Agreement.

(c) DISCLAIMER OF REPRESENTATIONS AND WARRANTIES. THE DEVELOPER AGREES THAT THE PROPERTY IS BEING DELIVERED BY CITY AND ACCEPTED BY THE DEVELOPER IN ITS "AS IS WITH ALL FAULTS" CONDITION. THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT NEITHER THE CITY, NOR ANY OF THE OTHER INDEMNIFIED PARTIES, NOR ANY EMPLOYEE, OFFICER, COMMISSIONER, REPRESENTATIVE OR OTHER AGENT OF ANY OF THEM, HAS MADE, AND THERE IS HEREBY DISCLAIMED, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, WITH RESPECT TO THE CONDITION OF THE PROPERTY, THE SUITABILITY OR FITNESS OF THE PROPERTY OR APPURTENANCES TO THE PROPERTY FOR THE DEVELOPMENT, USE OR OPERATION OF THE PROJECT, ANY COMPLIANCE WITH LAWS OR APPLICABLE LAND USE OR ZONING REGULATIONS ANY MATTER AFFECTING THE USE, VALUE, OCCUPANCY OR ENJOYMENT OF THE PROPERTY, OR ANY OTHER MATTER WHATSOEVER PERTAINING TO THE PROPERTY OR THE PROJECT.

3.2. Release

As part of its agreement to accept the Property in its "As Is With All Faults" condition, effective upon the Close of Escrow, the Developer, 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, the City, and its Agents of and from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that the Developer 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 Property, including, without limitation, any Hazardous Materials in, on, under, above or about the Property (including, but not limited to, soils and groundwater conditions), and (ii) any Laws applicable thereto, including without limitation, Hazardous Materials Laws.

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

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

The Developer agrees that the release contemplated by this Section includes unknown claims. Accordingly, the Developer 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 Agreement, the foregoing release shall survive any termination of this Agreement.

3.3. Environmental Matters

(a) **Compliance with Hazardous Materials Laws.** From and after the Close of Escrow, the Developer shall comply with the provisions of all Hazardous Materials Laws and all conditions for Regulatory Approval of Hazardous Materials Remediation applicable to the Property, including the Improvements, and the activities conducted on the Site, and all uses, improvements and appurtenances of and to the Property, as further provided in the Lease. The Developer shall perform any required Investigation and Remediation of Hazardous Materials with regard to any condition of the Property existing before or after the Close of Escrow, at no cost to the City, in accordance with applicable Laws, regulations and agency requirements and standards. The Developer's obligations set forth in the preceding sentence shall survive any termination of this Agreement in any manner. The Developer shall also comply with all conditions for Regulatory Approval of Hazardous Materials Remediation

(b) **Remedies Against Other Persons.** Nothing in this Agreement is intended in any way to preclude or limit the Developer from pursuing any remedies the Developer may have with regard to the existence of Hazardous Materials in, on, under or about the Property against any Person other than the Indemnified Parties; provided, however, the Developer may pursue such remedies only with the advance written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) **Deed.** The Developer agrees that it is subject to all obligations of the City under the terms of the Deed, which among other things, (i) grants the government of the United States of America a right of access to any and all portions of the property for purposes of environmental remediation or other response or corrective action in accordance with the terms of the Deed; (ii) requires cooperation with the government of the United States of America in its performance of any remedial action, response action or corrective action; and (iii) prohibits the unreasonable disruption or interference with such activities. The City hereby agrees to cooperate with the Developer, at no cost or expense to the City, in enforcing environmental remediation or other response or corrective actions obligations of the government of the United States of America under the Deed.

(d) **Condition of Property.** Between the Effective Date and the Close of Escrow, the City shall not introduce new Hazardous Materials to the Property other than such types typically associated with any maintenance or protection of the Property by or on behalf of the City.

3.4. Indemnification

(a) **Indemnification Before Close of Escrow.** Without limiting any indemnity contained in any Permit to Enter, the Developer shall Indemnify the City and the other Indemnified Parties from and against any and all Losses incurred in connection with or arising prior to the Close of Escrow out of the conduct of the Developer or its Agents on the Property or related to the Project, including, without limitation, (i) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which may occur on or adjacent to the Property and which may be caused directly or indirectly by any acts done on the Property, or any acts or omissions of the Developer or its Agents, (ii) any default by the Developer in the observation or performance of any of the terms, covenants or conditions of this Agreement to be observed or performed on the Developer's part; and (iii) the entry by the Developer, its Agents or Invitees or any Person claiming through or under any of them, upon the Property. Notwithstanding the foregoing, Developer shall not be required to Indemnify the City or other Indemnified Parties against Losses if such Losses (A) are caused by the gross negligence or willful misconduct of any of City or any of the other Indemnified Parties, including in the exercise of police powers; (B) arise from the satisfaction by the Developer of the obligations of Developer under Section 11.1 below; or (C) are caused by third party claims arising from the condition or use of the Property prior to August 20, 2003, to the extent not arising from the negligence or willful misconduct of the Developer or its Agents.

(b) Indemnification On and After Delivery. The Developer shall Indemnify the City and the other Indemnified Parties for Losses arising after the Close of Escrow in accordance with the provisions of the Lease.

(c) General Provisions Regarding Indemnities.

(i) Costs. The foregoing Indemnities shall include, without limitation, Attorneys' Fees and Costs and the fees and costs of consultants and experts, laboratory costs, and other related costs, as well as the Indemnified Party's reasonable costs of investigating any Loss.

(ii) Immediate Obligation to Defend. The Developer agrees to defend the Indemnified Parties against any claims which are actually or potentially within the scope of the indemnity provisions of this Agreement even if such claims may be groundless, fraudulent or false. The City or Indemnified Party against whom any claim is made which may be within the scope of the indemnity provisions of this Agreement shall provide notice to the Developer of such claim within a reasonable time after learning of such claim, and thereafter shall cooperate with the Developer in the defense of such claim; provided that any failure to provide such notice shall not affect the Developer's obligations under any such indemnity provisions except to the extent the Developer is prejudiced by such failure.

(iii) Not Limited by Insurance. The insurance requirements and other provisions of this Agreement shall not limit the Developer's indemnification obligations under this Agreement, any Permit to Enter or the Lease.

(iv) Survival. The indemnification obligations of the Developer set forth in this Agreement shall survive any termination of this Agreement as to any acts or omissions occurring prior to such date.

(v) Additional Obligations. The agreements to Indemnify set forth in this Agreement are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Developer may have to the City in this Agreement, any Permit to Enter or applicable Law.

(vi) Defense. The Developer shall, at its option but subject to the reasonable consent and approval of the City, be entitled to control the defense, compromise, or settlement of any indemnified matter through counsel of the Developer's own choice; provided, however, in all cases the City shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Developer shall fail, however, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend such suit or claim, City shall have the right promptly to use the City Attorney or to hire outside counsel (reasonably satisfactory to the Developer) to carry out such defense, which expense shall be due and payable to the City within ten (10) days after receipt by the Developer of an invoice therefor.

4. ACCESS BY DEVELOPER UPON SITE

4.1. Access and Entry by the Developer to the Property

(a) Permit to Enter Before Close of Escrow. This Section will govern the right of access to and entry upon the Property by the Developer and its Agents before the Close of Escrow.

(i) After the Effective Date but before the Close of Escrow, the Developer shall have the right of access to and entry upon and around the Property for the purposes of performing tests necessary to carry out this Agreement, including visual surveys and inspections provided, however, the Developer shall first obtain a Permit to Enter from the City in substantial form of the Permit to Enter attached hereto as Exhibit R (the "DDA Permit to Enter"), which, among other things, includes indemnification and insurance requirements.

(ii) The Developer may not perform any demolition, excavation or construction work before the Close of Escrow without the express written approval of the City, which the City may give or withhold in its sole and absolute discretion. If the City grants such approval, the City may include in a separate Permit to Enter such additional insurance, bond, guaranty and indemnification requirements as the City reasonably determines are appropriate to protect its interests.

(iii) In making any entry upon the Property authorized in accordance with the foregoing, the Developer shall not materially interfere with or obstruct the permitted, lawful use of the Property by the City, or its invitees.

(iv) The City may require any contractor performing the work under a Permit to Enter to be a co-permittee.

(b) The City hereby permits the Developer to commence and complete work to seismically strengthen the Building ("Seismic Work") prior to the Close of Escrow provided that the Developer satisfies the following requirements:

(i) Prior to commencement, the following must have occurred:

(A) The Developer shall have prepared and the City and SHPO shall have approved the supplemented Historic American Building Survey documentation regarding the Old Mint pursuant to the terms of the PA.

(B) The cost of the Seismic Work, including a contingency line item, is included in the Budget and the Financing Plan. Prior to the commencement of any Seismic Work, the Budget and Financing Plan must be updated to reflect the actual cost of the Seismic Work provided in a guaranteed fixed price contract approved by the City. Additionally, all funds required to commence, perform and complete the Seismic Work must be placed in escrow in a federally insured bank account with a financial institution approved by the City, separate from all other Project accounts or other accounts owned by the Developer, or the Developer must provide a performance bond to the City in substantially the same form and content as the Performance Bond.

(ii) All Seismic Work must be performed in accordance with the Seismic Work section of the Construction Documents, including the Schematic Drawings attached hereto as Exhibit H.

(iii) All Seismic Work must commence, be performed and be completed in accordance with the schedule of performance for the Seismic Work approved by the City and attached, or to be attached, hereto as Exhibit I following such approval by the City ("Seismic Work Schedule of Performance").

(iv) All Seismic Work must be performed in accordance with all applicable Laws and in accordance with the construction requirements set forth in this Agreement.

(v) The Developer shall remain and the Seismic Work shall be subject to the terms and conditions of this Agreement, and additional requirements reasonably required by the City.

(vi) The Developer must provide the City with evidence reasonably satisfactory to the City that none of the Seismic Work shall negatively impact the remainder of the Construction necessary to complete the Project.

(c) **Property Maintenance.** At all times prior to the Close of Escrow, and at the Developer's sole cost and expense, the Developer shall be solely responsible for maintaining all facilities placed in or on the Property and shall maintain the Property in a good, clean, safe, secure and sanitary sightly condition. Without limiting the Developer's foregoing maintenance obligations, the Developer shall comply with the following obligations:

(i) The Developer shall continuously maintain the areas shown in Exhibit J-1 in a clean and sanitary condition in accordance with the maintenance schedule shown in Exhibit J-2, and except only to the extent reasonably necessary during construction of the Improvements, shall not allow the condition of those areas to deteriorate below the conditions shown in Exhibit J-1.

(ii) The Developer shall be responsible for basic maintenance of the existing burglar alarm and surface wired smoke detector systems and will be the primary (24/7) response contact if an alarm sounds.

(iii) The Developer shall be responsible for the maintenance and, replacement of existing fire extinguishers on the Property, and as necessary, the installation of any additional fire extinguishers throughout the Property, and shall train its personnel responsible for oversight of the Property maintenance in the location and operation of the fire extinguishers and post an emergency evacuation plan.

(d) The Developer shall be responsible for licensing, maintenance and operation of the existing elevator located near the Jessie Street entrance.

(e) The City may also approve, at its sole discretion, a request by Developer to commence and complete certain "soft" demolition (i.e. non-structural interior elements) prior to Close of Escrow; provided that the Developer satisfies any conditions that the City may impose at its sole discretion, including, but not limited to Restoration obligations.

5. DEVELOPMENT OF THE SITE

5.1. Developer's Construction Obligations

(a) **Scope of Development; Schedule of Performance; Standards.** The Developer shall Construct or cause to be Constructed the Improvements on the Site within the times and in the manner set forth in this Section 5 and as more particularly set forth in the Schedule of Performance and the Scope of Development, including Schematic Drawings, attached hereto as Exhibit H. The satisfaction of the matters set forth in the Schedule of Performance by the required completion dates is an essential part of this Agreement, time being of the essence. In the event the City grants an extension of any such date, the City shall not be deemed to be waiving any other rights under this Agreement or implying the extension of any other dates. All Construction with respect to the Project shall be accomplished expeditiously, diligently within the time frames set forth in the Schedule of Performance and in accordance with good construction and engineering practices and applicable Laws. The Developer shall undertake commercially reasonable 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 reasonable methods customarily used to control deleterious effects associated with construction projects in populated or developed urban areas. The Developer, while performing any Construction with respect to the Project, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining portions of the Site and Improvements and the surrounding property, or the risk of injury to members of the public, caused by or resulting from the performance of such Construction.

(b) **Costs; Private Development.** The Developer shall bear all of the cost of developing the Property and the rehabilitation and development of all Improvements, including, without limitation, any and all cost overruns in relation to the Budget. Without limiting the foregoing, the Developer shall be responsible for performing all Property preparation work necessary for the rehabilitation and development of the Improvements. Such preparation of the Property shall include, among other things, Investigation and Remediation of Hazardous Materials required for development or operation of the Improvements, all structure and substructure work, and disabled and public access improvements and tenant improvements.

(c) **Character Defining Features.** At all times prior to and following Completion and at the Developer's sole cost and expense, the Developer shall be solely responsible for the safekeeping and protection of the character defining features of the Old Mint as designated by the Historic Structure Report. The Developer shall take all commercially reasonable measures during such time to protect the character defining features from damage or injury. The Developer shall make no changes to the character defining features of the Old Mint except in strict accordance with the terms of this Agreement, the Deed, the PA, and the Construction Documents and only upon approval by SHPO.

(d) **Phased Construction.** City may at its sole discretion approve modifications to the Schedule of Performance and the review process and timeframes set forth in Section 5.8 herein to accommodate a request by the Developer for phased construction of the Improvements.

5.2. Utilities

Developer's Responsibility. The Developer, at its sole expense, shall arrange for the provision and construction of all on-site and off-site utilities necessary to Construct the Improvements on the Property, as shown on the Scope of Development, subject to Section 11.2 of the Lease (requirement to use Hetch Hetchy power).

5.3. Construction Documents

(a) **Definition of Construction Documents.** The Construction Documents shall consist of the following:

(i) Schematic Drawings for the Project, approved by the City and SHPO (attached hereto as Exhibit H), which generally includes, without limitation (a) perspective drawings sufficient to illustrate the Project, (b) a site plan at appropriate scale showing relationships of the Improvements with their respective uses, and designating public access areas, open space areas, walkways, loading areas and adjacent uses, (c) building plans, floor plans and elevations sufficient to describe the development proposal for the Project, and the general architectural character, and the location and size of uses, of the Project, and (d) building sections showing height relationships of the areas noted above.

(ii) Design Development Documents in sufficient detail and completeness to show and describe among other things, the size and character of the Improvements as to the architectural, structural, mechanical and electrical systems and materials.

(iii) Preliminary Construction Documents in sufficient detail and completeness to show the Improvements and the construction thereof in compliance with the Project Requirements (as defined in Section 5.4 below), and which shall generally include, without limitation, (a) site plans at appropriate scale showing the building, streets, walks, and other open spaces, with all land uses designated and all site development details and bounding streets, and points of vehicular and pedestrian access shown, (b) all building plans and elevations at appropriate scale, (c) building sections showing all typical cross sections at appropriate scale, (d) floor plans, (e) preliminary tenant improvement plans, (f) plans for public access areas, (g) outline specifications for materials, finishes and methods of construction, (h) exterior signage and exterior lighting plans (i) material and color samples, and (j) roof plans showing all mechanical and other equipment.

(iv) Final Construction Documents, which shall include all plans and specifications required under applicable Laws to be submitted with an application for a Building Permit as provided in Section 5.15 below.

(b) **Exclusion.** As used in this Agreement "Construction Documents" does not mean any contracts between the Developer and any contractor, subcontractor, architect, engineer or consultant.

5.4. Project Requirements

The Developer shall construct all of the Improvements in compliance with those elements of the Construction Documents for which City approval is required under Sections 5.7 and 5.9 below, and in compliance with all applicable Laws, including, without limitation, Hazardous Materials Laws and Disabled Access Laws, and as further provided in Section 2.9. In addition, the Construction Documents shall conform to and be in compliance with applicable requirements of (i) this Agreement, including the Scope of Development, the Schematic Drawings and the Special City Requirements set forth in Section 11 below, (ii) the Mitigation Measures set forth in Exhibit L attached hereto, (iii) the City's Building Code and State Historic Building Code, as applicable, (iv) any required Regulatory Approvals, (v) the approval of the Preliminary Construction Documents by the Staff, (vi) the Secretary's Standards for historic rehabilitation as approved by SHPO and to the extent not inconsistent with SHPO's approval, consistent with the project described and preliminarily approved by the NPS in the Historic Preservation Certification Application, Part-2 ("Certification Application"). All of the requirements set forth in this Section 5.4 are referred to collectively as the "Project Requirements." Notwithstanding any other provision of this Agreement or the Lease to the contrary, City's approval of the Schematic Drawings and the Site Plan in the respective forms attached hereto is in no manner intended to, and shall not, evidence or be deemed to evidence City's approval of any aspect of the Project with respect to the scope of review described in this Section 5.4 or in Section 5.7 below.

5.5. Preparation of Construction Documents/Approval of Architect

(a) **Preparation by Licensed Architect.** The Construction Documents shall be prepared by or signed by an architect (or architects) duly licensed to practice architecture in and by the State of California, in consultation with a licensed historic preservation architect for purposes of complying with applicable historic preservation standards required by SHPO and NPS. A California licensed architect shall coordinate the work of any associated design professionals, including engineers and landscape architects.

(b) **Inspection.** A California licensed architect shall inspect all Construction of the Improvements and shall provide certificates in the form of the Architect's Certificate attached hereto as Exhibit L when required by the City.

(c) **Certification by Structural Engineer.** A California licensed structural engineer shall review and certify all final structural plans and the sufficiency of structural support elements to support the Improvements under applicable Laws.

5.6. Submission of Construction Documents

The Developer shall prepare and submit the Construction Documents to the City for review and approval by City as provided in Section 5.7 below in accordance with the Scope of Development and at the time or times established in the Schedule of Performance. As to all stages of the Developer's submission of Construction Documents, each of the Construction Document stages is intended to constitute a further development and refinement from the previous stage. Thus, the elements of the Design Development Drawings and the Preliminary Construction Documents requiring the City's approval shall be in substantial conformance with the Schematic Drawings and the Scope of Development, and shall incorporate conditions, modifications and changes specified by the City or required as a condition of Regulatory Approvals as approved by the City. And, the Design Development Drawings and the Preliminary Construction Documents shall be in sufficient detail and completeness to show that the Improvements and the Construction of Improvements will be in compliance with the Project Requirements and matters previously approved. And, the Final Construction Documents shall be a final development of, and be based upon and conform to, the approved Preliminary Construction Documents. The elements of the Final Construction Documents requiring the City approval shall incorporate conditions, modifications and changes required by the City for the approval of the Preliminary Construction Documents. The Final Construction Documents shall include all drawings, specifications and documents necessary for the Improvements to be constructed and completed in accordance with this Agreement.

