ORDINANCE NO. 20-020

An Ordinance Of The City Council Of The City Of Emeryville Approving And Authorizing The City Manager To Enter Into And Execute A Lease Disposition And Development Agreement Between The City Of Emeryville And 4060 Hollis, LLC And Related Ground Lease For The Development And Operation Of An Art Center At 4060 Hollis Street, Emeryville, California (APN 049-0618-004) And Authorizing The City Manager To Take Action To Effectuate The Lease Disposition and Development Agreement And Related Ground Lease (CEQA Status: Exempt Pursuant To State CEQA Guidelines Sections 15301 and 15332)

WHEREAS, in March 2006, the Emeryville Redevelopment Agency ("Agency") purchased the former United Stamping Company building at 4060 Hollis Street ("Site") for the purpose of establishing an arts and cultural facility (the "Art Center"); and

WHEREAS, in December 2010, the Agency entered into an Exclusive Right to Negotiate Agreement with Emeryville Center for the Arts ("ECA"), a non-profit entity created to operate the Art Center; and

WHEREAS, on September 22, 2011, the Emeryville Planning Commission approved a Conditional Use Permit and Design Review application for ECA's adaptive reuse of the property as an Art Center; and

WHEREAS, in 2012, the State of California dissolved all redevelopment agencies statewide, and, as a consequence, the Art Center project was postponed until adequate funds could be identified; and

WHEREAS, shortly after the Agency was dissolved, ECA was dissolved as an entity; and

WHEREAS, the City was ultimately able to retain the Site and the Site was legally transferred to the City from the Successor Agency to the Emeryville Redevelopment Agency ("Successor Agency") on September 5, 2017 in accordance with the Long Range Property Management Plan prepared by the Successor Agency; and

WHEREAS, on January 16, 2018, the City Council held a study session regarding redevelopment of the Site as an Art Center ("Project"), directed staff to pursue a public-private partnership approach, and approved a draft Request for Qualifications/Proposals ("RFQP") to solicit developer interest in partnering with the City for development of the Art Center; and

WHEREAS, following the release of the RFQP on February 12, 2018, and publication of notice of the release of the RFQP in the East Bay Times and the San Francisco Chronicle, the City received nine responses by the April 13, 2018 deadline; and

WHEREAS, on September 17, 2018 the City Council adopted Resolution No. 18-160 authorizing the City Manager to negotiate an Exclusive Right to Negotiate Agreement with Orton Development, Inc. ("ODI") to implement the Project; and

WHEREAS, ODI has formed 4060 Hollis, LLC as a single purpose entity for the purposes of entering into a Lease Disposition and Development Agreement and a related Ground Lease (the "LDDA") to construct the Project and operate the Art Center; and

WHEREAS, on August 27, 2020 the Emeryville Planning Commission approved an application for a Conditional Use Permit and Design Review permit for the Project (UPDR18-006) and adopted a resolution approving the General Plan Conformity Report for the Art Center Project; and

WHEREAS, the City and 4060 Hollis, LLC desire to enter into a LDDA for the construction of the Project, and pursuant to Government Code section 37380, a Ground Lease (attached as Exhibit E to the LDDA) ("Ground Lease") to operate the Art Center;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. TITLE

This Ordinance shall be known as the "Art Center Lease Disposition and Development Agreement and Ground Lease Ordinance."

SECTION TWO. FINDINGS AND PURPOSES DECLARATION

The purpose of this ordinance is to facilitate the development of an arts and cultural facility on City-owned property located at 4060 Hollis Street, Emeryville, California. The arts and cultural facility is to provide (1) dedicated space for the annual Emeryville Celebration of the Arts, (2) dedicated and managed gallery space for artists, (3) flexible space suitable for performing arts and other community events, and (4) other uses to support fiscal sustainability of the arts and cultural facility. The City Council finds that, by awarding the LDDA and Ground Lease to 4060 Hollis Street, LLC, the City will realize the greatest economic return because Project proposed by ODI is self-sustaining and does not call for any on-going City subsidy.