5.7. Scope of City Review of Developer's Construction Documents

(a) Scope of Review. The City's review and approval of the Construction Documents under this Agreement shall address (i) conformity with the Project Requirements, (ii) exterior architectural appearance and aesthetics, (iii) design and appearance of interior and exterior historic fabric and spaces subject to regulation under the State's Historic Building Code and the Secretary's Standards, (iv) design of any areas required under Regulatory Approvals to be accessible to the public.

(b) Effect of Review. Subject to the provisions of the last sentence of this subsection 5.7(b), the City's review and approval or disapproval of Construction Documents will be final and conclusive. Except by mutual agreement with the Developer, the City will not disapprove or require changes subsequently in, or in a manner which is inconsistent with, matters which it has approved previously. If there is a disagreement between the City and the Developer as to whether or not a matter contained in a particular submittal has been approved previously or whether the City is acting in a manner which is inconsistent with matters which it approved previously, the Parties shall promptly resolve the disagreement, and either party may submit the matter to arbitration as defined in Section 5.7(c) below.

(c) Dispute Resolution.

(i) Either party may elect to refer a dispute under Section 5.7(b) above to arbitration by a single arbitrator (the "Arbiter") as provided herein. The Parties shall agree and designate the Arbiter within ten (10) business days of a written request therefor by either party. If the Parties cannot agree on a single arbitrator within ten (10) business days after either party requests arbitration hereunder, then either party, on behalf of both, may request that appointment of an arbitrator be designated by JAMS/Endispute in San Francisco, California, and the other party shall not raise any questions as to such person's full power and jurisdiction to entertain the application for and make the appointment.

(ii) Each party initially shall advance 50% of the required arbitration fee. Within fifteen (15) days following written notice to the Arbiter or the appointment of the arbitrator (as the case may be), each party shall state in writing the reasons it believes that the dispute under Section 5.7(b) has occurred and should be resolved in its favor, and attach such supporting statements and materials as it shall deem appropriate, and deliver such statement with attachments to the Arbiter and to the other party. If a party does not so deliver such statement or if a party fails to appear at the hearing, the Arbiter may enter a default award against such party, provided said party received actual notice of the hearing. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(iii) The Arbiter shall issue its opinion within ten (10) business days after his or her receipt of the statements. The unsuccessful party shall pay the legal fees of the prevailing party. If the Arbiter refuses to or fails to act within such time, JAMS/Endispute shall appoint a successor arbitrator. The Arbiter may order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the noncompliance and/or to bring the non-compliant party into compliance.

(iv) Except as otherwise provided, the Arbiter shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the this Agreement, or any other agreement between the City and the Developer, or to negotiate new agreements or provisions between the Parties. The inquiry of the Arbiter shall be restricted to the issue of whether the City improperly withheld, conditioned, or failed to act on a required submission hereunder of Construction Documents.

(v) A decision of the Arbiter issued hereunder shall be final and binding upon the City and the Developer, unless a party files a request for judicial relief with a court of competent jurisdiction with respect to the decision within fifteen (15) working days after

the issuance of the Arbiter's decision. If any such claim is timely filed, the petitioning party shall be entitled to de novo judicial review.

(vi) The losing party in arbitration shall pay the arbitrator's fees and related costs of arbitration. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the arbitrator finds that the request was frivolous or that the arbitration action was otherwise instituted or litigated in bad faith. Judgment upon the Arbiter's decision may be entered in any court of competent jurisdiction.

(vii) If either Party does not timely perform its obligations under this DDA because of the arbitration proceedings set forth above resulting in an arbitrator's order against the other Party, the time for any performance by the prevailing Party pursuant to this Agreement, including the time limits imposed under the Schedule of Performance, shall be extended for a period commensurate with the period of said cessation of work; provided, however, that such prevailing Party shall take all actions reasonably necessary to minimize any delays.

(viii) California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2 shall govern all arbitration proceedings.

5.8. Construction Document Review Procedures

(a) **Role of City Staff.** The City's review and approval of Construction Documents means and requires review and approval of required Construction Documents by City staff or consultants designated to review the Construction Documents by the City Administrator ("Staff").

(b) **Method of City Action/Prior Approvals for Construction Documents.** The City shall reasonably and in good faith approve, disapprove or approve conditionally the Construction Documents in writing, within thirty (30) days after submittal, so long as the applicable documents are properly submitted in accordance herewith and with the Schedule of Performance and/or the other terms of this Agreement. Pursuant to the PA, for each of the Design Development Drawings, Preliminary Construction Document, and Final Construction Document, the HP Consultant must submit a written report to SHPO within thirty (30) days after receipt of such documents advising as to whether the documents comply with the Secretary's Standards. The HP Consultant's report submitted to SHPO in connection with the Design Development documents is referred to as the Third Determination Report. The HP Consultant's report submitted to SHPO in connection with the Preliminary and Final Construction Documents is referred to as the Fourth Determination Report. The Developer shall submit the Construction Documents to the City for delivery to the HP Consultant and the City shall work with the HP Consultant and use reasonable efforts to provide any City comments on the Construction Documents within sufficient time for the HP Consultant's review prior to the required time for the HP Consultant's submission of the Third Determination Report and Fourth Determination Report respectively. Failure by the City to either approve or disapprove within such times will entitle the Developer to an extension of time equal to the period of such delay.

(c) **Timing of City Disapproval/Conditional Approval and Developer Resubmission for Construction Documents.** If the City disapproves of any of the Construction Documents in whole or in part, the City in the written disapproval shall state the reason or reasons and may recommend changes and make other recommendations. If the City conditionally approves the Construction Documents in whole or in part, the conditions shall be stated in writing and a reasonable time shall be stated for satisfying the conditions. The Developer shall make a resubmittal as expeditiously as possible. The Developer may continue making resubmissions until the approval of the submissions or the later of (i) the time specified in any conditional approval or (ii) the Close Date, as either may be extended under the terms hereof. Failure to have a submission approved by such last date will permit termination of this Agreement by the City on thirty (30) days' written notice to the Developer, unless the Developer cures such failure within such thirty (30)-day period. If the City disapproves the Construction Documents, the date in the Schedule of Performance for approval of Construction Documents

will be extended an additional thirty (30) days. Approval of Construction Documents by the City shall not be construed as approval of such documents by SHPO. All disputes between SHPO and the City in connection with the approval of Construction Documents or the approval of any construction work shall be resolved in accordance with the terms of the PA.

(d) Method of City Action/Prior Approvals for Other Submissions. With respect to submissions other than the Construction Documents, the City shall reasonably and in good faith approve, disapprove or approve conditionally unless otherwise set forth herein, any submissions required under the terms of this Agreement, in writing, within forty-five (45) days after submittal, so long as the applicable documents are properly submitted in accordance herewith and with the Schedule of Performance and/or the other terms of this Agreement. Failure by the City to either approve or disapprove within such times will entitle the Developer to an extension of time equal to the period of such delay. Notwithstanding the foregoing, if Developer submits a full building permit application in accordance with Section 5.15(a), the City's time for review shall be sixty (60) days. The Parties hereby acknowledge and agree that the City has approved the Schematic Drawings attached hereto as Exhibit H.

5.9. Changes in Final Construction Documents

(a) Approval of Changes in Required Elements. The Developer shall not make or cause to be made any material changes in any City-approved Construction Documents as to elements requiring City approval as provided in this Section 5 (each a "Required Element") without the City's express written approval in its reasonable discretion as provided in Section 5.9(b) below. Prior to making any changes that the Developer considers to be non-material to any City approved Construction Documents as to Required Elements including, without limitation, substituting materials which are the architectural equivalent as to aesthetic appearance, quality, color, design and texture, the Developer shall notify City in writing or verbally at the progress meetings pursuant to Section 5.11 hereof of such changes in Required Elements. If City in its reasonable discretion determines that such noticed changes are material, then such changes shall be subject to City's approval under Section 5.9(b). City's determination of whether such changes are material will be conclusive.

(b) Response in Connection with Construction Documents. The Developer shall request in writing City's approval in connection with all material changes in Required Elements. The City shall respond to the Developer in writing within thirty (30) days after receipt of the Developer's request. If the City fails to respond to such request on or after twenty-five (25) days after the Developer's written request, the Developer may submit a second notice to City requesting City's approval or disapproval within five (5) days after the Developer's second notice. If City fails to respond within such five (5)-day period, such changes will be deemed disapproved. All changes to the Construction Documents must be consistent with applicable historic preservation laws and standards, all as determined by the HP Consultant in accordance with the terms of the PA, and consistent with all other laws as determined by the City in the exercise of its reasonable discretion. The Developer acknowledges that the submission, review, approval and dispute resolution process used in connection with the initial approval of the Construction Documents shall apply in connection with the approval of any changes to the Construction Documents.

5.10. Conflict Between Project Requirements and Other Governmental Requirements

(a) Approval by City. The City shall not withhold its approval, where otherwise required under this Agreement, of elements of the Construction Documents or changes in Construction Documents required by any governmental body with jurisdiction over the Project if all of the following have occurred: (i) the City receives written notice of the required change, (ii) the City is afforded at least thirty (30) days to discuss such element or change with the governmental body having jurisdiction over the Project and requiring such element or change and with the Developer's architect, (iii) the Developer's architect cooperates fully with the City and with the governmental body having jurisdiction in seeking reasonable modifications of such

requirement, or reasonable design modifications of the Improvements, or some combination of such modifications, all to the end that a design solution reasonably satisfactory to the City may be achieved despite the imposition of such requirement, and (iv) any conditions imposed in connection with such requirements comply with Section 2.9(b).

(b) Best Efforts to Attempt to Resolve Disputes. The Developer and the City recognize that the foregoing kind of conflict may arise at any stage in the preparation or the Construction Documents, but that it is more likely to arise at or after the time of the preparation of the Final Construction Documents and may arise in connection with the issuance of building permits. Accordingly, time may be of the essence when such a conflict arises. Both Parties agree to use their best efforts to reach a solution expeditiously that is mutually satisfactory to the Developer and the City.

5.11. Progress Meetings/Consultation

During the preparation of Construction Documents and during the Construction of the Improvements, Staff and the Developer agree to hold periodic progress meetings to consider the Developer's progress, and to coordinate the preparation of, submission to, and review of Construction Documents and the Construction process by the City, the HP Consultant and SHPO. Staff, the HP Consultant and the Developer will communicate and consult informally as frequently as is reasonably necessary to assure that the formal submittal of any Construction Documents to the City, the HP Consultant and SHPO and any matters regarding Construction can receive prompt and speedy consideration (subject to the terms of this Agreement). The Developer shall keep the City and the HP Consultant reasonably informed of all meetings taking place in connection with Construction and shall give the City and the HP Consultant the opportunity to attend and participate in such meetings. The City may at its own cost, but is not obligated to, have one or more individuals present on the Property at any time and from time to time during Construction, to observe the progress of Construction and to monitor the Developer's compliance with this Agreement and any other approved submittals. Pursuant to the PA, the HP Consultant will monitor the Construction and upon prior notice to the City, SHPO and the Council may inspect the Property and monitor the progress of the Construction, provided such access and reviews do not unreasonably interfere with or delay the Construction, and the GSA shall have the same right to inspect the Property and monitor the progress of the Construction in connection with its dispute resolution rights set forth in the PA.

5.12. Construction Schedule

The Developer shall use its best efforts to commence, prosecute and complete all Construction within the times specified in the Schedule of Performance or within such extension of time as the City may reasonably grant in writing or as otherwise permitted by the Agreement, subject to Force Majeure and Litigation Force Majeure. During periods of Construction the Developer shall submit written progress reports to the City, and if requested by City, related or supporting information, in form and detail as may be required reasonably by the City, but at least on a monthly basis.

5.13. Submittals After Completion

(a) As Built Documents. The Developer shall furnish City as-built plans, specifications and surveys with respect to the Property within ninety (90) days after Completion of the Improvements. As used in this Section "as-built plans and specifications" means as-built field plans prepared during the course of construction. If the Developer fails to provide such surveys and as-built plans and specifications to the City within such period of time, the City after giving notice to the Developer shall have the right, but not the obligation, to cause the preparation by an architect of the City's choice of final surveys and as-built plans and specifications, at the Developer's sole cost, to be paid by the Developer to City within thirty (30) days after City's request therefor.

(b) Certified Construction Costs. Within ninety (90) days after Completion of the Improvements, the Developer shall furnish the City with an itemized statement of all

Construction Costs (which costs shall include all tenant improvement work) incurred by the Developer in connection with the construction of the Improvements in accordance with the final construction drawings, certified as true and accurate by an independent certified public accountant (the "Certified Construction Costs"). The Developer shall keep accurate books and records of all Construction Costs incurred in accordance with accounting principles generally accepted in the construction industry. Within sixty (60) days after receipt of the statement of Certified Construction Costs, the City shall have the right to inspect the Developer's records regarding the construction of the Improvements and the costs incurred in connection therewith. If the City disagrees with the statement of Certified Construction Costs, the City may request that such records may be audited by an independent certified public accounting firm mutually acceptable to the City and the Developer, or if the Parties are unable to agree, either party may apply to the Superior Court of the State of California in and for the County of San Francisco for appointment of an auditor meeting the foregoing qualifications. If the court denies or otherwise refuses to act upon such application, either party may apply to the American Arbitration Association, or any similar provider of professional commercial arbitration services, for appointment in accordance with the rules and procedures of such organization of an independent auditor. Such audit shall be binding on the Parties, except in the case of fraud, corruption or undue influence. The entire cost of the audit shall be paid by the City unless the audit discovers that the Developer has overstated the Construction Costs by more than three percent (3%), in which case the Developer shall pay the entire cost of the audit.

5.14. Insurance Requirements

(a) **Before Close of Escrow.** Before Close of Escrow, the Developer shall procure and maintain insurance coverage as required by any Permit to Enter given to the Developer by the City, and otherwise, upon the terms provided in the Lease.

(b) **After Close of Escrow.** From and after Close of Escrow, the Developer's obligation to maintain insurance with respect to the Site and the Project will be as set forth in the Lease.

(c) **City Self-Help Right to Obtain Insurance.** After five (5) days' written notice to the Developer, the City has the right, but not the obligation, to obtain, and thereafter continuously to maintain, any insurance required by this Agreement that the Developer fails to obtain or maintain, and to charge the cost of obtaining and maintaining that insurance to the Developer; provided, however, if the Developer reimburses the City for any premiums and subsequently provides such insurance satisfactory to the City, then the City agrees to cancel the insurance it obtained and to credit the Developer with any premium refund.

5.15. City and Other Governmental Permits

(a) **Regular Track.** As further provided in Section 2.9(b), the Developer has the sole responsibility for obtaining all necessary permits for the Improvements and shall make application for such permits directly to the applicable regulatory agency. Unless the Developer elects to use the Site Permit method described in Section 5.15(b) below, the Developer shall submit to the City a complete application for a full building permit within a time adequate to obtain the same before the date set forth in the Schedule of Performance, taking into account normal processing time by the City and notwithstanding the dates set forth in the Schedule of Performance for submission of Construction Documents. Upon any such submission, the Developer shall use its best efforts to prosecute the application diligently to issuance.

(b) **Site Permit.** The so-called "Site Permit" method of permit approval for construction of improvements allows construction to begin with an approved site permit and addenda. Construction may continue to completion through the issuance of addenda covering the remaining aspects and phases of construction not provided for under the initial approved portion of the building permit. The City is willing to allow the Site Permit method for Construction of Improvements at the election of the Developer, provided that the Developer proceeds diligently and strictly in accordance with this Section and that the use of Site Permit

will not delay the dates set forth in the Schedule of Performance for commencement or Completion of Construction.

(i) Under the Site Permit process, only the Site Permit and addenda required for commencement of Construction are required to satisfy the building permit condition to the Close of Escrow.

(ii) If the Developer elects to use the Site Permit for any portion of the Improvements, the following provisions shall apply:

(A) The Developer shall notify the City in writing of its election to do so at any time after the City's approval of the Developer's Schematic Drawings, including submittal of a proposed sequence, scope and schedule of Site Permit addenda.

(B) The City will review the schedule and sequence promptly, and within ten (10) days of receipt, will advise the Developer in writing whether or not the City believes that such schedule and sequence (i) comply with applicable building code requirements and provide the City with adequate processing time, and (ii) would delay the construction commencement date or the Completion of the Improvements beyond the dates in the Schedule of Performance for commencement and Completion in accordance with a full building permit process. If the City reasonably believes the schedule and sequence do not so comply or that such a delay would result, it will specify the basis for such belief. Failure of the City to respond will be deemed to be approval of the schedule and sequence.

(C) If the City disapproves of the schedule or sequence in accordance with this Section, the City will meet and consult with the Developer to revise the schedule or sequence to make them acceptable to the City.

(D) If the schedule and sequence are approved, the City will notify the Developer in writing of the City's required Final Construction Document submission schedule. Such schedule shall be consistent with the schedule for permit addenda submissions, advising which documents shall be approved by the City as a condition of approving each permit addendum, commencing with the Site Permit. The Developer acknowledges that the City's approval of such submissions is a condition precedent to issuance of any permit addenda.

(iii) If the Developer objects to the City's schedule for Final Construction Documents submittal and review, the Developer shall make its objections known to the City in writing within seven (7) days of receipt of the City schedule.

(iv) If the requirements above have been satisfied and if the City and the Developer have agreed to a Final Construction Documents submission schedule, the Developer will be relieved of the requirement to submit a full set of Final Construction Documents at the time specified in the Schedule of Performance as a condition to the Close of Escrow. In lieu of such requirement, the Final Construction Documents shall be submitted sequentially in accordance with the agreed-upon schedule established above. The Schedule of Performance will be deemed to be amended accordingly.

(v) The Developer may request that the City modify the Preliminary Construction Document submittal or approval process to accommodate the Site Permit schedule. If the City agrees to such modifications, the City will make its submission schedule consistent with the schedule for permit addenda submissions.

(vi) If the Site Permit or any addenda are not issued or will not be issued in accordance with the City-approved schedule, the Developer will advise the City in writing within three (3) days of such fact and state what it believes to be the reason for the delay. The City may then conduct its own investigation with the Developer as to the reason for the delay. If the City determines that the delay is due to acts or omissions of the Developer or was contributed to by the Developer, the City will advise the Developer. The Developer shall then take all steps and prepare all documents required for the issuance of the permit addenda within forty-five (45) days of the original permit addenda issuance date.

(vii) If the Developer so decides, it may change from the Site Permit to regular building permit at any time before commencement of construction by electing to do so in written notice to the City. However, such a change may be made only if the City determines that the change will not delay the commencement and completion of construction dates specified in the Schedule of Performance for the regular building permit process and that Construction Document review by the City can be accommodated reasonably and in sufficient time for issuance of a full building permit and timely commencement of construction. The City's determination will be final.

(viii) The City's review of Final Construction Documents shall be limited to a determination of consistency with the Preliminary Construction Documents with respect to matters within the scope of the City's review and approval as set forth in Section 5.7, including satisfaction of any conditions to the City's approval of the Preliminary Construction Documents. Nothing herein shall limit the City's review in its regulatory capacity as issuer of the Site Permit and addenda thereto under the City's Building Code.

5.16. City Rights of Access

The City and its Agents will have the right of access to the Property to the extent necessary to carry out the purposes of this Agreement, including, but not limited to, the inspection of the Developer's maintenance of the Property and inspection of the work being performed by the Developer in constructing the Improvements. To the extent reasonably practicable, the City shall take reasonable action to minimize any interference with the Developer's construction activities. The City will not be estopped from taking any action (including, but not limited to, later claiming that the construction of the Improvements is defective, unauthorized or incomplete) nor be required to take any action as a result of any such inspection.

5.17. Prevailing Wage (Labor Standards)

Although the Parties acknowledge that the development of the Project is a private work of improvement, the Developer agrees to pay or cause to be paid prevailing rates of wages for all construction work done in connection with the construction of the Improvements in accordance with the requirements set forth in Exhibit M attached hereto.

5.18. Construction Signs and Barriers

The Developer shall provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction. The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers must be submitted to the City for approval before installation, which approval may not be withheld unreasonably.

5.19. Coordination

The Parties acknowledge that a number of construction projects in the area of the Site are or are anticipated to be constructed at the same time as the construction of the Improvements. Such projects include the expansion of the Westfield San Francisco Center and the redevelopment of the former Jessie Street Fire Station, including the possible development of a pedestrian plaza in the portion of Jessie Street adjacent to the Site. The Developer shall use reasonable efforts to coordinate its construction efforts with those of others engaged in construction on such other projects in a manner that will seek, to the extent reasonably possible, and without material delay to the Project, to reduce construction conflicts.

5.20. Damage and Destruction

(a) **After Close of Escrow.** If at any time between the Close of Escrow and the end of the DDA Term, a fire, flood, earthquake or other casualty damages or destroys the Site or the Improvements, or any portion of the Site or the Improvements, the obligations of the Parties shall be governed by Section 12 of the Lease.

(b) Before Close of Escrow. If any such casualty occurs during the DDA Term but before the Close of Escrow, the obligations of the Parties shall be governed by Section 3.1(a) of this Agreement and this Section 5.20(b). If the Developer elects not to accept the Delivery of the Property due to a fire, flood, earthquake or other casualty that damages or destroys the Site or the Improvements, or any portion of the Site or the Improvements, or due to an Adverse Change, the DDA shall terminate provided that the Developer completes the Safety Restoration Work (as defined in the Lease), or delivers to the City Tenant's Restoration Funds (as defined in the Lease).

6. CERTIFICATE OF COMPLETION

6.1. Certificate of Completion

(a) Issuance Process

(i) Before issuance by the City of a Certificate of Completion, the Developer may not occupy the Improvements on the Site, or any portion of the Improvements, except for construction purposes under this Agreement or the Lease, or in accordance with Section 6.4 below.

(ii) After the Developer has Completed the Construction of the Improvements in accordance with all the provisions of this Agreement, including, but not limited to, the Scope of Development and the Schedule of Performance, the Developer may request a Certificate of Completion in writing. The City shall act on the Developer's request within thirty (30) days of receipt.

(iii) The City's issuance of any Certificate of Completion does not relieve the Developer or any other Person from any obligations to secure or comply with any Regulatory Approval of any agency (including the City) that may be required for the occupancy or operation of the Improvements of the Project. The Developer shall comply with all such requirements or conditions separately.

(b) Condition to Approval. If there remain uncompleted (i) customary punch list items, (ii) landscaping (to the extent (i) and (ii) are subject to the City's approval, (iii) exterior finishes (to the extent the Developer can demonstrate to the City's reasonable satisfaction that such exterior finishes would be damaged during the course of later construction of interior improvements), or (iv) any other item that City approves in writing in its sole and absolute discretion (collectively "Deferred Items"), the City may reasonably condition approval upon provision of security or other assurances in form, substance and amount satisfactory to the City that all the Deferred Items will be completed in a timely fashion. Such security may include a letter of credit (in a form and issued by an institution acceptable to the City) or funds in an escrow account acceptable to the City (with joint escrow instructions acceptable to both Parties) in the amount of one hundred ten percent (110%) of the cost of completion of the Deferred Items as reasonably determined by the City. The obligations set forth in this subsection shall survive a termination of this Agreement in the manner set forth in Section 6.1(c) below.

(c) Definition of Completed and Completion. For purposes of the City's issuance of a Certificate of Completion in accordance with the provisions of Section 6.1(a), "Completed" and "Completion" mean completion of Construction by the Developer of all aspects of the Improvements for which the City's approval is required in accordance with the approved Construction Documents, and in compliance with all Regulatory Approvals needed for the occupancy and development of the Improvements, or provision of security satisfactory to the City for Deferred Items under Section 6.1(b), and issuance of applicable certificates of occupancy for the space for the SF Convention and Visitors Bureau and the portions of the Improvements that will not be leased to tenants of the Project pursuant to the Scope of Work attached to the Lease, together with completion of all such portions of the Improvements that are required for such occupancy of the Improvements.

6.2. Form and Effect of Certificate

(a) **Form of Certificates.** The Certificate of Completion will be in the form of Exhibit C attached hereto, and which permits it to be recorded in the Official Records. For purposes of this Agreement, the Certificate of Completion will be a conclusive determination of Completion of the Improvements (except for completion of Deferred Items) and of the right of the Developer to occupy all of the Improvements in accordance with the terms of the Lease.

(b) **Effect.** The Certificate of Completion is not a notice of completion as referred to in Section 3093 of the California Civil Code, and is not in lieu of a certificate of occupancy to be issued by the City in its regulatory capacity, which is separately required for occupancy and is a condition precedent to issuance of a Certificate of Completion.

(c) **Termination of Agreement Upon Recordation.** Recording of the Certificate of Completion by the City (or by the Developer at the written request and authorization of the City) will terminate this Agreement, and shall have the force and effect of a quitclaim deed by City of its interest in this Agreement; provided, however, that such termination shall not relieve the Developer of its obligations to complete the Deferred Items as set forth in Section 6.1(b) above, nor shall such termination relieve the Developer of its obligations pursuant to any of the other provisions of this Agreement which expressly survive such a termination. At the request of the Developer, following recordation of a Certificate of Completion, the City will execute and acknowledge a quitclaim or other documentation, in form reasonably satisfactory to the City, as may be required by any title company, Lender or the Developer to confirm the complete termination of this Agreement.

6.3. Failure to Issue

If the City refuses or fails to furnish a Certificate of Completion, the City shall, within the thirty (30)-day period specified in Section 6.1(a)(ii) above, provide the Developer with a written statement specifying the reasons the City refused or failed to furnish the Certificate and identifying the items the Developer shall complete or requirements it shall satisfy to obtain a Certificate of Completion.

6.4. Permission for Phased Occupancy

The Developer may request in writing permission to occupy portions of the Property before issuance of a Certificate of Completion; provided that the City has issued a certificate of occupancy for such space, which may be issued or withheld in the City's sole and absolute discretion. Each such request shall specify the portions of the Site which the Developer wishes to occupy and the intended date of occupancy. The City will approve such occupancy and issue a written confirmation thereof in a form and substance reasonably satisfactory to the Parties within five (5) days of such request if the Developer has obtained valid temporary certificates of occupancy for such portions of the Property, which may be issued or withheld in the City's sole and absolute discretion, and no uncured Developer Event of Default exists.

7. CITY APPROVAL OF FINANCING

7.1. Required Submittals

No later than the date specified in the Schedule of Performance for submission of evidence of financing, the Developer shall have submitted the items listed below. Except with respect to Section 7.1(c) below, the sole purpose of the City's review shall be to determine whether the Developer has satisfied the criteria in Section 7.1(b)(i) and (ii) below.

(a) A final budget of total development costs for the Site and the Improvements (the "Budget") in accordance with (i) the Final Construction Documents or the Preliminary Construction Documents if the Developer is using the Site Permit process and (ii) the Scope of Development. The Budget shall be substantially in the form attached hereto as Exhibit N and shall include, but not be limited to, line items for all pre-development costs, permits and fees, architectural and engineering costs, marketing costs, financing costs, hard construction costs, furniture, fixtures and equipment costs, and costs of tenant improvements to

be constructed by the Developer allocated between space to be occupied by the Developer and by other subtenants.

(b) A statement and appropriate supporting documents certified by the Developer to be true and correct and in form reasonably satisfactory to the City showing sources and expected uses of funds and sufficient to demonstrate that (i) the Developer has or will have adequate funds to complete the Improvements in accordance with the Budget and (ii) such funds have been spent for uses described in the Budget or are committed and available for that purpose.

(c) An operating budget updating the operating budget assumptions from the preliminary operating budget assumptions included in the Financing Plan attached hereto as Exhibit O, which operating budget shall cover the first year from the commencement of the operation of the Property, including all anticipated Gross Revenues (as defined in the Lease), all anticipated Approved Expenses (as defined in the Lease), together with an estimate of Net Revenues (as defined in the Lease) to be paid for the period covered by such operating budget (the "Operating Budget"). The Operating Budget must also project Approved Expenses, Gross Revenues and Net Revenues for the four (4) year period after the initial budget year, include a detailed explanation of the changes in assumptions from those included in the Financing Plan attached to this Agreement and must be approved by the City as a condition to close Escrow. The scope of the City's review for such approval shall include whatever the City reasonably determines is necessary to conclude that the Project is financially feasible, including, without limitation, the City's analysis of the assumptions underlying the Operating Budget and the City's determination regarding whether the anticipated debt service will negatively impact the Developer's positive cash flow and ability to operate the Project in accordance with the Approved Operating Standards (as defined in the Lease).

(d) With regard to all debt financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its reasonable discretion) and no provisions requiring acts of the Developer prohibited in this Agreement or the Lease or prohibiting acts of the Developer required in this Agreement or the Lease, for the financing of that portion of the Budget intended to be borrowed by the Developer, which portion shall not exceed a seventy percent (70%) loan-to-value ratio, and which must not reduce the anticipated cash flow of the Project below the level necessary to adequately fund operating expenses necessary to comply with the Approved Operating Standards, certified by the Developer to be a true and correct copy or copies thereof. The commitment or commitments shall be obtained from a Bona Fide Institutional Lender (or Lenders), and, if required by any construction lenders(s), shall include commitments for permanent financing. The Developer covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(e) With regard to all grant financing, a copy of a bona fide commitment or commitments, with no conditions other than standard and customary conditions (or as otherwise approved by City in its reasonable discretion) and no provisions requiring acts of the Developer prohibited in this Agreement or the Lease or prohibiting acts of the Developer required in this Agreement or the Lease, for the funding of that portion of the Budget intended to be granted to the Developer, certified by the Developer to be a true and correct copy or copies thereof. The commitment or commitments shall be obtained from grant providers with reputations for fulfilling grant commitments and reasonably approved by the City. The Developer covenants and agrees to perform any and all conditions to funding in accordance with such commitments.

(f) With regard to all unpaid capital campaign contributions or other unpaid contributions from members of the Developer's Board of Directors designated as sources of funds for development of the Project, for each pledgee, a written pledge which meets the provisions for recording pledges under the Guide, executed by such pledgee, showing the name of the pledgee, the amount of the pledge and the date by which the pledge will be paid.

(g) With regard to all paid capital contributions or other paid contributions from the members of the Developer's Board of Directors, a written statement with appropriate

supporting documents certified by the Developer to be true and correct and in a form reasonably satisfactory to the City showing actual receipt of pledged contributions and describing in detail any expenditure thereof previously made.

(h) Evidence of a guaranteed maximum price contract or a stipulated sum contract for Construction of the Improvements consistent with the approved Budget and the financing for the Project as described in Section 7.1(c)- 7.1(f) above in form reasonably acceptable to City with a contractor reasonably acceptable to City (a "Construction Contract").

(i) Evidence of a performance bond approved by the City, issued by a responsible surety company licensed to do business in California and acceptable to the City that guarantees in full (i) the Construction of the Property in accordance with this Agreement in an amount not less than the value of the completed Improvements; and (ii) if the Project is not completed as required by this Agreement, the restoration of the Property to the condition required by SHPO, including, without limitation, the removal of any new construction or installation required to satisfy the Secretary's Standards (the "Performance Bond").

The foregoing submissions required under this Section 7.1 may be in substantially final form (including the pricing under the Construction Contract) at the time of initial submission by the Developer, but must be noted as such at the time of such submission and all changes to such submission thereafter must be resubmitted to City for approval with all additions and deletions clearly noted by the Developer. All such submissions must be in final form by no later than ten (10) days prior to the Close of Escrow.

7.2. Approval Process

Within thirty (30) days after the Developer's submission of all of the documents described in Section 7.1 above, the City will notify the Developer in writing of its approval or disapproval (including the reasons for disapproval) of the evidence of financing as described in Section 7.1(c) above, provided that at least forty-five (45) days before the date of such request for approval, the City shall have received Preliminary Construction Documents in accordance with Section 5 above in sufficient detail to allow the City to obtain a cost estimator's report if the City, in its sole discretion and at its sole cost and expense, determines to obtain such a report.

7.3. Financing Plan

The Financing Plan approved by the City is attached hereto as Exhibit O. The Developer must keep the City informed of the Developer's implementation of the Financing Plan in a written report submitted to the City no less than once per month beginning thirty days after the Effective Date and on each monthly anniversary of the Effective Date until the Close of Escrow. In connection with its submission of the financing submittals described in Section 7.1 above, the Developer shall provide a detailed written explanation of all material differences between the components of the attached Financing Plan and the financing submittals described in Section 7.1 above.

7.4. Return of Property Funds

The Developer has received funds in return for the City's sale of Transferable Development Rights (TDRs) from the Property, as well as art fee in lieu funds and other public funds, including without limitation, grants from the U.S. Department of Housing and Urban Development and the California Cultural Historical Endowment, all of which received or anticipated funds are set forth in the Financing Plan, the amounts of which shall be updated and included in the Budget submitted in connection with the Close of Escrow (the "Property Funds"). The Developer agrees that it has and shall continue to accept all such Property Funds solely for the benefit of the Project and that upon the termination of this Agreement prior to the Completion of the Improvements, all Property Funds not previously spent on the Project shall be transferred to the City or its designee. The Developer shall include in all agreements with the providers of the Property Funds a provision that assigns the Property funds to the City or its designee upon the termination of this Agreement prior to the Completion of Improvements.

8. ENCUMBRANCES AND LIENS

8.1. No Mortgage of Fee

The Developer may not under any circumstance engage in any financing or other transaction creating any mortgage, lien or other encumbrance on the City's fee interest in the Property. The City's fee interest in the Property shall not be subordinated under any circumstance whatsoever to any Mortgage allowed under the Lease.

8.2. Leasehold Liens

Following the Close of Escrow, Developer shall, pursuant to the terms and conditions of the Lease, have the right to assign, mortgage or encumber any or all of its right, title and interest in the Property by way of leasehold mortgages, deeds of trust or other security instruments to any Mortgagee under a Mortgage permitted under the Lease. The Developer may assign, mortgage or encumber its interest under this Agreement to any Mortgagee permitted under the Lease under a Mortgage permitted under the Lease, and in such event all of the provisions set forth in the Lease relating to the rights of Mortgagees shall also apply to the rights and obligations of the Developer and the City under this Agreement.

8.3. Mechanics' Liens

The Developer shall keep the Site, this Agreement, and any Improvements thereon free from any liens arising out of any work performed, materials furnished or obligations incurred by the Developer or its Agents. If the Developer does not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record or sufficiently bonded over in City's reasonable determination, it shall be a material default under this Agreement, and City shall have, in addition to all other remedies provided by this Agreement or by Law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including without limitation, payment of the claim giving rise to such lien. All sums paid by City for such purpose and all reasonable expenses incurred by City in connection therewith shall be payable to City by the Developer within thirty (30) days following written demand by City.

8.4. Contests

The Developer may contest the validity or amount of any tax, assessment, encumbrance or lien related to the Property and to pursue any remedies associated with such contest; provided, however, such contest and pursuit of remedies does not subject the Property or any portion of it to forfeiture or sale and such contest shall be subject to all of the terms and conditions of the Lease, including, but not limited to, the provision of security.

9. ASSIGNMENT AND TRANSFER

9.1. Prohibition Against Transfer of the Agreement or Significant Change

Except as otherwise permitted under Section 8.2, the Developer may not sell, convey, assign, transfer, alienate or otherwise dispose of all or any of its interest or rights in this Agreement, including, but not limited to, any right or obligation to acquire a leasehold estate in the Site, develop the Site or otherwise do any of the above or make any contract or agreement to do any of the same (collectively, a "Transfer"), or permit a Significant Change to occur, without in each instance obtaining the prior written approval of the City, except that a Transfer or Significant Change shall be permitted on and after the Close of Escrow in conjunction with a Transfer or Significant Change permitted by the Lease or approved by the City in accordance with the Lease. The City's consent to a Transfer or Significant Change prior to the Close of Escrow may be given, withheld, or conditioned in the City's sole and absolute discretion, except that if such Transfer or Significant Change is requested solely in connection with obtaining Historic Tax Credits or New Markets Tax Credits, the City's consent shall not be unreasonably withheld or conditioned. Consent to any one Transfer or Significant Change will not be a waiver of the City's right to require such consent for each and every Transfer or Significant Change. The Developer shall reimburse the City for its reasonable costs of reviewing a proposed Transfer or Significant Change, as provided in the Lease.

9.2. No Release of Obligations

Except as expressly provided in the Lease or by the specific written approval of the City, which the City may give or withhold in its sole discretion, no Transfer or Significant Change will relieve the Developer or any other party from any obligations under this Agreement or the Lease.

10. DEFAULTS, REMEDIES AND TERMINATION

10.1. Events of Default – Developer

Any one or more of the following constitute an Event of Default by the Developer:

(a) The Developer fails to use its good faith efforts to obtain all Regulatory Approvals or all the elements of the financing described in Section 7 above within the time frames set forth in the Schedule of Performance;

(b) The Developer fails to commence in accordance with the Schedule of Performance, or after commencement fails to prosecute diligently to Completion, the Construction of the Improvements to be constructed on the Site under the Scope of Development on or before the required completion dates set forth in the Schedule of Performance, or abandons or substantially suspends Construction for more than thirty (30) consecutive days, and such failure to commence or prosecute diligently to completion, abandonment or suspension continues for a period of: (i) thirty (30) days from the date of written notice from the City as to failure to commence Construction, or (ii) sixty (60) days (or such other later date as agreed to by City in its sole and absolute discretion) from the date of written notice from the City as to abandonment, suspension or a failure to complete Construction of the Improvements in accordance with Section 6, except for Deferred Items, if any;

(c) The Developer fails to pay any amount required to be paid under this Agreement when due and such failure continues for thirty (30) days following written notice from the City to the Developer;

(d) The Developer does not accept Delivery of the Property in accordance with this Agreement within the times set forth in this Agreement, provided that all conditions to the Developer's obligation to the Close of Escrow as set forth in Section 2.4 above have been satisfied or waived, and such failure continues for a period of fifteen (15) business days after written notice from the City;

(e) The Developer fails to perform its obligations under the Card Check Ordinance, Workforce Hiring Program, Prevailing Wage Provision or First Source Hiring Program set forth in this Agreement (together; the "Special City Requirements"), provided, however, that any rights to cure and the City's remedies for any default under the Special City Requirements will be only as set forth in such Special City Requirements;

(f) The Developer does not submit such of the Construction Documents as are required to be submitted within the times provided in this Agreement and the Schedule of Performance or by any permitted Site Permit, and the Developer does not cure such default within thirty (30) days after the date of written demand by the City to the Developer;

(g) After Close of Escrow, the Developer commits an Event of Default under the Lease, as Event of Default is defined in the Lease, but such Event of Default under this Agreement shall be deemed cured if the Event of Default as defined in the Lease is cured pursuant thereto;

(h) The Developer files a petition for relief, or an order for relief is entered against the Developer, 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 the Developer are not dismissed or stayed within sixty (60) days;

(i) A writ of execution is levied on this Agreement 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 the Developer, which appointment is not dismissed within sixty (60) days;

(j) The Developer makes a general assignment for the benefit of its creditors;

(k) The Developer fails to maintain the insurance required pursuant to Section 5.14, or fails to deliver certificates or policies as required pursuant to that Section, and such failure continues for five (5) days following written notice from the City to the Developer;

(l) Without limiting any other provisions of this Section, the Developer violates any other covenant, or fails to perform any other obligation to be performed by the Developer under this Agreement or the Lease at the time such performance is due (including the expiration of any specified grace period), and such violation or failures continues without cure for more than thirty (30) days after written notice from the City specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if the Developer does not within such thirty (30)-day period commence such cure, or having so commenced, does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter;

(m) The Developer executes any mortgage, encumbrance or lien not permitted by this Agreement, or such mortgage, encumbrance or lien is placed of record (regardless of whether or when it is foreclosed or otherwise enforced); and

(n) Any Transfer or Significant Change made in violation of Section 9.1 above.