SECTION THREE. APPROVAL AND AUTHORIZATION TO EXECUTE LEASE DISPOSITION AND DEVELOPMENT AGREEMENT AND GROUND LEASE

The City Council hereby approves and authorizes the City Manager to execute and enter into a LDDA that is substantially the same form as the LDDA attached hereto as Exhibit A. The City Council hereby approves and authorizes the City Manager to execute and enter into a Ground Lease for a total term of 64 years, that is in substantially the same form as the Ground Lease attached as Exhibit E to the LDDA, provided the terms and conditions precedent to execution of the Ground Lease as set forth in the LDDA executed by the parties are satisfied.

SECTION FOUR. APPROVAL AND AUTHORIZATION TO EXECUTE AGREEMENTS

The City Council hereby approves and authorizes the City Manager to execute and enter into agreements necessary to implement the LDDA with 4060 Hollis LLC, including license(s) for construction, parking and access as contemplated in the LDDA.

SECTION FIVE. APPROVAL AND AUTHORIZATION TO EXECUTE AMENDMENTS

A) Minor Amendments: The City Council hereby authorizes the City Manager to execute and enter into amendments to the LDDA and Ground Lease with 4060 Hollis LLC as may be agreed to by the City Manager and approved as to form by the City Attorney that do not materially increase the obligations of the City thereunder.

B) Major Amendments: For any amendments not characterized as Minor Amendments pursuant to Section 5(A) of this ordinance, the City Council is authorized to approve any such amendments to the LDDA and Ground Lease by a resolution of the City Council.

SECTION SIX. CEQA DETERMINATION

The City Council finds that adoption of this ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15301 because the project entails the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use; and Section 15332 governing infill development projects because (i) the project is consistent with the Emeryville General Plan and Planning regulations, (ii) the development will be constructed on a site of no more than 5 acres (the Site is approximately .7 acres) and is surrounded by urban uses, (iii) the Site has no value is habitat for endangered, rare or threatened species, (iv) approval of the project will not result in any significant effects relating to traffic, noise, air quality or water quality, and (v) the Site is adequately served by all required utilities and public service.

SECTION SEVEN. SEVERABILITY

Every section, paragraph, clause, and phrase of this ordinance is hereby declared to be severable. If for any reason, any section, paragraph, clause, or phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining section, paragraphs, clauses or phrases.

SECTION EIGHT. EFFECTIVE DATE

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code section 33693.

SECTION NINE. CODIFICATION

This ordinance shall NOT be codified.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, Tuesday, September 1, 2020, and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday, September 15, 2020 by the following vote:

AYES:	5	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	

DocuSigned by:
Christian R. Patz
49BC4DC144904C0...
MAYOR

ATTEST:

DocuSigned by:
Sheri Hartz
FB7B5D8EAB6A4BE...
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

ATTACHMENT:

Exhibit A: Lease Disposition and Development Agreement with 4060 Hollis, LLC

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF EMERYVILLE,

AND

4060 HOLLIS LLC

Dated as of _____

Exhibit A

LEASE DISPOSITION AND DEVELOPMENT AGREEMENT
(Emeryville Arts Center)

This Lease Disposition and Development Agreement (the "Agreement") is entered into as of _____, 2020 (the "Effective Date"), by and between the City of Emeryville, a municipal corporation (the "City"), and 4060 Hollis LLC, a Delaware limited liability company (the "Developer"), with reference to the following facts, understandings and intentions of the parties:

RECITALS

A. These Recitals refer to and utilize certain capitalized terms which are defined in Article 1 of this Agreement. The Parties intend to refer to those definitions in connection with the use of capitalized terms in these Recitals.

B. The City owns the Property, which is located in the 4060 Hollis Street (APN No. 049-0618-004-00), as more particularly described in the attached Exhibit A. The Property currently is improved with a vacant single-story unreinforced masonry brick building with approximately 30,000 square feet ("Existing Building"). The Existing Building is designated a "Significant Structure" per Emeryville Municipal Code §9-5.1210.

C. The City acquired the Property from the Successor Agency to the Emeryville Redevelopment Agency in accordance with the Long Range Property Management Plan ("LRPMP) approved by the California Department of Finance. The LRPMP designated the Property as government use property.

D. The former Emeryville Redevelopment Agency acquired the Property for the purposes of adaptive reuse of the Existing Building to provide, among other uses, space for the annual Emeryville Celebration of the Arts as well as a year round gallery and performing arts space ("Emeryville Arts Center").

E. The City desires that the Property and the Existing Building be redeveloped to include (1) dedicated space for the annual Emeryville Celebration of the Arts, (2) dedicated and managed gallery space for artists, (3) flexible space suitable for performing arts and other community events, and (4) other uses to support fiscal sustainability of the Development.

F. The City issued a Request for Qualifications and Proposals ("RFQP) in February 2018 for a developer operator of the Property. The City received proposals from various developers and after a review and selection process, the City Council adopted Resolution No. 18-130, selecting Orton Development, Incorporated and authorizing the City Manager to enter into negotiations for an ERN.

G. Pursuant to Resolution No. 18-160, the City and Orton Development Incorporated entered into an ERN on December 16, 2018 which provided for an initial negotiation period of 180 days. An amendment to the ERN was executed by the City Manager in July 2019 extending the ERN for an additional 60 days. The City Council adopted Resolution No. 19-15 at its September 3, 2019 regular meeting authorizing a further extension of the ERN for an additional

90 days to allow the City and Orton Development Incorporated to negotiate the terms of this Agreement.

H. Orton Development Incorporated has formed the Developer as a single purpose entity for the purpose of entering into this Agreement and the Ground Lease and completing and operating the Development.

I. The City desires to lease the Property to the Developer in accordance with the provisions of this Agreement and the Ground Lease attached hereto in order to facilitate the development and operation of an arts and cultural center benefiting the citizens of Emeryville and the general public.

J. On August 27, 2020 the City of Emeryville Planning Commission adopted Resolution 20-____, (1) determining that the Development was exempt from CEQA pursuant to Section 15332 of the CEQA Guidelines and that the Development was consistent with the City's General Plan and (2) approving the City Discretionary Approvals.

K. In accordance with the ERN, the City and the Developer have established the terms and conditions for the conveyance of the leasehold interest in the Property to the Developer, the redevelopment of the Existing Building to provide an arts and cultural center, the use of certain City-owned property as well as other property for parking and other ancillary uses, and the ongoing operation of the Emeryville Arts Center upon completion of the redevelopment. The City has determined that the Developer has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement.

L. To effectuate the redevelopment of the Existing Building and the operation of the Emeryville Arts Center, upon the Developer's satisfaction of the conditions set forth below, the City will convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease, and the City will provide the City Funds to the Developer to assist in financing the redevelopment of the Existing Building.

THEREFORE, the Parties agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Agreement.

ARTICLE 1.
DEFINITIONS AND EXHIBITS

Section 1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, the following definitions shall apply throughout this Agreement.

(a) "Agency" means the former Emeryville Redevelopment Agency, a public body, corporate and politic.

(b) "Approved Plans" means the conceptual plans for the Initial Improvements approved by the City in conjunction with discretionary land use approvals, which are set forth in Exhibit D.

(c) "Arts Management Plan" means the plan to be submitted by the Developer to the City for its approval prior to the Close of Escrow that will set forth (1) the designated community foundation to manage the Operating Fund and any agreement with such community foundation, (2) the marketing plan for the completed improvements, (3) the procedures for the implementation and monitoring of the use restrictions applicable to the Arts Dedicated Spaces and (4) policies and procedures related to the management and use of the Operating Fund.

(d) "Art Uses" means any of the following:

(1) Arts production. Practice of an art or craft such as studios for art production including, without limitation, painting, photography, jewelry, glass, textile, graphic art, and pottery studios, with or without sales of materials produced on-site. Art production on a medium or large scale generally using heavy equipment may be allowed where it does not interfere with the reasonable operation of other uses in the Improvements and may include large scale metal and wood working studios and recording studios only if designed for the purpose of recording, editing, producing or broadcasting live and/or recorded music or videos.

(2) Flexible Gallery. Display and selling of art. Typical uses include, but are not limited to, art galleries and show rooms.