10.2. Remedies of City

Upon the occurrence of an Event of Default by the Developer, the City has the remedies set forth below:

(a) **Termination.** The City may terminate this Agreement upon thirty (30) days' written notice to the Developer, provided however, in the case of an Event of Default under Sections 10.1(g) or (l), the City may exercise such remedy only if such Event of Default involves a material or willful breach by the Developer of the Developer's covenants and obligations under this Agreement or the Lease, as applicable.

(b) **Specific Performance.** The City may institute an action for specific performance.

(c) **Other Remedies.** The City is entitled to all other remedies permitted by law or at equity or under this Agreement, including without limitation, damages (but excluding incidental or consequential damages). Without limiting Section 10.5(c) below, the remedies provided for in this Agreement are in addition to and not in limitation of other remedies including, but not limited to, the remedies provided in the Lease or under the Special City Requirements.

(d) **Nonliability of Developer's Member, Partners, Shareholders, Directors Officers and Employees.** No member, officer, partner, agent shareholder, director or employee of Developer will be personally liable to the City, in an Event of Default by Developer or for any amount which may become due to the City or on any obligations under the terms of this Agreement.

10.3. Events of Default – City

Any one or more of the following constitute an Event of Default by the City:

(a) The City fails to make Delivery of the Property in violation of this Agreement within the times set forth in this Agreement, provided that all conditions to City's obligation to the Close of Escrow as set forth in Section 2.3 above have been satisfied or waived by City, and such failure continues for thirty (30) days after written notice from the Developer; and

(b) Without limiting subsection (a) above, the City violates any other covenant, or fails to perform any other obligation to be performed by City under this Agreement or the Lease at the time such performance is due (including the expiration of any specified grace period) and such violation or failure continues without cure for more than thirty (30) days after the written notice by the Developer, specifying the nature of such violation or failure, or, if such cure cannot reasonably be completed within such thirty (30)-day period, if City does not within such thirty (30)-day period commence such cure, or having so commenced does not prosecute such cure with diligence and dispatch to completion within a reasonable time thereafter.

10.4. Remedies of the Developer

Upon the occurrence of an Event of Default by the City, the Developer has the remedies set forth below:

(a) **Termination.** The Developer may terminate this Agreement upon thirty (30) days' written notice to the City only if the Event of Default would make impossible Completion of Improvements in accordance with the Schedule of Performance or the Budget and the provisions of this Agreement.

(b) **Specific Performance.** The Developer may institute an action for specific performance. City acknowledges that an Event of Default by City hereunder will be conclusively deemed to be a breach of an agreement to transfer real property that cannot be adequately relieved by pecuniary compensation as set forth in California Civil Code Section 3387.

(c) **Damages.** If an Event of Default occurs under Section 10.3(a) above, the City will be liable for the Developer's actual out-of-pocket damages, but shall not be liable for any consequential or incidental damages (including, but not limited to, lost profits). If an Event of Default occurs under Section 10.3(b) above, the City will not be liable to the Developer for any damages caused by such Event of Default, or to spend money to cure such Event of Default.

(d) **Other Remedies.** Subject to the limitations in Section 10.4(c), the Developer is entitled to all other remedies permitted by law or at equity.

(e) **Nonliability of City Members, Officials and Employees.** No member, official, commissioner or employee of the City will be personally liable to the Developer, or any successor in interest, in an Event of Default by the City or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

10.5. General

(a) **Institution of Legal Actions.** Subject to the limitations contained in this Agreement, either Party may institute legal action to cure correct or remedy any Event of Default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of the City and County of San Francisco, State of California, in any other appropriate court in that City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) **Acceptance of Service of Process.** In the event that any legal action is commenced by the Developer against the City, service of process on the City shall be made by personal service upon the City in such manner as may be provided by Law. In the event that any legal action is commenced by the City against the Developer, service of process on the Developer shall be made by personal service upon the Developer at the address provided for notices or such other address as shall have been given to City by the Developer under Section 12.2, or in such other manner as may be provided by Law, and will be valid whether made within or outside of the State of California.

(c) **Rights and Remedies Are Cumulative.** Except with respect to any rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and not in derogation of other rights and remedies found in this Agreement and, after

Delivery, in the Lease. The exercise by either Party of any one or more of such remedies will not preclude the exercise by it, at the same or a different time, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

10.6. Plans and Data

If either Party terminates this Agreement before Completion of the Improvements, the Developer shall assign and deliver to the City any and all copies of reports and studies in its possession of the Developer or the Developer's agents, employees, contractors, architects, engineers or consultants or reasonably obtainable by the Developer or reports and studies prepared by or for the Developer regarding the Property and all Construction Documents in the possession of the Developer or the Developer's agents, employees, contractors, architects, engineers or consultants or reasonably obtainable by the Developer, or prepared for the Developer, for the development of the Property within thirty (30) days after written demand from the City. The City may use said reports, studies and Construction Documents for any purpose whatsoever relating to the Site, without cost or liability therefor to the Developer or any other Person; provided, however, the City shall release the Developer and the Developer's contractor, architect, engineer, agents, employees and other consultants from any Losses arising out of the City's use of such reports and Construction Documents except to the extent such contractor, architect, engineer, agent, employee or other consultant is retained by the City to complete construction. The Developer shall include in all contracts and authorizations for services pertaining to the planning and design of the Improvements an express agreement by the Person performing such services that the City may use such reports, studies or Construction Documents as provided in this Section 10.6 without compensation or payment from the City in the event such reports, studies or Construction Documents are delivered to the City under the provisions of this Section 10.6, provided that the City agrees (i) not to remove the name of the preparer of such reports of Construction Documents without the preparer's written permission or (ii) to remove it at their written request.

10.7. Return of Site

If this Agreement terminates due to an Event of Default by the Developer, the Developer shall, at its sole expense and as promptly as practicable, return the Property to the City in a safe condition, and unless otherwise requested by City, shall remove all loose building materials and debris present at the Property resulting from the Developer's Construction activities. In addition, the Developer shall restore the Property to the condition required by SHPO, including, without limitation, remove any new construction or installation required to satisfy the Secretary's Standards. In the event that the Developer is required to return the Property as aforesaid, the Developer shall obtain those permits customary and necessary to enter upon the Property in order to complete such work and shall otherwise comply with applicable Law. In such event, City shall cooperate with the Developer in the Developer's efforts to obtain such permits, provided that the City will not be required to expend any money or undertake any obligations in connection therewith. Notwithstanding any such termination, the Developer shall remain responsible for any obligations with respect to the Investigation and Remediation of Hazardous Materials to the extent provided in this Agreement and the Lease. The provisions of this Section shall survive any termination of this Agreement.

10.8. Return of Property Funds

If this Agreement terminates due to an Event of Default by the Developer, the Developer shall return all received and unexpended Property Funds to the City and shall take all steps

reasonably necessary to obtain and assign to the City all Property Funds owed to the Developer, but not yet delivered.

11. SPECIAL PROVISIONS

The Developer agrees to comply with the following, based on the requirements in effect as of the Effective Date, and as they may be amended between the Effective Date and the Lease Commencement Date.

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

(a) **Covenant Not to Discriminate.** In the performance of this Agreement, the Developer 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 the Developer, in any of the Developer'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 the Developer.

(b) **Subleases and Other Subcontracts.** The Developer shall include in all subleases and other subcontracts relating to the Property a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of Section 11.1(a) above. In addition, the Developer 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. The Developer's failure to comply the obligations in this subsection shall constitute a material breach of this Agreement.

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

(d) **HRC Form.** On or prior to the Effective Date, the Developer shall execute and deliver to the City the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Developer shall comply fully with and be bound by all of the provisions that apply to this Agreement and the Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Developer 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 Agreement may be assessed against the Developer and/or deducted from any payments due the Developer.

11.2. Mitigation Measures

In order to mitigate significant environmental impacts of development of the Property, the Developer agrees that the rehabilitation and construction of the Improvements will be in accordance with all of the mitigation measures attached to this Agreement as Exhibit K (the "Mitigation Measures"). As appropriate, the Developer shall incorporate such Mitigation Measures into any contract for the rehabilitation, construction or operation of the Improvements.

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

11.4. Tropical Hardwood Ban/Virgin Redwood Ban

Pursuant to § 804(b) of the San Francisco Environment Code, the City urges the Developer 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, the Developer shall not provide any items to the rehabilitation or development of the Property, or otherwise in the performance of this Agreement or the lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood products.

11.5. Tobacco Product Advertising Prohibition

The Developer acknowledges and agrees that no advertising of cigarettes or tobacco products shall be allowed on the Property. The foregoing prohibition shall include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

11.6. Drug-Free Workplace

The Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. The Developer and its employees, agents or assigns shall comply with all terms and provisions of such Act and the rules and regulations promulgated thereunder.

11.7. Pesticide Ordinance

The Developer shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require the Developer to submit to the City an integrated pest management ("IPM") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that the Developer may need to apply to the Property during the terms of this Agreement or the Lease, (b) describes the steps the Developer will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies by name, title, address and telephone number, an individual to act as the Developer's primary IPM contact person with the City. In addition, the Developer shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent the Developer, through City, from seeking a determination from the Agency on the

Environment that it is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

11.8. First Source Hiring Ordinance

The City has adopted a First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83), which established specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions ("First Source Hiring Program), and the Developer agrees to duly execute and deliver to the City simultaneously with the execution of this Agreement, and be bound by, the terms and conditions of the First Source Hiring Agreement attached hereto as Exhibit P-1, which includes the requirements of the First Source Hiring Ordinance.

11.9. Card Check Ordinance

The City has adopted a Card Check Ordinance (San Francisco Administrative Code Sections 23.50-23.56). That ordinance requires employers of employees in hotel or restaurant projects on City property with more than fifty (50) employees 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. The Developer acknowledges and agrees that the Lease will require the Developer and the Developer's subtenants to comply with the requirements of such Ordinance to the extent applicable.

11.10. Workforce Hiring Program

In furtherance of its covenant not to discriminate in Section 11.1 above, the Developer is committed to affording opportunities for minority-owned enterprises, women-owned enterprises, and economically disadvantaged local businesses to participate in the architecture, design, engineering, construction and operation of the Improvements, and agrees as of the date of this Agreement to implement the Workforce Hiring Plan approved by the City and attached hereto as Exhibit P-2 as to the Site and Improvements.

11.11. Developer Conflicts of Interest

The Developer states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the 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, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if the Developer becomes aware of any such fact during the term of this Agreement the Developer shall immediately notify the City. The Developer further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which the Developer believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by the Developer to make such disclosure, if any, shall constitute grounds for the City's termination and cancellation of this Agreement.

11.12. Prohibition of Political Activity with City Funds

In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event the Developer, or any staff member in association with the Developer, engages in any Political Activity, then (i) the Developer shall keep and maintain appropriate records to evidence compliance with this section, and (ii) the Developer shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. The Developer agrees to cooperate with any audit by the City or its designee

in order to ensure compliance with this section. In the event the Developer violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between the Developer and the City, (ii) prohibit the Developer from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to the Developer under this Agreement.

11.13. Resource-Efficient Building Ordinance

The Developer acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. The Developer hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Property. Upon the request of the Developer, if the City Administrator determines that compliance with certain provisions of the code section would prevent the Developer from complying with the Secretary's Standards or otherwise warrants a waiver as set forth in such code, the City Administrator will request a waiver of such code sections at the sole cost of the Developer.

11.14. Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

11.15. Public Access to Meetings and Records

If the Developer receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Developer shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Developer agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Developer further agrees to make good-faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Developer acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Developer further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew this Agreement, partially or in its entirety.

11.16. Preservative Treated Wood Containing Arsenic

The Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the 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, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. The Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Developer 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.

11.17. Compliance with Disabled Access Laws

The Developer acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through the Developer or contractor, must be accessible to the disabled public. The Developer shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Property and shall comply at all times with the provisions of the Disabled Access Laws.

11.18. Nondisclosure of Private Information

The Developer agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither the Developer nor any of its Subcontractors shall disclose Private Subcontractor, person, or other entity, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) The Developer received advance written approval from the Contracting Department to disclose the information; or
 - (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (d) Any failure of the Developer to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar the Developer, or bring a false claim action against the Developer.

11.19. 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.

The Developer shall remove all graffiti from the Property and any real property owned or leased by the Developer in the City and County of San Francisco within forty eight (48) hours of the earlier of Museum's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require the

Museum to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of the Developer to comply with this section of this Agreement shall constitute an Event of Default of this Agreement .

11.20. Incorporation

Each and every provision of the San Francisco Administrative Code or any other San Francisco Code specifically described or referenced in this Agreement is hereby incorporated by reference, as it exists on the Effective Date, and as may be amended between the Effective Date and the Lease Commencement Date as though fully set forth herein. Failure of the Developer to comply with any provision of this Agreement relating to any such code provision shall be governed by Section 10 of this Agreement, unless (i) such failure is otherwise specifically addressed in this Agreement or (ii) such failure is specifically addressed by the applicable code section.

12. GENERAL PROVISIONS

12.1. Force Majeure – Extension of Time of Performance

(a) Effect of Force Majeure. For the purpose of any of the provisions of this Agreement, including, without limitation, the Schedule of Performance, neither the Developer, the City, nor any successor in interest (the "Delayed Party," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other Party in event of Force Majeure.

(b) Definition of Force Majeure. "Force Majeure" means events other than Litigation Force Majeure that cause delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to the other Party's performance under this Agreement, due primarily to causes beyond the Delayed Party's control and not caused by the acts or omissions of the Delayed Party (excluding, in any case, a Delayed Party's performance of the payment of money required under the terms of this Agreement), including, but not restricted to: acts of God or of the public enemy; war; explosion; invasion; insurrection; rebellion; riots; acts of the government (including any general moratorium in the issuance of permits applicable to the Site or the Improvements, provided, however, in the absence of such a moratorium, acts of the government relating to issuance of building permits or other Regulatory Approvals are governed by Section 12.1(d) below); fires; floods; tidal waves; epidemics; quarantine restrictions; freight embargoes; earthquakes; unusually severe weather; delays of contractors or subcontractors due to any of these causes; the unanticipated presence of Hazardous Materials or other concealed conditions on the Site or Improvements that would not have reasonably been discovered through due diligence and that would delay or materially adversely impair the Developer's ability to construct the Project; substantial interruption of work because of other construction by third parties in the immediate vicinity of the Site; archeological finds on the Site; strikes, and substantial interruption of work because of labor disputes; inability to obtain materials or reasonably acceptable substitute materials (provided that the Developer has ordered such materials on a timely basis and the Developer is not otherwise at fault for such inability to obtain materials); unlawful detainer actions or other administrative appeals, litigation or arbitration relating to the relocation of tenants from the Site; or any Litigation Force Majeure

or other administrative appeals, litigation and arbitration relating to the construction of the Project (provided that the Delayed Party proceeds with due diligence to defend such action or proceeding or take other appropriate measures to resolve any dispute that is the subject of such action or proceeding). In the event of the occurrence of any such delay, the time or times for performance of the obligations of the Developer or City will be extended for the period of the delay; provided, however, within thirty (30) days after the beginning of any such delay, the Delayed Party shall have first notified the other Party in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period of the delay. Notwithstanding anything to the contrary in this Section, the lack of credit or financing (unless such lack is itself a result of some other event of Force Majeure) shall not be considered to be a matter beyond the Developer's control and therefore no event caused by a lack of such financing in and of itself shall be considered to be an event of Force Majeure for purposes of this Agreement.

(c) Definition of Litigation Force Majeure. "Litigation Force Majeure" means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by a third party, (a) which seeks to challenge the validity of any action taken by the City in connection with the Project, including the City's approval, execution, and delivery of this Agreement or the Lease and its performance hereunder, or other action by, the City or any of its commissions approving the City's execution and delivery of this Agreement, the performance of any action required or permitted to be performed by the City hereunder, or any findings upon which any of the foregoing are predicated, or (b) which seeks to challenge the validity of any other Regulatory Approval. With respect to an event of Litigation Force Majeure occurring after the Close of Escrow, such event will not be considered Litigation Force Majeure unless such event would (1) create a default under the loan documents or grant documents for any Mortgage approved under the Lease such that the lender will imminently discontinue funding the loan, as evidenced by a written notice from such lender's counsel (or other official representative of lender reasonably satisfactory to the City), or a written legal opinion from experienced counsel reasonably satisfactory to the City, and/or (2) result in the issuance of an injunction, temporary restraining order or writ of mandate (collectively, a "writ") and such writ is in effect or, if no writ has yet been issued as a result of the filing of such action, the Developer obtains a written legal opinion from experienced counsel reasonably satisfactory to the City that it is likely that writ will issue (except that if the challenge is procedural and the City furnishes to the Developer a written opinion of experienced counsel reasonably satisfactory to the Developer that such defect is curable and the City seeks to cure such defect, such event shall not constitute Litigation Force Majeure until such attempt to cure fails). Notwithstanding the foregoing, Litigation Force Majeure shall exclude any action or proceeding brought by an Affiliate of the Developer, any of the Developers' members or their Affiliates, any consultant of the Developer, or any other third party assisted by the Developer, directly or indirectly, in such action or proceeding. Performance by a party hereunder shall be deemed delayed or made impossible by virtue of Litigation Force Majeure during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable. Under no circumstances shall the delay attributable to an event of Litigation Force Majeure extend beyond twenty-four (24) months unless such limitation is expressly waived by both Parties in each of their respective sole and absolute discretion. The Parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

(d) Permits. If the Developer is diligently proceeding to obtain necessary building permits or addenda as required by Sections 5.15(a) or 5.15(b) or other Regulatory Approvals for the Improvements, Force Majeure includes the Developer's inability to obtain building permits or other Regulatory Approvals.

(e) Limitations Before Close of Escrow. Before the Close of Escrow, Force Majeure (other than Litigation Force Majeure or delays described in Section 12.1(d) above) will

be limited to an aggregate of twelve (12) months after the Close Date. At any time after the expiration of such twelve (12)-month period, the other Party may terminate the Agreement by giving thirty (30) days' notice to the Delayed Party.

12.2. Notices

(a) Manner of Delivery. Except as otherwise expressly provided in this Agreement, all notices, demands, approvals, consents and other formal communications between the City and the Developer required or permitted under this Agreement shall be in writing and shall be deemed given and effective (i) on the date of receipt if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day) or (ii) if mailed, three (3) business days after deposit with the U.S. Postal Service for delivery by United States registered or certified mail, first class postage prepaid, or, (iii) on the first business day after deposit with a reputable overnight delivery service, all fees for such delivery prepaid, in each case to the City or the Developer at their respective addresses for notice designated below. For convenience of the Parties, copies of notices may also be given by telefacsimile to the facsimile number set forth below or such other number as may be provided from time to time by notice given in the manner required under this Agreement; however, neither Party may give official or binding notice by telefacsimile or email.

(b) Request for Approval. In order for a request for any approval required under the terms of this Agreement to be effective, it shall be clearly marked "Request for Approval" and state (or be accompanied by a cover letter stating) substantially the following:

(i) the section of this Agreement under which the request is made and the action or response required;

(ii) if applicable, the period of time as stated in this Agreement within which the recipient of the notice shall respond; and

(iii) if specifically stated in the Agreement that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval of or consent to the request for approval which is the subject matter of the notice.

In the event that a request for approval states a period of time for approval which is less than the time period provided for in this Agreement for such approval, the time period stated in this Agreement shall be the controlling time period. In no event shall a recipient's approval of or consent to the subject matter of notice be deemed to have been given by its failure to object to such notice if such notice (or the accompanying cover letter) does not comply with the requirements of this Section.

(c) Addresses for Notices. All notices shall be properly addressed and delivered to the Parties at the addresses set forth below or at such other addresses as either Party may designate by written notice given in the manner provided in this Section:

To Developer: San Francisco Museum and Historical Society
785 Market Street
San Francisco, CA 94103
Attention: Erik Christoffersen, Executive Director
Facsimile: (415) 537-1108

With a copy to: Coblenz, Patch, Duffy & Bass, LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213
Attention: Tay C. Via
Facsimile: (415) 989-1663

To City: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attention: Director of Property
Facsimile: (415) 552-9216

and

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
Attention: E. Venessa Henlon, Deputy City Attorney
Facsimile: (415) 554-4755

12.3. Conflict of Interest

No member, official or employee of the City may have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly.

12.4. Inspection of Books and Records

The City, including its Agents has the right at all reasonable times and from time to time, to inspect the books and records of the Developer pertaining to the Developer's compliance with its obligations under this Agreement, provided that the City shall, to the maximum extent allowed by applicable Law, keep strictly confidential any such information which the Developer reasonably and in good faith determines is proprietary and clearly and conspicuously so designates.

12.5. Time of Performance

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

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

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

(d) **Time of the Essence.** Time is of the essence with respect to each required completion date in the Schedule of Performance, subject to the provisions of Section 12.1 relating to Force Majeure and subject to the cure provisions of Section 10.1(b).

12.6. Interpretation of Agreement

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

(b) **Captions.** Whenever a section or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the sections of this Agreement and in the table of contents have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) **Words of Inclusion.** The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of

non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) No Presumption Against Drafter. This Agreement has been negotiated at arm's length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement 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 Agreement (including, but not limited to California Civil Code Section 1654).

(e) Costs and Expenses. The Party on which any obligation is imposed in this Agreement shall be solely responsible for paying all costs and expenses incurred in the performance of such obligation, unless the provision imposing such obligation specifically provides to the contrary.

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

(g) Approvals. Unless this Agreement otherwise expressly provides or unless the City's Charter otherwise requires, all approvals, consents or determinations to be made by or on behalf of the City or the City under this Agreement shall be made by the City Administrator or his designee, and the City Administrator is hereby authorized to make such approvals, consents and determinations.

12.7. Successors and Assigns

This Agreement is binding upon and will inure to the benefit of the successors and assigns of the City and the Developer, subject to the limitations set forth in Section 9. Where the term "Developer," or "City" is used in this Agreement, it means and includes their respective successors and assigns.

12.8. No Third Party Beneficiaries

This Agreement is made and entered into for the sole protection and benefit of City and Developer and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Agreement.

12.9. Real Estate Commissions

The Developer and the City each represents that it engaged no broker, agent or finder in connection with this transaction. In the event any broker, 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.

12.10. Counterparts

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

12.11. Entire Agreement

This Agreement (including the Exhibits attached hereto) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Agreement. No parole evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

12.12. Amendment

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

12.13. Governing Law

The Laws of the State of California shall govern the interpretation and enforcement of this Agreement. As part of the consideration for the City's entering into this Agreement, the Developer agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of the City, be litigated in courts having sites within the State of California, and the Developer expressly 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 the Developer wherever the Developer may then be located, or by certified or registered mail directed to the Developer at the address set forth in Section 12.2 for the delivery of notices.

12.14. Recordation

A Memorandum of Agreement will be recorded by the Developer in the Official Records on or after the Effective Date. Either Party shall promptly upon request of the other Party, deliver to such requesting Party a duly executed and acknowledged quitclaim deed, suitable for recordation in the Official Records and in form and content reasonably satisfactory to the requesting Party (and the City Attorney in the event that the City is the requesting Party), for the purpose of effecting the termination of the non-requesting Party's interest under this Agreement upon the termination of this Agreement. Either Party may record such quitclaim deed at any time on or after the termination of this Agreement, without the need for any approval or further act of the non-requesting Party.

12.15. Extensions by City

Upon the request of the Developer, the City, acting through the City Administrator, may, by written instrument, extend the time for Developer's performance of any term, covenant or condition of this Agreement 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 the Developer shall agree to such terms or conditions, provided, however, any such extension or grant of permission to cure any particular default will not operate to release Developer from, nor constitute a waiver of the City's rights with respect to any of Developer's obligations or any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement or otherwise effect the time of the essence provisions with respect to the extended date or the other dates for performance under this Agreement.

12.16. Further Assurances

The Parties hereto agree to execute and acknowledge such other and further documents and take such other reasonable actions as may be necessary or reasonably required to effectuate the terms of this Agreement. The City Administrator is authorized to execute on behalf of the City any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Agreement and do not materially increase the obligations of the City under this Agreement, if the City Administrator determines, in consultation with the City Attorney, that the document is necessary or proper and in the City's best interests. The City Administrator's signature of any such document shall conclusively evidence such a determination by him or her.

12.17. Attorneys' Fees

If either Party fails to perform any of its respective obligations under this Agreement or if any material dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, 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 or in enforcing or establishing its rights under this Agreement, including, without limitation, Attorneys' Fees and Costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorney's Fees and Costs obligation is intended to be several from the other provisions of this Agreement and to survive and not be merged into any such judgment.

12.18. Relationship of Parties

The subject of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render the City a partner in the Developer's business, or joint venturer or member in any joint enterprise with the Developer.

12.19. Severability

If any provision of this Agreement, 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 Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement 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 Agreement.

12.20. Representations and Warranties of the Developer

The Developer represents and warrants as follows, as of the Effective Date and as of the date of the Close of Escrow:

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

(b) **Authority.** The Developer has all requisite power and authority to execute and deliver this Agreement and the agreements contemplated by this Agreement and to carry out and perform all of the terms and covenants of this Agreement and the agreements contemplated by this Agreement.

(c) **No Limitation on Ability to Perform.** Neither the Developer's articles of incorporation or bylaws, nor any other agreement or Law in any way prohibits, limits or otherwise affects the right or power of the Developer to enter into and perform all of the terms and covenants of this Agreement. The Developer is not party to or bound by any contract, agreement, indenture, trust agreement, note, obligation or other instrument which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other Person is required for the due execution, delivery and performance by the Developer of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting the Developer before any court, governmental agency, or arbitrator which might materially adversely affect the enforceability of this Agreement or the business, operations, assets or condition of the Developer.

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

(e) **Defaults.** The execution, delivery and performance of this Agreement (i) do not and will not violate or result in a violation of, contravene or conflict with, or constitute a default under (A) any agreement, document or instrument to which the Developer is a party or by which the Developer's assets may be bound or affected, (B) any law, statute, ordinance, regulation, or (C) the articles of incorporation or the bylaws of the Developer, and (ii) do not and will not result in the creation or imposition of any lien or other encumbrance upon the assets of the Developer.

(f) **Meeting Financial Obligations.** There is no material adverse change in the Developer's financial condition, and the Developer is meeting its current liabilities as they mature; no federal or state tax liens have been filed against it; and the Developer is not in default or claimed default under any agreement for borrowed money.

(g) **Property Funds.** All Property Funds received have been used as required by Section 7.4.

The representations and warranties in this Section shall survive any termination of this Agreement.

12.21. Effective Date

This Agreement shall become effective on the date the Parties duly execute and deliver this Agreement following approval by the City's Board of Supervisors and the Mayor, in their respective sole and absolute discretion. The Effective Date of this Agreement will be inserted by the City on the cover page and on Page 1 of this Agreement; provided, however, no failure by the City to do so shall in any way invalidate this Agreement. Where used in this Agreement or in any of its exhibits, references to "the date of this Agreement," the "reference date of this Agreement," "Agreement date" or "Effective Date" will mean the Effective Date determined as set forth above and shown on Page 1 of this Agreement.

12.22. Cooperation and Good Faith

In connection with this Agreement, the Developer and the City shall reasonably cooperate with one another to achieve the objectives and purposes of this Agreement. In so doing, the Developer and the City shall each refrain from doing anything that would render its performance under this Agreement impossible and each shall do everything that this Agreement contemplates that the Party shall do to accomplish the objectives and purposes of this Agreement. In furtherance, and not in limitation of Developer's obligations under the terms of this Agreement, Developer covenants that Developer shall pursue all actions, obligations, undertakings and agreements for which it is responsible under this Agreement with diligence and in good faith, including without limitation, in connection with all submissions required under Section 5.6 and any revisions required thereunder, all obligations to seek Regulatory Approvals and Building Permit or Site Permit and any addenda thereto as set forth in Section 2.9(b) and Section 5.15, all obligations to seek financing commitments and to obtain the other documents and make the submissions required by Section 7.1, and all obligations to reach the agreements and make submissions as set forth in Section 11.

13. DEFINITIONS

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

Adverse Change as defined in Section 3.1(a).

Affiliate as defined in the Lease.

Agents means, when used with reference to either Party to this Agreement or any other Person, the members, officers, directors, commissioners, boards, employees, agents and contractors of such Party or other Person, and their respective heirs, legal representatives, successors and assigns.

Agreement means this Old Mint Lease Disposition and Development Agreement, as it may be amended from time to time in accordance with its terms.

American Money and Gold Rush Museum Memorandum of Understanding as defined in Section 2.3(a)(vii).

Approved Operating Standards as defined in the Lease.

Arbiter as defined in Section 5.7(c)(i).

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

Bona Fide Institutional Lender as defined in the Lease.

Budget as defined in Section 7.1(a) and a form of which is attached hereto as Exhibit N.

Building as defined in Section 1.1(b).

Building Permit(s) will mean a permit or permits issued by the City which will allow Developer to commence Construction of the Improvements (see Section 5.15).

Card Check Ordinance as described in Section 11.9.

CBD Assessment as described in Section 1.5(b).

Certificate of Completion as described in Section 6 and a form of which is attached as Exhibit C.

Certified Construction Costs as defined in Section 5.13(b).

CEQA means the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.).

City as defined in the introductory paragraph of this Agreement.

City Administrator means the City Administrator of the City and County of San Francisco or his or her designee, or successor that succeeds to the rights and obligations of the City Administrator under applicable Law.

Close Date as defined in Section 2.2(b).

Close of Escrow means the Delivery of the Property by the City to the Developer through the Escrow.

Closing Costs as defined in Section 2.2(e).

Consistency means consistent in all material respects with this Agreement, the assumptions set forth in the Budget, the Operating Budget, the Regulatory Approvals and Project Requirements.

Completion or Completed as defined in Section 6.1(c).

Construction means all new construction, replacement, rehabilitation, and demolition occurring on the Site pursuant to this Agreement and the Lease.

Construction Contract as defined in Section 7.1(h).

Construction Documents as defined in Section 5.3.

Council means the Advisory Council on Historic Preservation, a party to the PA.

DDA Term as defined in Section 1.2.

DDA Permit to Enter as defined in Section 4.1(a)(i).

Deed as defined in Recital B.

Deferred Items as defined in Section 6.1(b).

Delayed Party as defined in Section 12.1(a).

Delivery means execution and delivery of the Lease and the delivery through Escrow by the City of leasehold estate in the Property under the Lease.

Design Development Documents as defined in Section 5.3.

Developer as defined in the introductory paragraph of this Agreement and includes Developer's permitted successors and assigns.

Disabled Access Laws means all Laws related to access for persons with disabilities including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. Sections 12101 et seq. and disabled access laws under the City's building code.

Effective Date as defined in Section 12.21.

ENA as defined in Recital F.

Escrow as defined in Section 2.2(a).

Event of Default as defined in Section 10.

Final Construction Documents as defined in Section 5.3.

Finally Granted means that the action is final, binding and non-appealable and all applicable statutes of limitation relating to such action, including without limitation with respect to CEQA, shall have expired without the filing or commencement of any judicial or administrative action or proceeding in a court of competent jurisdiction with regard to such action.

Financing Plan means the financing plan attached hereto as Exhibit O, which includes (i) a detailed description of all sources and uses of funds for the construction of the Project, the timing for receipt of such funds and a description of conditions that the Developer must meet to receive such funds, including, without limitation, a detailed description of the capital fundraising process that the Developer expects to utilize showing the amount of funds required to be raised and a timeline for raising such funds; (ii) a summary of the key loan terms for anticipated construction and take out financing, if any; and (iii) a proforma operating budget assumptions covering a period of one year from the commencement of operation of the Project, including, without limitation, a current update of all assumptions used in the financial plan submitted by the Developer in its responses to the RFP.

First Source Hiring Program as described in Section 11.8.

Force Majeure means the Force Majeure provisions described in Section 12.1(a)-(e).

GSA as defined in Recital B.

Guide means the AICPA Audit Guide for Not-for-Profit Organizations and its related standards.

Handle when used with reference to Hazardous Materials means to use, generate, manufacture, process, produce, package, treat, store, emit, discharge, or dispose of any Hazardous Material (Handling will have a correlative meaning).

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 Section 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 Site, any Improvements to be constructed on the Site by or on behalf of the Developer, or are naturally occurring substances on, in or about the Site; and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

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

Hazardous Material Laws means any present or future federal, state or local Laws or policies 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 Site (including the Improvements) and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. Hazardous Materials Laws include, but not be limited to, the City's Pesticide Ordinance (Chapter 3 of the San Francisco Environment Code), to the extent the same is as of the date of this Agreement applicable to tenants of City property, and Section 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

Historic American Building Survey means the documentation described in Appendix C of the PA and required to be supplemented in accordance with the terms of Appendix C-2 of the PA prior to the commencement of any Construction.

Historic Preservation Tax Credit means the 20% federal income tax credits for historic rehabilitation, pursuant to Internal Revenue Code §§38 and 47, and 16 U.S.C.A. §470 et seq. and applicable regulations.

Historic Structure Report as defined in Recital C.

HP Consultant as defined in Recital C.

Improvements means all physical construction on the Site and all buildings, structures, fixtures and other improvements, rehabilitated, erected, built, placed, installed or constructed upon or within the Site on or after the Effective Date, including, but not limited to all renovation and rehabilitation work on the existing Building other than tenant improvement work not required to occur for the Improvements to be Completed pursuant to Section 6.1 hereto, all as

described in the Scope of Development and approved by the City as provided for in Section 6 and elsewhere in this Agreement.

Indemnified Parties means the City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, including, without limitation, all of the Agents of the City.

Indemnify means indemnify, protect, defend and hold harmless.

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 Site, any Improvements or any portion of this Agreement 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 Site or any Improvements.

Invitees as defined in the Lease.

Jessie Street Pedestrian Plaza as defined in Section 1.5(a).

Jessie Street Pedestrian Plaza Use Instrument as defined in Section 1.5(b).

Law or Laws shall mean all present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties, the Site, the Improvements, or any portion of any of them (including, without limitation, any subsurface area, the use thereof and of the Site, or any portion thereof, and the buildings and Improvements thereon) whether or not in the contemplation of the Parties, including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site, the Improvements or any portion of any of them.

Lease as defined in Section 1.4.

Litigation Force Majeure as defined in Section 12.1(c).

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

Management Plan as defined in Section 2.3(a)(v).

Memoranda of Understandings and Memorandum of Understanding as defined in Section 2.3(a)(xvi).

Memorandum of Agreement as defined in Section 2.5(b)(iii).

Memorandum of Lease means the memorandum of the Lease, between the City and the Developer, suitable for recordation in the Official Records and in the form of Exhibit F.

Mitigation Measures as defined in Section 11.2.

Mortgage as defined in the Lease.

Mortgagee as defined in the Lease.

Net Revenue as defined in the Lease.

New Markets Tax Credit means those tax credits received for investing in certain low income census tracts as governed by Section 45D of the Internal Revenue Code of the United States.

NPS as defined in Section 2.3(a)(ix).

Official Records mean, with reference to the recordation of documents, the Official Records of the City and County of San Francisco.

Old Mint as defined in Recital A.

Operating Budget as defined in Section 7.1(c).

PA as defined in Recital B.

Party means the City or the Developer, as a party to this Agreement; Parties means both the City and the Developer, as parties to this Agreement.

Performance Bond as defined in Section 7.1(i).

Permit to Enter as referred to in Section 4.1(a).

Permitted Title Exceptions as defined in Section 2.6(a).

Person means any individual, partnership, corporation (including, but not limited to, any business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture or any other entity or association, the United States, or a federal, state or political subdivision thereof.

Preliminary Construction Documents as defined in Section 5.3.

Prevailing Wage Provisions mean the provisions described in Section 5.17.

Prevailing Wage Agreement in the form of Exhibit M.

Project means the Construction of the Improvements described in the Scope of Development, operated as the museum for the City and County of San Francisco, together with complementary uses as described in the Scope of Development all at the Approved Operating Standards.

Project Requirements as defined in Section 5.4.

Property means the Site and the Improvements.

Property Funds as defined in Section 7.4.

Regulatory Approval means any rezoning, authorization, approval or permit required by any governmental agency having jurisdiction over the Site or the Project, including, but not limited to, the City's Planning Commission and/or Zoning Administrator, the City's Art Commission, the City's Department of Building Inspection and the Board of Supervisors.