(3) Indoor Entertainment. Indoor entertainment uses, including, without limitation, a pop-up movie theater, rehearsal space, concert hall, and playhouse (live theatre or creative digital/tech presentations).

(4) Arts-based Instructional Services. Services for the purpose of personal enrichment related specifically to the arts. Typical uses include classes or instruction in music, art, or STEAM-based academics (instruction providing a connection between science/technology/engineering/art/math disciplines).

(5) Libraries and Museums. Uses primarily engaged in public access to, and preservation of, items that promote the arts. This may also include items of historical value. Activities associated with Libraries and Museums may include related gatherings, events and performances as well as accessory uses including gift shops, cafes and auditoriums.

(6) Arts-Supportive Uses. Uses that are (a) allowed by the underlying zoning or permitted by any use permit issued for the Property and (b) directly supportive of the arts; provided, however, Arts-Supportive Uses that are the primary use intended for the applicable space may not occupy more than fifty percent (50%) of the Arts Dedicated Spaces. Typical Arts-Supportive Uses include, without limitation, facilities with a primary focus on support of the arts such as a printing press dedicated to art production, offices such as legal services or foundations with a focus primarily on support and promotion of the arts, production or sale of musical instruments, or the retail of arts supplies, dance or theatre arts materials.

(e) "Arts Dedicated Spaces" means the approximately 20,000 square feet of the Improvements that is (1) subject to the use restrictions set forth in Section 5.1(a) of the Ground Lease and (2) designated as Areas "2" and "3" on the floor plan included in the Scope of Development attached as Exhibit C.

(f) "Assignment of Documents" means the Assignment of Agreements, Plans and Specifications, and Approvals, substantially in the form attached as Exhibit F.

(g) "Besler Parking Lot" means that certain portion of the Parking Lot adjacent to the Property commonly referred to as APN Number 49-618-2-3.

(h) "Building Permit" means the building permit and all other ministerial construction permits required from the City and other governmental agencies to construct the Improvements.

(i) "CEQA" means the California Environmental Quality Act (Public Resource Code 21000 et seq.), and its implementing regulations.

(j) "Certificate of Occupancy" means a final certificate of occupancy issued by the City for the Improvements, or equivalent final inspection.

(k) "City" means the City of Emeryville, a municipal corporation.

(l) "City Discretionary Approvals" means the discretionary approvals approved by the City Planning Commission pursuant to the Resolution referenced in Recital (J), above, which approvals are (1) all of the discretionary approvals required to be obtained from the City for the Development, and (2) include, but are not limited to, conditional use and design review permits and any approvals required to reconfigure the Parking Lot as contemplated in the Pedestrian, Vehicle and Parking License and the Temporary Right of Entry and License Agreement for Construction Staging, as applicable.

(m) "City Council" means the city council of the City.

(n) "City Documents" means, collectively, this Agreement, the Ground Lease, the ERN, the Assignment of Documents, all documents executed by the Developer in favor of the City in accordance with the ERN and this Agreement, and all other documents required by the City to be executed by the Developer in connection with the transaction contemplated by this Agreement. "City Document" means any of the City Documents.

(o) "City Funds" means an amount not to exceed Ten Million Eight Hundred Thousand Dollars ($10,800,000) in City funds earmarked for the Emeryville Arts Center, Nine Million Eight Hundred and Eighty Thousand Dollars ($9,800,000) of which is the Construction Component, and One Million ($1,000,000) of which is to be set aside for the Operating Fund.

(p) "City Parking Lot" means that certain portion of the Parking Lot adjacent to the Property commonly referred to as APN Numbers 49-618-2-2, and 29.

(q) "Close of Escrow" means the date on which the leasehold interest in the Property is conveyed to the Developer by the City pursuant to the Ground Lease.

(r) "Commercial Component" means the café space, the studio space and office space as designated on the site plan included in Exhibit C, attached hereto, as spaces 1, 2 and 4.

(s) "Community Outreach Plan" means the plan to be prepared by Developer and submitted to the City setting forth the Developer's detailed plan for outreach to the Local Arts Community regarding the programming and marketing of the Arts Dedicated Spaces.