Release when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any existing improvements or any Improvements constructed under this Agreement by or on behalf of the Developer, or in, on, under or about the Site or any portion of the Site.

Remediate or Remediation when used with reference to Hazardous Materials means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Site 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.

Required Elements as defined in Section 5.9(a).

Restaurant Memorandum of Understanding as defined in Section 2.3(a)(viii).

San Francisco Museum as defined in Recital G.

Schedule of Performance as defined in Section 2.2(a).

Schematic Drawings as attached hereto as Exhibit H.

Scope of Development means the narrative document and Schematic Drawings attached hereto as Exhibit H.

Secretary's Standards as defined in Recital B.

Seismic Work as defined in Section 4.1(b).

Seismic Work Schedule of Performance as defined in Section 4.1(b)(iii).

SF Convention and Visitors Bureau Memorandum of Understanding as defined in Section 2.3(a)(vi).

SHPO as defined in Recital B.

Significant Change as defined in the Lease.

Site as defined in Section 1.1.

Site Permit means the permit for construction of improvements as described in Section 5.15(b).

Special City Requirements means as defined in Section 10.1(e).

Staff means as defined in Section 5.8(a).

Substantially Complete means that such work shall have been completed except for customary punch list items, including without limitation, items such as clean-up, painting, minor adjustments to the overhead system, and safety checks (such as grade and paving adjustments).

Task Force as defined in Recital D.

Title Company as defined in Section 2.2(a).

Title Defect as defined in Section 2.6(b).

Title Defect Cure Period as defined in Section 2.6(b).

Transfer as defined in Section 9.1.

Unmatured Event of Default means any event, act, failure to act, or other occurrence that, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Agreement.

Workforce Hiring Program means the program for diversity concerning design, construction and operation of the Improvements which the Developer has agreed to implement as described in Section 11.10 and attached hereto as Exhibit P-2.

IN WITNESS WHEREOF City and Developer have caused this Lease Disposition and Development Agreement to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER

SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation

By: _____
Name: _____
Title: _____

CITY

CITY & COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its
Office of Administrative Services

By: _____
Name: Amy Brown
Title: Director of Property

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF SITE

[TO BE ATTACHED AT CLOSE OF ESCROW]

EXHIBIT B

SITE PLAN

[The attached Site Plan will be replaced at closing with a more accurate Site Plan derived from a survey of the Property]

EXHIBIT C

FORM OF CERTIFICATE OF COMPLETION

Recorded at the request of, and
When recorded, mail to:

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

CERTIFICATE OF COMPLETION OF IMPROVEMENTS

WHEREAS, the City and County of San Francisco, acting by and through its Office of Administrative Services (the "City") and the San Francisco Museum and Historical Society, a California nonprofit corporation (the "Developer") entered into a Lease Disposition and Development Agreement dated as of _____, 2006 (the "Agreement"), a memorandum of which was recorded on _____, 2006, in the Office of the Recorder of the City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, setting forth the terms and conditions under which City and Developer would enter into a Ground Lease of certain real property situated in the City and County of San Francisco, State of California, which property is more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"), and setting forth certain obligations of the Developer to rehabilitate and construct certain Improvements (as defined in the Agreement) on the Property;

WHEREAS, by Lease dated _____, 2006 (the "Lease"), a memorandum of which was recorded on _____, 2006, in the Office of the Recorder of the City and County of San Francisco, in Reel _____, of the Official Records, at Image _____, City did convey to the Developer (as Tenant thereunder) a leasehold interest in the Property;

WHEREAS, City has conclusively determined that the rehabilitation and construction obligations of the Developer as specified in the Agreement have been fully performed and the Improvements, as defined in the Agreement, have been completed in accordance therewith; and

WHEREAS, as stated in the Agreement, City's determination regarding said rehabilitation and construction obligations is not directed to, and thus City assumes no responsibility by virtue of this Certificate for, engineering or structural matters or compliance with building codes, regulations, Regulatory Approvals or applicable Laws (as defined in the Agreement) relating to construction standards.

NOW THEREFORE, as provided in the Agreement, with respect to the Property, and subject to the foregoing provisions hereof, City does hereby certify that Developer's rehabilitation and construction obligations under the Agreement related to Completion of the Improvements have been fully performed and completed as aforesaid and that the Agreement

shall be deemed terminated and of no further force or effect, except as specifically set forth therein. Nothing contained in this instrument shall modify in any way any provisions of the Lease.

IN WITNESS WHEREOF, City has duly executed this instrument this _____ day of _____, 200_.

THE CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT D

FORM OF THE LEASE

[ATTACHED]

EXHIBIT E

SCHEDULE OF PERFORMANCE

INTRODUCTION

Several principles apply to an effective understanding of this Schedule of Performance: (i) all terms used herein have the same meanings as provided in the Lease Disposition and Development Agreement between the City and County of San Francisco acting by and through its Office of Administrative Services (“City”), and San Francisco Museum and Historical Society, a California nonprofit corporation (“Developer”) to which this Schedule of Performance is attached (the “DDA”); (ii) parenthetical numbers are references to sections of the DDA, as the dates described herein are not exhaustive of all dates described in the DDA; (iii) all Required Completion Dates provided for in this Schedule of Performance may be extended by applicable Force Majeure and Litigation Force Majeure provisions to the extent permitted in the DDA or otherwise to the extent provided for in the DDA; and (iv) in the event of an inconsistency between this Schedule of Performance and the DDA, the DDA shall prevail.

Action

Required Completion Date

Approval – Schematic Drawings. Already approved by City concurrently with approval of the DDA (Section 5.8(d)).

Submission – Design Development Documents. Developer shall prepare and submit the Design Development Documents to City for review and approval (Section 5.6).

Approval – Design Development Documents. City must approve, disapprove or approve conditionally the Design Development Documents in writing (Section 5.8(b)).

Submission – Preliminary Construction Documents. Developer shall prepare and submit Preliminary Construction Documents to City for review and approval (Section 5.6)

Approval – Preliminary Construction Documents. City must approve, disapprove or approve conditionally the Preliminary Construction Documents in writing (Section 5.8(b)).

Submission - Evidence of Adequate Financing. Developer shall submit to City evidence of adequate financing, including Budget, statement of sources and uses of funds, bonafide commitment, evidence of a Guaranteed Maximum Price Contract (Section 7.1).

No later than 120 days prior to Close of Escrow.

Within 30 days after complete submittal thereof.

No later than 90 days prior to the Close of Escrow and at least 30 days prior to the submittal of evidence of adequate financing.

Within 30 days after complete submittal thereof, or, if Developer submits a full building permit application, within 60 days after proper submittal (Section 5.8(b)).

After City has received Preliminary Construction Documents and, in substantially final form at least 60 days prior to Close of Escrow, and in final form at least 10 days prior to the Close of Escrow (Section 7.1).

Action

Approval – Evidence of Adequate Financing. City must approve or disapprove the evidence of adequate financing (including the reasons for disapproval) in writing (Section 7.2).

Submission – Application for Building Permit. Developer must submit to City a complete application for either a Site Permit or a full building permit and prosecute such application diligently to issuance (Section 5.15).

Submission - Final Construction Documents. Developer shall prepare and submit the Final Construction Documents to City for review and approval (Section 5.6).

Approval - Final Construction Documents. City must approve, disapprove or approve conditionally the Final Construction Documents in writing (Section 5.8(b)).

Resubmittal – Construction Documents. If City disapproves or conditionally approves the Construction Documents, in whole or in part, Developer must resubmit the Construction Documents to City for review and approval (Section 5.8(c)).

Submission – Management Plan. Developer shall prepare and submit the Management Plan to City for review and approval (Section 2.3(a)(v)).

Approval – Management Plan, City must approve, disapprove or approve conditionally the

Required Completion Date

Within 30 days after the Developer's submission of all of the documents described in Section 7.1, provided that at least 45 days before the date of such request for approval, the City shall have received Preliminary Construction Documents in accordance with Section 5 in sufficient detail to allow the City to obtain a cost estimator's report if the City, in its sole discretion and at its sole cost and expense, determines to obtain such a report. (Section 7.2).

Within a time adequate to obtain either the building permit, or the first Site Permit addendum allowing for commencement of construction, before Close of Escrow, taking into account normal processing time by City.

No later than 60 days prior to Close of Escrow unless Developer has elected the Site Permit process. If Developer has elected to use the Site Permit process, then in accordance with the approved schedule (Section 5.15(b)(ii)).

Within 30 days after complete submittal thereof, or, if Developer submits a full building permit application, within 60 days after complete submittal, or, if Developer has elected to use the Site Permit process, then in accordance with the approved schedule (Section 5.15(b)(ii)).

As expeditiously as possible and Developer may continue making resubmissions until the approval of the submissions or the later of (i) the time specified in any conditional approval or (ii) the Close Date, as either may be extended by the terms of the DDA (Section 5.8(c)).

No later than 90 days prior to Close of Escrow.

Within 45 days after complete submittal thereof (Section 5.8(d)).

Action

Required Completion Date

Management Plan in writing (Section 5.8(d)).

Submission – SF Convention and Visitors Bureau Memorandum of Understanding. Developer shall prepare and submit the SF Convention and Visitors Bureau Memorandum of Understanding to City for review and approval (Section 2.3(a)(vi)).

No later than 90 days prior to Close of Escrow.

Approval – SF Convention and Visitors Bureau Memorandum of Understanding. City must approve, disapprove or approve conditionally the SF Convention and Visitors Bureau Memorandum of Understanding (Section 5.8(d)).

Within 45 days after complete submittal thereof (Section 5.8(d)).

Submission – American Money and Gold Rush Museum Memorandum of Understanding. Developer shall prepare and submit the American Money and Gold Rush Museum Memorandum of Understanding to the City for review and approval (Section 2.3(a)(vii)).

No later than 90 days prior to Close of Escrow.

Approval – American Money and Gold Rush Museum Memorandum of Understanding. City must approve, disapprove or approve conditionally the American Money and Gold Rush Museum Memorandum of Understanding in writing (Section 5.8(d)).

Within 45 days after complete submittal thereof (Section 5.8(d)).

Submission – Restaurant Memorandum of Understanding. Developer shall prepare and submit each Restaurant Memorandum of Understanding to the City for review and approval (Section 2.3(a)(viii)).

No later than 90 days prior to Close of Escrow.

Approval – Restaurant Memorandum of Understanding. City must approve, disapprove or approve conditionally each Restaurant Memorandum of Understanding in writing (Section 5.8(d)).

Within 45 days after complete submittal thereof (Section 5.8(d)).

Open Escrow

No later than 30 days prior to the Close of Escrow (2.2(a)).

Execute Joint Escrow Instructions - City. If the joint escrow instructions are acceptable to City, it shall execute and transmit the instructions to the Title Company (Section 2.2(c)).

Within 7 days after their receipt (Section 2.2(c)).

Deposit – Costs of Escrow. Developer shall deposit all Closing Costs into Escrow (Section 2.5(b)(ii)).

Prior to the Close of Escrow (Section 2.5(b)(ii)).

Action

Close of Escrow. The City shall Deliver the Property to the Developer and the Developer shall accept the Delivery of the Property under the Lease (Section 2.5).

Commencement of Construction of Improvements. The Developer shall commence construction of the Improvements on the Property.

Completion of Construction of Improvements. Developer shall complete Construction of Improvements on the Property.

Submission – Request for Certificate of Completion. Developer may request in writing from City a Certificate of Completion (Section 6.1(a)(ii)).

Approval – Certificate of Completion. City shall act on Developer’s request for a Certificate of Completion. (Section 6.1(a)(ii)).

Submission - As Built Documents. Developer must furnish City as-built plans, specifications and surveys with respect to the Site (Section 5.13(a)).

Submission – Certified Construction Costs. The Developer must furnish to the City Certified Construction Costs (Section 5.13(b)).

Inspection – Certified Construction Costs. The City shall have the right to inspect the Developer's records regarding the construction of the Improvements (Section 5.13(b)).

Required Completion Date

Date of Close of Escrow, but no later than Close Date, which may be extended by the terms of the DDA.

Not later than 30 days after Close of Escrow.

Not later than 42 months from the Effective Date of the DDA, subject to Force Majeure and Litigation Force Majeure.

After Construction of the Improvements (except for Deferred Items) on the Property has been Completed by Developer in accordance with all provisions of the DDA (Section 6.1(a)(ii)).

Within 30 days of receipt of the request (Section 6.1(a)(ii)).

Within 90 days after Completion of the Improvements (Section 5.13(a)).

Within 90 days after Completion of the Improvements (Section 5.13(b)).

Within 60 days after receipt by the City of Certified Construction Costs (Section 5.13(b)).

EXHIBIT F

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

SAN FRANCISCO MUSEUM AND
HISTORICAL SOCIETY
785 Market Street
San Francisco, CA 94103
Attention: Executive Director

FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE ("Memorandum") is dated as of _____, 2006, and is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Office of Administrative Services and SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation ("Tenant").

Recitals

A. Concurrently herewith, City and Tenant have entered into that certain Lease, dated _____ (the "Lease"), pursuant to which City leased to Tenant and Tenant leased from City the real property more particularly described in the attached Exhibit A (the "Premises"), which is incorporated by this reference.

B. City and Tenant also have entered into that certain Old Mint Lease Disposition and Development Agreement, dated, _____ (the "DDA"), with respect to the development of the Premises.

C. City and Tenant desire to execute this Memorandum to provide constructive notice of Tenant's rights under the Lease to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, City leased the Premises to Tenant for a term commencing on the date City delivers possession of the Premises to Tenant in accordance with the DDA and as further set forth in the Lease. The Term of the Lease shall expire on the date that is sixty-six (66) years after the Commencement Date (as such term is defined in the Lease), unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Premises to Tenant is made pursuant to the Lease, which is incorporated in this Memorandum by reference. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

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

TENANT:

SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

EXHIBIT G

PERMITTED TITLE EXCEPTIONS

1. Taxes and assessments which are a lien but are not yet due and payable.
2. All matters listed as exceptions to title on the Preliminary Report issued by Chicago Title Company, dated as of June 1, 2006, Order No. 06-36902670.
3. All existing exceptions and encumbrances, whether or not disclosed by a current preliminary title report or the public records or any other documents reviewed by the Developer in connection with the RFP process and its investigation of the Property, and any other exceptions to title which would be disclosed by an accurate and thorough investigation, survey, or inspection of the Property.
4. All items of which the Developer has actual or constructive notice or knowledge.
5. This Agreement and the Lease (and all rights and easements created hereby and thereby) and the interests reflected by all memoranda and other documents executed and recorded pursuant to the terms of the Lease and this Agreement.

EXHIBIT H

SCOPE OF DEVELOPMENT/SCHEMATIC DRAWINGS

As shown on the attached Schematic Drawings, the proposed Project will consist of developing the Building into a mixed use space, anchored by an approximately 30,000 square foot museum celebrating San Francisco's history. The Project will include related spaces such as approximately 1,000 square feet of administrative offices for the San Francisco Museum and Historical society, an approximately 1,900 square foot retail/gift shop component, and an approximately 1,500 square foot educational center (collectively, "San Francisco Museum"). It may also include various complementary uses such as one or more restaurants or cafés located in up to approximately 6,000 square feet of space in the aggregate, with public restrooms, an approximately 8,000 square foot space for a numismatic museum currently contemplated to be the American Money and Gold Rush Museum, a 501(c)(3) non-profit organization, with approximately 2,400 square feet of related retail space, together with approximately 3,700 square feet of space for a visitor center to be used by the San Francisco Convention and Visitors Bureau, and about 2,300 square feet of other complementary retail uses. The remaining space will be used for circulation, courtyard lobby, toilets, and support spaces. Because the Project is at the Schematic phase, it is anticipated that the actual square footages and precise ratio and mix of uses may vary somewhat as the plans continue to develop.

The development of the Project may also involve removal of the first floor courtyard floor of the Building and the addition of two elevators between the chimneys at the west side of the building and two ADA-compliant elevators with access from Fifth Street. The Project will require seismic rehabilitation of the Building and other work necessary to remove asbestos and lead, the implementation of moisture protection measures and the installation of fire safety, mechanical, electrical and plumbing systems. The Building will also be brought into compliance with the Americans with Disabilities laws and the Secretary's Standards.

EXHIBIT I

SEISMIC WORK SCHEDULE OF PERFORMANCE
[TO BE ATTACHED IF SEISMIC WORK COMMENCES PRIOR TO CLOSE OF ESCROW]

EXHIBIT J-1

DEMONSTRATION OF PROPERTY MAINTENANCE

[ATTACHED]

EXHIBIT J-2

PROPERTY MAINTENANCE SCHEDULE

The Developer shall provide the services described below at its sole cost in a manner that causes the Property to be maintained in at least as good a condition as of the date of the First Amended Revocable Permit to Enter and Use Property dated as of October 20, 2003, by and between the City and the Developer, except that the landscaping must be kept in the same condition as existed on August 11, 2006, and as shown on Exhibit J-1:

TASK	FREQUENCY
Landscape Maintenance	
Trash pick-up	Daily
Irrigate the lawn using water sprinklers	Every other day (20 Minutes), unless otherwise notified by City
Pressure clean the stairs and sidewalks around perimeter of building with steamer/water truck	Weekly, unless otherwise notified by City
Pressure clean building exterior with steam cleaner/water truck	Annually
Mow/edge and otherwise maintain	Weekly
Prune shrubs and fertilize lawn	Twice/Year
Graffiti Removal	
Remove graffiti by appropriate methods including soda blaster or graffiti removal detergents	As needed or at City's request
Pest Control	
Spray for roaches and other pests	Monthly
Perform rodent prevention activities	As Needed
Utilities	
Provide electricity for interior and exterior of building, including exterior lighting	24 hrs./day every day
Provide water for building	24 hrs./day every day
Provide gas for building	24 hrs./day every day
Mechanical Operations & Maintenance	
Monitor, maintain, replace & add as necessary or required fire extinguishers	As Needed/Semi-Annually
Maintain, repair, license Jessie Street Elevator	As needed/required
Monitor, replace and repair fire alarms, smoke detectors and motion sensors	Weekly
Stationery Engineer routine inspection of all building systems, including but not limited to installation, replacement &	Weekly

maintenance of sump pumps, and courtyard drains/gutters	
Lighting Maintenance: <ul style="list-style-type: none"> • Interior relamping & replacement (as needed) • Exterior relamping & repairs (as needed) 	As needed
General Repairs: <ul style="list-style-type: none"> • Includes but not limited to irrigation sprinkler maintenance, replacement of broken windows/glass, repair of pipe breaks, water damage, sewer blockage, lock repairs, board-up elevator shafts, break-in damage, roof maintenance 	As needed
Security	
Perform routine drive-by patrols	Daily
Perform as the primary response contact to all alarms	24 hrs./day every day

EXHIBIT K

MITIGATION MEASURES

Mitigation Measure 1 – Construction Air Quality

The project sponsor shall require the contractor(s) to cover stockpiles of soil, sand, and other material; cover trucks hauling debris, soil, sand or other such material; and sweep surrounding streets during construction at least once per day to reduce particulate emissions. Ordinance 175-91, passed by the Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities. Therefore, the project sponsor would require that the contractor(s) obtain reclaimed water from the Clean Water Program for this purpose.

Mitigation Measure 2 - Contaminated Waste Removal

Any waste materials generated during chimney retrofitting or demolition shall be handled as industrial or hazardous wastes.

Mitigation Measure 3 – Historical Resources

All terms and obligations and procedures contained in the Programmatic Agreement entered into by and among the United States of America, acting by and through its General Services Administration (GSA), the Advisory Council on Historic Preservation, the California State Historic Preservation Office (SHPO), and the City and County of San Francisco regarding the preservation of the Old Mint Building, are incorporated by reference into this mitigation measure.

All future design plans shall be submitted by the San Francisco Museum and Historical Society (project sponsor) to the HPC for its review and submission to the State Office of Historic Preservation and the Planning Department to ensure that the project shall comply with the Secretary of Interior's Standards for the Treatment of Historic Properties set forth at 36 S.F.R. Part 68, with the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, or to the extent applicable in connection with any request for the use of historic tax credits for the Old Mint, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Properties set forth at 36 C.F.R. part 67 (together, as applicable, the "Standards").

Reviews for compliance with the *Standards* shall take place after the schematic, design development, and construction stages of the design process. Like the initial determination report, each subsequent report will be submitted to SHPO and the Planning Department for review and

comment. As part of the Planning Department review of the rehabilitation of the Old Mint, the project sponsor shall obtain the independent review of the City's historic preservation consultant (HPC) on each phase of the project development as required by the Programmatic Agreement to determine compliance with the Standards. The project sponsor and the HPC will present each phase of the project development to the Landmark Preservation Advisory Board in a public hearing for its review and recommendations, including, schematic design, design development and construction plans. Submittal to the Landmarks Board at each phase of the project development along with the independent review of the HPC will inform the Certificate of Appropriateness process and assure compliance with Planning Code Article 10 and the Standards. If, after reviewing the HPC's report as required by the Programmatic Agreement, the SHPO does not concur that a proposed design solution meets the Standards, then further changes shall be made to the project design to satisfy the Standards before the project may proceed.

IMPROVEMENT MEASURES

Improvement measures diminish effects of the project that are identified in the environmental analysis as being less-than-significant impacts. The project sponsor will implement these improvement measures as part of the project.

Improvement Measure 1 - Traffic

Signing improvements to restrict access on Mint Street could be required at the entrance of Mint Street. Also proper signing could be required to restrict private buses from using the eastside curb as layover area. This space is proposed as drop-off area for visitors to the Historical Museum. It is noted that buses after drop off would have difficulty in maneuvering a U-turn on Mint Street and would also cause some conflict with pedestrian activities on Mint Street. Tour buses bringing visitors to the Historical Museum could require layover space and the project sponsor would work with DPT to identify improvement measures to provide layover space for these buses.

In order to reduce potential tour bus double parking and illegal tour bus parking impacts in downtown, the DPT could continue its enforcement effort in downtown and work with the bus operators to find a long-term solution.

Improvement Measure 2 - Transit

The proposed project could have an impact on MUNI operations due to the closure of Jessie Street east of Mint Street. The project sponsor proposes that MUNI route 26 use Fifth Street instead of Eighth Street and use the existing bus stop location on Fifth Street for layover. This

option could still have the same travel distance and travel time and thus would not affect the MUNI schedule. This option of change in MUNI route and relocation of layover space for MUNI bus route 26 would require approval from MUNI.

The MUNI #26 buses eastbound route could change to continue on Market Street then turn to Fifth Street and its layover location could be moved to Fifth Street and combined with MUNI #27 bus stop. The westbound route could remain the same.

Improvement Measure 3 - Parking

Five car parking spaces and eight motorcycle parking spaces would be displaced due to the Jessie Street closure. These five spaces can be compensated fully with one extra space on Mint Street by converting the existing parallel parking to 90-degree parking spaces. Resulting in the increase of one vehicle parking space and loss of eight motorcycle spaces. Proposed design of Mint Street would be require to be approved by Department of Parking and Traffic (DPT) prior to implementation.

Improvement Measure 4 - Construction

Any construction traffic occurring between 7:00 AM and 9:00 AM or between 3:30 PM and 6:00 PM could coincide with peak hour traffic and could impede traffic flow. The impact of lane closures and construction traffic could decrease the capacity of streets and slow the movement of traffic (including MUNI buses). To the extent possible for the proposed project, truck movements could be limited to the hours between 9:00 AM and 3:30 P.M. Prior to any lane closure and encroachment on traffic lanes, proper permits need to be obtained from the City. A closure of all sidewalks along the perimeter of the project on Mission Street, Fifth Street, Mint Street and Jessie Street could require detailed planning to provide space for bus stop, passenger waiting area and layover location. The project sponsor has indicated that proper waiting area could be provided for the passengers waiting for buses on Mission Street and Fifth Street bus-stop locations for the entire duration of construction. The project sponsor could be required to work with DPT, DPW and MUNI to seek satisfactory design needs to accommodate proper waiting area for transit riders. Sidewalk closure with additional pedestrian pathway could encroach on traffic lanes thereby disrupting traffic operation.

The Project Sponsor and construction contractor(s) could meet with the Traffic Engineering Division of the Department of Parking and Traffic, the Fire Department, and the Planning Department to determine feasible traffic measures to reduce traffic congestion and pedestrian

circulation impacts during construction of the project. In addition, to ensure that the relocation of MUNI bus stop, suggested route relocation and the MUNI passenger waiting area (minimum 5 feet in width for the entire length of the bus stop) are acceptable to MUNI, the project sponsor could coordinate with MUNI's Chief Inspector prior to construction

EXHIBIT L

FORM OF ARCHITECT'S CERTIFICATE

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

Date: _____

FROM: Architect of Record

RE: Old Mint

NOTE: This certificate is being provided pursuant to Section 5.5(b) of that certain Lease Disposition and Development Agreement between the City and County of San Francisco ("City"), acting by and through its Office of Administrative Services, and San Francisco Museum and Historical Society, a California corporation ("Developer"), dated _____, 2006, hereinafter referred to as the "DDA." Unless otherwise provided in this Certificate, all terms used below shall have the meaning given to them in the DDA.

As the Architect of Record, I visited the Property at intervals appropriate to the stage of construction, or as otherwise agreed by me, Developer and City, to become generally familiar with the progress and quality of the construction completed and to determine in general if the construction was being performed in a manner indicating that the construction when completed would be in accordance with the Construction Documents.

My opinions and statements provided in this certificate are limited to my on-site observations. I am not required to make nor have I made exhaustive or continuous on-site inspections to check the quality or quantity of the construction.

I neither retained nor exercised control over or charge of or am responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction of the Improvements. These areas solely are within the contractor's responsibility under the DDA and Construction Documents.

I shall not be responsible for the contractor's schedules or failure to carry out the work in accordance with the Construction Documents. I neither have nor have had control over or charge of acts or omissions of the contractor, subcontractor, or their agents or employees, or of any other person performing portions of the construction.

As Architect of Record for the Construction of the Improvements and subject to the limitations set forth above, I hereby certify to the best of my knowledge, information and belief as follows:

1. I have observed the Improvements on _____, and all the statements made below are made as of and are limited to the date of my observation.
2. Design of the Improvements has been performed in accordance with applicable Laws.

3. Construction of the Improvements has been performed in a good and workerlike manner and in accordance with those elements of the Construction Documents which have been approved by City pursuant to Section 5.7(a) of the DDA, except as may be noted on Schedule A attached hereto.

4. Construction of the Improvements has been completed in compliance with all applicable building codes and ordinances including, but not limited to, Disabled Access Laws, except as may be noted on Schedule A attached hereto.

5. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the Improvements have been issued and are in force, and there is not an undischarged violation of applicable Laws of which I have noticed as of the date hereof except as may be noted on Schedule A attached hereto.

All statements and opinions made in this Certificate are limited to the extent that I have not made exhaustive or continuous on-site inspections to check the quality or quantity of the construction nor have I reviewed the construction means, methods, techniques, sequences or procedures.

Architect

EXHIBIT M

PREVAILING WAGES AGREEMENT (LABOR STANDARDS)

1.01 **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Lease Disposition and Development Agreement between San Francisco Museum and Historical Society, a California nonprofit corporation (the "Developer") and the City and County of San Francisco, a municipal corporation ("City") acting by and through its Office of Administrative Services, of which this Exhibit and these Labor Standards are a part ("DDA"). These Labor Standards contain some, but not all of the provisions of Section 6.22(E) of Chapter 6 of the San Francisco Administrative Code, however, all provisions thereof are hereby incorporated into this Exhibit.

1.02 **All Contract and Subcontracts Shall Contain the Labor Standards; Confirmation by Construction Lender.**

- (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards, and the Developer shall have the responsibility to ensure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Developer shall maintain for inspection by City true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof. Failure to do so shall be a violation of these Labor Standards.
- (b) Before Close of Escrow under the DDA, and as a condition to the Close of Escrow, the Developer shall also supply a written confirmation to City from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.

1.03 **Definitions.** The following definitions shall apply for purposes of this Exhibit M. All terms used herein and not otherwise defined shall have the same meaning as the same term in the Development Agreement.

- (a) "Contractor" is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, and Working Foremen to perform the construction on all or any part of the Improvements.
- (b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including Working Foremen.

- (c) Working Foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the workweek.

1.04

Prevailing Wage.

- (a) All Laborers and Mechanics employed in the construction of the Improvements shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by Section 1.05) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of City. At the time of the Close of Escrow City shall provide the Developer with a copy of the applicable Wage Determination.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

- (b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall pay either the benefit in the manner as stated therein, i.e., the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the City Administrator has found, upon the written request of the Contractor made through the Developer, that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of Section 1.08. The City Administrator may require the Developer to set aside, in a separate interest-bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or

program referred to above in subsection (b) of this Section 1.04. The interest shall be accumulated and shall be paid as determined by City acting in its sole discretion.

- (d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (e) The responsibility for compliance with Section 1776 of the California Labor Code shall be on the Contractor.

1.05

Permissible Payroll Deductions. The following payroll deductions are permissible deductions. Any others require the approval of the City Administrator.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.
- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents; provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

- b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
- 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
- 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

1.06

Apprentices and Trainees. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanics' hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

1.07

Overtime. No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess

of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek (including two (2) ten (10) minute breaks) unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight (8) hours in any calendar day or in excess of forty (40) hours in such workweek, whichever is greater. Any Contractor who shall violate any of the foregoing provisions of this Section 1.07 shall be liable for the same penalties and forfeits as those specified in Section 6.22(E) of Chapter 6 of the San Francisco Administrative Code.

1.08

Payrolls and Basic Records.

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of four years thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, a general description of the work such employee performed each day, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to City on the first working Monday of each month a copy of the payrolls for the previous month in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by City's Form, a copy of which may be obtained from City. The Contractor, if a prime contractor, or the Developer acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.
2. Each monthly payroll shall be accompanied by the Statement of Compliance that accompanies this Exhibit and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

(c) The Contractor shall make the records required under this section available for inspection or copying by authorized representatives of City, including representatives of the Office of Labor Standards Enforcement (as defined in Section 6.22(E) of the City's Administrative Code, and shall permit such representatives to interview employees, upon 24-hours notice, during working hours on the job; but without causing undue disruption to the work. Upon request, the City Administrator shall advise the Contractor of the identity of such authorized representatives.

1.09 **Occupational Safety and Health.** No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

1.10 **Workforce Hiring Program.** The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the First Source Hiring Program and Workforce Hiring Program set forth in Exhibits P-1 and P-2 of the Development Agreement. Any conflicts between the language contained in these Labor Standards and Exhibits P-1 and P-2 shall be resolved in favor of the language set forth in Exhibits P-1 and P-2 except that in no event shall less than the Prevailing Wage be paid.

1.11 **Nondiscrimination Against Employees for Complaints.** No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

1.12 **Posting of Notice to Employees.** A copy of the Wage Determination referred to above in subsection (a) of Section 1.04 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Developer at the Close of Escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination are not so posted or maintained, City may do so.

1.13 **Labor Standards Enforcement Officer.** The Contractor shall comply with the following requirements: (a) The Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed pursuant to the Charter and Chapter 6 of the San Francisco Administrative Code; (b) The Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee checks; (c) the Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (d) the Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's prevailing wage requirements

and that these requirements are enforced by the Labor Standards Enforcement Officer; and (e) the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter and Chapter 6 of the Administrative Code.

1.14

Violation and Remedies.

- (a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.
- (b) Stop Work--Contract Terms Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by Section 1.02 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by Section 1.08 ("Non-Complying Contractor"), the City Administrator, after written notice to the Developer, with a copy to the Contractor involved, and after failure to cure the violation within ten working days after the date of such notice, may stop the construction work under the Non-Conforming Contract or until the Non-Complying Contractor comes into compliance.
- (c) Forfeiture. Any Contractor who fails or neglects to pay to Laborers or Mechanics the highest prevailing rate of wages as fixed by the Board of Supervisors under the authority of Chapter 6 of the San Francisco Administrative Code, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, the original Contractor and the subcontractor shall jointly and severally forfeit to the City and County of San Francisco back wages due plus the penal sum of \$50.00 per day for each Laborer or Mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid the highest general prevailing rate of wages, and in addition shall be subject to the penalties set for in Article V of Chapter 6 of the San Francisco Administrative Code.
- (d) Stop Work and Other Violations. For any violation of these Labor Standards, the City Administrator may give written notice to the Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within ten (10) working days from the date of said notice, the Developer shall advise City in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Developer, upon receipt of the notice of claimed violation from City, shall, with respect to any amount stated in City notice, withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall,

with the Notice of Dispute, also advise City that the moneys are being or will be withheld. If the Developer fails to timely give a Notice of Dispute to City or to advise of the withhold, then the City Administrator may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute or withhold advice, any stop work which the City Administrator has ordered shall be lifted, but the Developer shall continue to withhold the moneys until the dispute has been resolved.

- (e) Withholding Certificates of Completion. City may withhold any or all certificates of completion of the Improvements provided for in this Agreement for any violation of these Labor Standards until such violation has been cured.
- (f) General Remedies. In addition to all of the rights and remedies herein contained, City shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction.

Non-Liability of City. The Developer and each Contractor acknowledge and agree that the procedures set forth above for dealing with violations of these Labor Standards are reasonable and have been anticipated by the Parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Developer, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against City for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

EXHIBIT N

FORM OF BUDGET

[ATTACHED]

EXHIBIT O

FINANCING PLAN

[ATTACHED]

EXHIBIT P-1

FORM OF FIRST SOURCE HIRING AGREEMENT

A. This First Source Hiring Agreement ("Agreement") is made and entered into as of this ___ day of _____, 2006, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the "City"), acting by and through its OFFICE OF ADMINISTRATIVE SERVICES, and SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation (the "Tenant"). Except with respect to the Citybuild Program requirements, this Agreement shall be administered by and through the City's First Source Hiring Administration ("FSHA"). The Citybuild Program requirements shall be administered by and through the Mayor's Office of Economic and Workforce Development ("MOEWD")

B. City and Tenant have entered into a Lease Disposition and Development Agreement, dated as of _____, 2006 (the "DDA"), and shall enter into a Lease in connection therewith ("Lease"), under which Tenant has agreed to lease certain real property from City for a term of 66 years, and to rehabilitate and seismically upgrade the property located at 88 Fifth Street, San Francisco, California (the "Old Mint"). Tenant will develop the Old Mint into a museum of San Francisco history, including a gift shop and educational center, and complementary uses such as a restaurant, bar, offices and coin museum, all subject to the terms of the DDA and the Lease.

C. This Agreement is made pursuant to the First Source Hiring Program ("Program") set forth in Chapter 83 of the San Francisco Administrative Code. Tenant is subject to the Program as a "Contractor" entering into a Property Contract with City, as a "Developer" obtaining a Permit, and as an "Employer," as those terms are defined below and as they are defined under Section 83.4 of the San Francisco Administrative Code.

AGREEMENT

1. **Definitions.** For the purposes of this Agreement, initially capitalized terms shall be defined as follows:

Citybuild Program: shall mean the program described in Exhibit A attached hereto established by the City to promote and ensure equal employment opportunities for economically disadvantaged persons of all ethnic backgrounds and genders in the construction work force.

Commercial Activity: shall include, without limitation, retail sales and services, museum, restaurant, office, education and any other non-profit or for-profit commercial uses.

Contractor: shall mean an entity that has entered into the DDA and a Property Contract with City. However, with respect to the Citybuild Program, "Contractor" shall mean any contractor or subcontractor, regardless of tier, whose contract on the Development Project exceeds \$150,000.

Developer: shall mean an entity that has the right under the San Francisco Planning Code and/or the San Francisco Building Code to make an application for approval of a Commercial Activity.

Development Project: shall mean a Commercial Activity located at 88 Fifth Street, San Francisco, California (the “Site”), which requires a Permit.

Economically Disadvantaged Individual: shall mean an individual who is either: (a) eligible for services under the Workforce Investment Act of 1998, 29 U.S.C. Section 2801, as determined by the San Francisco Private Industry Council; or (b) designated “economically disadvantaged” by the FSHA as an individual who is at risk of relying upon, or returning to, public assistance.

Employer: shall mean Tenant, Contractor, Developer, agents of the Developer, any Subcontractor of Tenant, any Subtenant or other occupants of Tenant, or any person(s), firm, partnership, corporation, or combination thereof, engaged in the Commercial Activity in the Development Project.

Employer’s Projection of Entry Level Positions Form: means a form including (i) the projected Entry Level Position employment needs under the contract; (ii) a description of such needs by Job Classification; (iii) weekly hours required; (iv) wages to be paid; (v) duration of employment; and (vi) the projected hiring schedule and procedures for each Entry Level Position, including the time and place of hiring for each Entry Level Position.

Entry Level Position: shall mean a non-managerial position that requires either: (a) no education above a high school diploma or certified equivalency; or (b) less than two years of training or specific preparation. It shall include temporary and permanent jobs, and construction jobs related to the Development Project.

First Opportunity: shall mean consideration by an Employer of the San Francisco Workforce Development System referrals for filling Entry Level Positions prior to recruitment and hiring of non-System job applicants.

FSHA: shall mean the First Source Hiring Administration, the body designated to administer and monitor the San Francisco Workforce Development System as set forth in Section 83.6 of the San Francisco Administrative Code.

Good Faith Efforts: shall mean engaged in reasonable employment opportunity outreach including the development of recruitment, interview, hiring and retention plans in collaboration with the San Francisco Workforce Development System.

Interviewing Requirement: shall mean providing a Job Notification to the San Francisco Workforce Development System, receipt of System Referrals and fair consideration of System Referrals for a period of no less than ten (10) days prior to recruitment and hiring of non-System job applicants.

Job Classification: shall mean categorization of employment opportunities or positions by craft, occupational title, skills, and experience required, if any.

Job Notification: Written notice provided to the System from Contractor to FSHA, prior to any other efforts of Contractor to Publicize such Entry Level Position, for any available Entry Level Position during the term of the Contract. The Job Notification must provide to FSHA a clear, minimum bona fide occupational qualifications and accurate job description, including expectations, standard of appearance, weekly hours required, wages to be

paid, duration of employment, and any special requirements (for example, language skills, passage of a drug test by the prospective employee, and possession of a valid driver's license by the employee). Job descriptions must be in accord with the skills, knowledge and abilities that are standard for the industry.