(t) "Construction Component" means the portion of the City Funds in the amount not to exceed Nine Million Eight Hundred Thousand Dollars ($9,800,000) to be used for the redevelopment of the Existing Building consistent with the Scope of Development and the Approved Plans.

(u) "Construction Plans" means the final construction plans for the construction of the Initial Improvements as approved by the City in accordance with Section 2.8.

(v) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(w) "County" means the County of Alameda, California.

(x) "Default" has the meaning set forth in Section 7.3.

(y) "Developer" means 4060 Hollis LLC, a California limited liability company and its successors and assigns as permitted by this Agreement.

(z) "Developer Equity Funds" means the Developer's financial contribution to the Development and shall not include any loan funds or the City Funds. Developer Equity Funds include, without limitation, Developer funds expended on the design, entitlement, construction of the Development and as required under the Ground Lease.

(aa) "Developer Event of Default" has the meaning set forth in Section 7.3.

(bb) "Developer Fee" has the meaning set forth in Section 5.3.

(cc) "Development" means the Developer's design, planning and construction of the Improvements in accordance with the terms of this Agreement and the Lease.

(dd) "Development Costs" means all costs of design, engineering, entitlement, permitting and construction of the Improvements in accordance with the Scope of Development, but shall exclude the Developer Fee.

(ee) "Development Schedule" means the schedule attached as Exhibit B, as approved by the City setting forth the anticipated schedule for the Developer's acquisition of the leasehold interest in the Property and the development of the Initial Improvements.

(ff) "Effective Date" means the date this Agreement is entered into by the Parties as first written above.

(gg) "ERN" means that certain Exclusive Right to Negotiate dated as of December 18, 2018 as amended by the First Amendment to the Exclusive Right to Negotiate dated July 5, 2019 and as further amended by the Second Amendment to the Exclusive Right to Negotiate dated September 19, 2019, by and between the City and Orton Development Incorporated.

(hh) "Financing Plan" means the Developer's plan for financing the design, engineering and construction of the Initial Improvements, including a detailed development budget, if applicable, construction and permanent financing commitment letters, to be approved by the City pursuant to Section 2.3, and which may be revised from time to time with the approval of the City pursuant to Section 2.3.

(ii) "Gallery Lease" means the sublease between the Developer and the Gallery Operator pursuant to which the Gallery Operator will manage, operate and program the Arts Dedicated Spaces.

(jj) "Gallery Operator" means the non-profit entity to be formed by the Developer pursuant to the documents approved by the City pursuant to Section 2.5, below . The Gallery Operator is expected to enter into the Gallery Lease with the Developer

(kk) "Ground Lease" means the ground lease, substantially in the form attached as Exhibit E, to be executed by the City and the Developer at the Close of Escrow.

(ll) "Hazardous Materials" means: any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code as amended from time to time;

(1) any "hazardous waste," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code as amended from time to time;

(2) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA (42 U.S.C. Section 9601 et seq., Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.), Safe Drinking Water Act (42 U.S.C. Section 300(f) et seq.), Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), Clear Air Act (42 U.S.C. Section 7401 et seq.), California

Health and Safety Code (Section 25100 et seq., Section 39000 et seq.), or California Water Code (Section 13000 et seq.) as amended from time to time; and

(3) any additional wastes, substances or materials which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Property or the Improvements.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products, art supplies, or janitorial supply products customarily used in the construction, maintenance, construction, or management of art facilities, or typically used in office activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Sections 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Property, including, but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine.

(mm) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials in, on or under the Property or the Improvements or any portion thereof.

(nn) "Initial Improvements" means the Existing Building located on the Property as improved in accordance with this Agreement and the Scope of Development attached as Exhibit C, including, without limitation (i) new structural components (aside from load bearing demising walls); (ii) building facades; (iii) roof demolition, repair, replacement and alteration; (iv) primary components for building systems (electrical, mechanical, plumbing); and (v) completion of Arts Dedicated Spaces and co-working, office and studio spaces to a finished condition, including tenant improvements and completion of the café space to a "cold shell" condition.