Permit: as of the date hereof, shall mean any building permit application for over 25,000 square feet of Commercial Activity at the Site that involves new construction, an addition, or alteration, and that results in the expansion of entry level positions for the Commercial Activity.

Program: shall mean the First Source Hiring Program set forth in Chapter 83 of the San Francisco Administrative Code.

Property Contract: shall mean the Lease between City and Tenant for the exclusive use of the museum development and related facilities located at the Site that create available Entry Level Positions.

Publicize: shall mean to advertise or post or to participate in job fairs or other forums in which employment information is available.

Qualified: shall mean an Economically Disadvantaged Individual who meets the minimum bona fide occupational qualifications designated and submitted to the San Francisco Workforce Development System by an Employer.

Retention: shall apply to the Entry Level Positions, not to any particular individual.

System: shall mean the San Francisco Workforce Development System established by the City and managed by FSHA for maintaining: (a) a pool of qualified individuals; and (b) the mechanism by which such individuals are certified and referred to prospective Employers covered by the Program.

System Referrals: means referrals by the System of Qualified applicants for Entry Level Positions with Contractor.

Subcontractor: shall mean any person(s), firm, partnership, corporation, or combination thereof (except City) that has a direct contract with Tenant to perform construction work on, or Commercial Activity in, the Development Project.

Subtenant: shall mean any person(s), firm, partnership, corporation, or combination thereof (except City) that has a direct contract with Tenant to sublease, occupy, franchise or license any portion of the Development Project for a period exceeding 29 days.

Tenant: shall mean San Francisco Museum and Historical Society, a California nonprofit corporation.

2. **Good Faith Efforts by Tenant.** Tenant, in its capacity as a Contractor entering into a Property Contract with City, agrees to make Good Faith Efforts to fill all of its Entry Level Positions with System Referrals.

3. **Good Faith Efforts by Subcontractors.** Tenant, in its capacity as a Developer applying for a permit, agrees that in all contracts that it enters into with any Subcontractors with a contract or contracts for the Development Project in the aggregate amount in excess of \$150,000, Tenant shall require said Subcontractors to make Good Faith Efforts to fill their new

hires by trade for the Development Project pursuant to the terms of the Citybuild Program, attached hereto as Exhibit A and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subcontractors from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subcontractor to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 15 of this Agreement against such Subcontractors, but Tenant shall have no further enforcement obligations against such Subcontractors.

4. **Good Faith Efforts by Subtenants.** Tenant, in its capacity as a Contractor entering into a Property Contract with City, further agrees that in all contracts that it enters into with any Subtenants, Tenant shall require said Subtenants to make Good Faith Efforts to fill their Entry Level Positions through System Referrals, and shall incorporate the requirements set forth in this Agreement in all relevant contracts it enters into with Subtenants from and after the date of this Agreement. If the Tenant fulfills its obligations under this Agreement, Tenant shall not be held responsible for the failure of a Subtenant to comply with the requirements of this Agreement or the Program, and City shall then have the remedies available to it under Section 15 of this Agreement against such Subtenants, but Tenant shall have no further enforcement obligations against such Subtenants.

5. **Determination of Good Faith.** Tenant shall be deemed to have used Good Faith Efforts to comply with the obligations and participate in the System under this Agreement if Tenant complies with the requirements of this Agreement and fills at least fifty percent (50%) of its Entry Level Positions through System Referrals. Tenant's failure to meet the criteria set forth in Section 2 above does not impute "bad faith." Failure to meet the criteria set forth in Section 2 above shall trigger a review of the referral process and Tenant's efforts to comply with this Agreement. Such review shall be conducted by FSHA in accordance with this Section. If based on complaint, failure to report, or other cause, the FSHA has reason to question Tenant's, Contractor, Subtenant's or Subcontractor's good faith effort, Tenant, Contractor, Subtenant or Subcontract, as applicable, shall demonstrate to the reasonable satisfaction of the City that it has exercised Good Faith Efforts to satisfy its obligations under this Agreement.

6. **First Opportunity.** Except as to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates, Tenant agrees to offer, and to require its Subcontractors and Subtenants to offer, to the System pursuant to a Job Notification, the First Opportunity to provide Qualified Economically Disadvantaged Individuals for employment consideration in Entry Level Positions, subject to any enforceable collective bargaining agreements. Employers shall give good faith consideration to all applications of Qualified Economically Disadvantaged Individuals referred by the System for employment, review the resumes of all such System Referrals, and conduct interviews for posted Entry Level Positions in accordance with the non-discrimination provisions of this contract. However, if Employers utilize nondiscriminatory screening criteria, Employers shall have the sole discretion to interview, hire or reject System Referrals.

7. **Interviewing Requirements.** The duration of the First Source interviewing requirement shall be for the ten (10) days immediately after Tenant submits a Job Notification for such job (provided, however, that this requirement shall not apply to the extent that Tenant intends to fill an Entry Level Position from a pool of internal candidates). During this period, Employers must Publicize the availability of Entry Level Positions only through the System.

8. **Information to Be Provided by Tenant and Subtenants.** Within thirty (30) days after Tenant takes physical occupancy of the premises under the Lease, Tenant shall complete and submit to the system the Employer's Projection of Entry Level Positions Form. Whenever an Entry Level Position becomes available during the term of the Lease, Tenant shall provide a

Job Notification to the System as soon as reasonably practicable and provide the information requested by FSHA. Tenant further agrees to include language in its Subleases entered into on or after the date of this Agreement, requiring its Subtenants to complete and submit to the System the Employer's Projection of Entry Level Positions Form within thirty (30) days after any Subtenant takes physical occupancy of City premises under a sublease, and to notify the System as soon as reasonably practicable and provide the information requested by FSHA whenever an Entry Level Position becomes available in a Subtenant's company at the Site during the term of the sublease.

9. **Information to Be Provided by Tenant and Subcontractors.** Tenant agrees to include language in its Subcontracts entered into on or after the date of this Agreement, requiring its Subcontractors, prior to commencing construction work at the Site, to complete and submit to the System the Employer's Projection of Entry Level Positions Form, and to submit a Job Notification to the System promptly, and provide the information requested by FSHA, whenever an Entry Level Position construction job becomes available during the period of construction.

10. **Record Keeping and Reporting.**

- (a) Tenant shall maintain accurate records, and shall include language in its Subcontracts and Subleases requiring its Subcontractors and Subtenants to maintain accurate records, demonstrating compliance with the Program, including tracking information on FSHA-approved forms. Tenant's records shall include, without limitation, records for each available Entry Level Position of the number of applicants referred, number of applicants interviewed, number of job offers made, number of applicants hired, and number of applicants rejected. Tenant, Subtenants and Subcontractors must submit completed reporting forms to FSHA quarterly, unless more frequent submittals are reasonably required by FSHA. If a significant number of positions are to be filled during a given period, or other circumstances warrant, FSHA may require daily, weekly, or monthly reports containing all or some of the above information.
- (b) Employers must provide constructive feedback to FSHA on all System Referrals in accordance with the following:
 - (i) If an Employer meets the criteria in Sections 2-4 above, as applicable, that establish Good Faith Efforts, such Employer must only respond orally to follow-up questions asked by the FSHA account executive regarding each System Referral; and
 - (ii) If such Employer is unable to meet the criteria in Sections 2-4 above, as applicable, that establishes Good Faith Efforts, such Employer will be required to provide written comments on all System Referrals
- (c) Each Employer must provide timely notification to FSHA as soon as the job is filled and identify by whom.

11. **Obligations of FSHA.** Tenant acknowledges that pursuant to the Program, the FSHA shall:

- (a) Upon receipt of any Job Notifications from an Employer, immediately initiate recruitment and pre-screening activities.

- (b) Recruit Qualified Economically Disadvantaged Individuals to create a pool of applicants for jobs that match Employers' Job Notification, and, to the extent appropriate, train applicants for jobs that will become available through the Program.
- (c) Screen and refer applicants according to qualifications and specific selection criteria submitted by Employers.
- (d) Provide funding for City-sponsored pre-employment and employment training, and for support services programs.
- (e) Follow-up with Employers on System Referrals and initiate corrective action as necessary to maintain an effective employment/training delivery system.
- (f) Provide Employers with reporting forms for monitoring the requirements of this Agreement.
- (g) Monitor compliance under this Agreement by examining the reporting, notification and tracking forms completed and submitted by Employers and records of Employers as submitted in accordance with the requirements of this Agreement.

12. **Essential Functions.** Nothing in this Agreement precludes an Employer from using temporary or reassigned existing employees to perform essential functions of its operation; provide, however, the obligations of this Agreement to make Good Faith Efforts to fill such vacancies permanently with System Referrals remains in effect. For these purposes, "essential functions" means those functions absolutely necessary to remain open for business.

13. **Collective Bargaining Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement. Notwithstanding any other provision hereunder, if Employer is subject to any collective bargaining agreement(s) requiring compliance with a pre-established applicant referral process, Employer's only obligations with regards to any available Entry Level Positions subject to such collective bargaining agreement(s) during the term of this Agreement shall be the following:

- (a) Employer shall notify the appropriate union(s) of the Employer's obligations under this Agreement and request assistance from the union(s) in referring Qualified applicants for the available Entry Level Position(s), to the extent such referral can conform to the requirements of the collective bargaining agreement(s).
- (b) Employer shall use "name call" privileges, in accordance with the terms of the applicable collective bargaining agreement(s), to seek Qualified applicants from the System for the available Entry Level Position(s).
- (c) Employer shall sponsor Qualified apprenticeship applicants, referred through the System, for applicable union membership.

14. **Hiring Goals Exceeding Obligations of this Agreement.** Nothing in this Agreement shall be interpreted to prohibit the adoption of hiring and Retention goals, first source

hiring and interviewing requirements, notice and job availability requirements, monitoring, record keeping and enforcement requirements and procedures which exceed the requirements of this Agreement.

15. **Remedies.** If Tenant or any of its Subcontractors or Subtenants fail to comply with this Agreement, City is entitled to the remedies set forth in Sections 83.10 and 83.12 of the San Francisco Administrative Code.

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

17. **Notice.** All notices to be given under this Agreement shall be in writing and sent by certified mail, return-receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid in the United States mail, a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or hand delivery, in which case notice shall be deemed delivered on the date received, all as follows:

If to FSHA:

First Source Hiring Administration
3120 Mission Street
San Francisco, CA 94110
Attention: First Source Hiring
Administrator

If to MOEWD:

Mayor's Office of Economic and Workforce
Development
City Hall
1 Dr. Carlton B. Goodlett Place, Rm. 448
San Francisco, CA 94102
Attention: Chris Iglesias

If to Tenant:

San Francisco Museum and Historical
Society
785 Market Street
San Francisco, CA 94103
Attention: Executive Director

18. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

19. **Successors.** This Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Tenant, their obligations shall be joint and several.

20. **Headings.** Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

21. **Governing Law.** This Agreement shall be governed and construed by the laws of the State of California.

IN WITNESS WHEREOF, City and Tenant have executed this First Source Hiring Agreement as of the day and year first above written.

TENANT:

SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation

By: _____
Name: _____
Title: _____

CITY:

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

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Deputy City Attorney

EXHIBIT A TO FIRST SOURCE HIRING AGREEMENT
DOCUMENT 00820

CITYBUILD PILOT PROGRAM

1.1 SUMMARY

- A. Contractor agrees to participate in the CITYBUILD Pilot Program to promote and ensure equal employment opportunities for economically disadvantaged persons of all ethnic backgrounds and genders in the construction work force.
- B. Under San Francisco Administrative Code Chapter 6, Section 6.22(G), contractors are required to hire qualified individuals who are economically disadvantaged and residents of the City and County of San Francisco, to comprise not less than 50% of each contractor's total construction work force. This Document 00820 incorporates the requirements of the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83), which requires that contractors provide hiring opportunities for economically disadvantaged persons.
- C. The CITYBUILD workforce goals, and the program requirements for achieving such goals, are set forth below.
- D. As part of its participation, Contractor shall incorporate the provisions of this Document 00820 into any subcontract on this Project (regardless of tier) in excess of \$150,000, and shall require such subcontractors to do the same. The term "Contractor," for the purposes of this Document 00820, shall mean any San Francisco public work contractor or subcontractor, regardless of tier, whose subcontract on this Project exceeds \$150,000.

1.2 CITYBUILD WORKFORCE GOALS

- A. The workforce goals set forth below are expressed as Contractor's new hires by trade for the Project. For example, if the Contractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then the goal for carpentry on this Project is based on the two additional opportunities ("new hires").
- B. The workforce participation goal is **50% of the new hires** for work in **each trade**.
- C. Contractor may achieve the goal in any of the following ways:
 - Employment of workers referred through CITYBUILD program services or other community organizations, including union hiring halls, approved by the CITYBUILD program.
 - Employment of apprentices. If a CITYBUILD referral, or other eligible individual as approved by the CITYBUILD program, participates in a state-approved apprenticeship class or other formal training for construction trade work during the course of the Project, the Contractor may count the worker toward meeting the workforce participation goal.
 - Employment of a CITYBUILD referral on a construction project other than this Project, during the course of this Project, so long as Contractor documents such employment in conformance with the requirements of San Francisco Administrative Code Chapter 6.

1.3 CITYBUILD PROGRAM REQUIREMENTS

- A. Contractor shall make good faith efforts to achieve the CITYBUILD workforce goals, as follows:

- Provide written notification to CITYBUILD staff the number of employment opportunities Contractor has available.
 - Upon direction from CITYBUILD staff, follow-up with any organizations designated by CITYBUILD to obtain referrals, and maintain a record of such organizations' responses.
 - Instruct all foremen, superintendents, and other on-site supervisory personnel as to the CITYBUILD program and the program requirements.
 - Attend and notify all subcontractors concerning mandatory pre-construction meeting as described in **paragraph 1.4** below.
 - Provide immediate written notification to CITYBUILD staff when a community-based organization or union has not referred to the Contractor a person or persons as requested by the Contractor.
 - Ensure that all CITYBUILD referrals engage in meaningful work that will provide advancement in the person's specific trade.
 - Designate a responsible official to monitor all employment-related activity, and to work with CITYBUILD staff.
 - Comply with the documentation requirements as set forth in **paragraph 1.5** below.
- B. Contractor may refer-back a CITYBUILD worker to the CITYBUILD program within seven working days of the referral. Contractor may do so only upon a written statement as to why the employee was unsuitable to Contractor. CITYBUILD will endeavor to replace the referral as soon as possible.
- C. In the employment of apprentices under the CITYBUILD Program, Contractor must maintain the proper ratio of apprentices to journeymen for each trade on the job site. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, the Contractor must employ such apprentices and trainees during the training period, and the Contractor must commit to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT"), or the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS"). Courses offered by City College of San Francisco and other community college districts will also be considered.
- D. Contractor shall comply with its obligations under this program, and shall make a good faith effort to achieve each goal in each trade in which it has employees performing work for the project. The overall good faith performance by other contractors or subcontractors toward a goal does not excuse any covered contractor's failure to make good faith efforts to achieve the goals.
- E. The failure by a community-based organization or union to refer economically disadvantaged persons shall not excuse the Contractor's obligations under this program.
- F. The Contractor shall not discriminate against any person because of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation. No employee to whom the CITYBUILD provisions of this program are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding against a Contractor.

- G. Contractors are encouraged to participate in voluntary industry associations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may demonstrate good faith efforts under the CITYBUILD program, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of economically disadvantaged individuals in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's diversity work force composition, makes a good faith effort to meet its individual goals, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a excuse for noncompliance.

1.4 PRECONSTRUCTION MEETING

- A. Prior to commencement of construction, Contractor shall attend a preconstruction meeting convened by CITYBUILD staff. The City shall also invite outreach organizations to review the reporting requirements, the prospective work force composition and any problems that may be anticipated in meeting the work force goals. Representatives from the contractor(s) must have hiring authority.
- B. Any subcontractor at any tier whose contract is subject to CITYBUILD participation, who does not attend such a meeting, shall not be permitted on the job site. CITYBUILD staff shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the City ordering a suspension of work by the Contractor until the breach has been cured.

1.5 DOCUMENTATION AND RECORDS

- A. Upon request by CITYBUILD program staff, Contractor shall make all payroll documentation and records required under San Francisco Administrative Code Chapter 6.
- B. Contractor shall permit representatives of CITYBUILD staff to interview employees during working hours on the job.
- C. Upon request by CITYBUILD program staff, Contractor shall provide documentation of its efforts as required the provisions of this Document 00820.

1.6 TERM

The obligations of the Contractors with respect to their construction work forces, as set forth in this Program, shall remain in effect until completion of all work to be performed by the Contractor under the terms and conditions of this Agreement.

EXHIBIT P-2

WORKFORCE HIRING PROGRAM

[ATTACHED]

EXHIBIT Q

FORM OF MEMORANDUM OF AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

SAN FRANCISCO MUSEUM AND
HISTORICAL SOCIETY
785 Market Street
San Francisco, CA 94103
Attention: Executive Director

FOR RECORDER'S USE ONLY

MEMORANDUM OF DEVELOPMENT AGREEMENT

This MEMORANDUM OF DEVELOPMENT AGREEMENT ("Memorandum") is dated as of __, 2006, and is by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), acting by and through its Office of Administrative Services and SAN FRANCISCO MUSEUM AND HISTORICAL SOCIETY, a California nonprofit corporation ("Developer").

Recitals

A. Concurrently herewith, City and Developer have entered into the Old Mint Lease Disposition and Development Agreement ("DDA"), dated as of _____, 2006, under which City agrees to lease to Developer certain real property described in Exhibit A attached hereto (the "Premises"), and Developer agrees to lease the Premises from City and to construct certain improvements thereon, subject to the terms and conditions contained in the DDA. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the DDA.

B. City and Developer desire to execute this Memorandum to provide constructive notice of each of their rights under the DDA to all third parties.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term; Effect of Recordation of Certificate of Completion. Subject to the terms and conditions of the DDA, the term of the DDA will end when City records a Certificate of Completion in the Official Records of the City and County of San Francisco, unless the DDA is earlier terminated in accordance with the provisions of the DDA. Recording of the Certificate of Completion by City will automatically terminate the DDA, and after such recording, the DDA shall have no further force or effect, except as otherwise set forth therein.

2. DDA Terms. The DDA is incorporated by reference in its entirety in this Memorandum. In the event of any conflict or inconsistency between this Memorandum and the DDA, the DDA shall control.

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

IN WITNESS WHEREOF, Developer and City hereto have caused this Memorandum of Development Agreement to be executed by their duly appointed representatives as of the date first above written.

DEVELOPER:

SAN FRANCISCO MUSEUM AND
HISTORICAL SOCIETY, a California
nonprofit corporation

By: _____
Name: _____
Title: _____

CITY:

CITY AND COUNTY OF
SAN FRANCISCO, a municipal corporation,

By: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT R

FORM OF DDA PERMIT TO ENTER