(oo) "Local Arts Community" means artists and arts organizations located in Alameda County, Contra Costa County and the City and County of San Francisco.

(pp) "Memorandum of Ground Lease" means the memorandum of the Ground Lease to be recorded against the Property at the Close of Escrow.

(qq) "Official Records" means the official land records of the County.

(rr) "Parking Lot" means the Besler Parking Lot and the City Parking Lot.

(ss) "Parties" means, collectively, the City, and the Developer. "Party" shall refer to either of the Parties.

(tt) "Pedestrian, Vehicle and Parking and Operations License" means that certain agreement between the City and the Developer whereby the Developer will be provided a license to reconfigure the Parking Lot, use parking spaces in the Parking Lot, install and use a trash enclosure within the Parking Lot, install and use certain drainage and utility improvements within the Parking Lot and install, use an ADA access ramp for ingress and egress to and from the Property and use the courtyard area for ingress and egress.

(uu) "Property" means the real property to be developed by the Developer pursuant to this Agreement, which real property is more particularly described in Exhibit A.

(vv) "Scope of Development" means the description of the basic physical characteristics of the Development which will serve as a basis for the Developer's application for the City Discretionary Approvals and for the preparation of the Construction Plans. The Scope of Development is attached to this Agreement as Exhibit C.

(ww) "Supplemental Financing" means any financing received by the Developer for the Development, other than the City Funds.

(xx) "Term" means the term of this Agreement, which shall consist of the period commencing as of the Effective Date and continuing until the first (1st) anniversary of the date of the issuance of the Certificate of Occupancy for the Development (as defined in the Ground Lease).

(yy) "Title Company" means Chicago Title Company, or such other title company as the Parties may mutually select.

(zz) "Title Report" means that certain title report dated July 15, 2019, issued by the Title Company for the Property.

(aaa) "Transfer" has the meaning set forth in Section 6.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated in the Agreement:

Exhibit A: Legal Description of the Property
Exhibit B: Development Schedule
Exhibit C: Scope of Development
Exhibit D: Approved Plans
Exhibit E: Ground Lease
Exhibit F: Assignment of Documents

ARTICLE 2.
PREDISPOSITION REQUIREMENTS FOR CONVEYANCE OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 2.1 Conditions Precedent to Disposition of the Leasehold Interest in the Property.

The requirements set forth in this Article 2 are conditions precedent to the City's obligation to convey the leasehold interest in the Property to the Developer pursuant to the Ground Lease. The City shall have no obligation to convey the leasehold interest in the Property to the Developer unless the Developer has satisfied the conditions precedent set forth in this Article 2 in the manner set forth below and within the timeframe set forth in the Development Schedule.

Section 2.2 City Discretionary Approvals.

The Parties hereby acknowledge the prior satisfaction of the condition precedent related to the City's approval of the City Discretionary Approvals.

Section 2.3 Financing Plan.

(a) City Review of Proposed Financing Plan. No later than the date set forth in the Development Schedule, the Developer shall submit a Financing Plan showing an itemized budget for the Development Costs. The City shall reasonably approve or disapprove the revised Financing Plan in writing within thirty (30) calendar days of the City's receipt of the Financing Plan; provided, however, in no event shall the City approve of any Financing Plan that requires, or contemplates that: (i) encumbrance of the City's fee interest in the Property or the Developer's leasehold interest in the Property; (ii) the Development Costs exceeds Nine Million Eight Hundred Thousand Dollars ($9,800,000) unless the Developer has obtained Supplemental Financing or the Developer has committed Developer Equity Funds in an amount necessary to fund the difference and the Financing Plan includes evidence of available equity satisfactory to the City or (iii) the Development Costs exceed Twelve Million Nine Hundred Thousand Dollars ($12,900,000), regardless of any Supplemental Financing obtained by the Developer or available Developer Equity. With regard to (iii), the Financing Plan may be approved by the City if Development Costs exceed Twelve Million Nine Hundred Thousand Dollars ($12,900,000) only if Developer has secured a grant or philanthropic donation for the Development Costs in excess of Twelve Million Nine Hundred Thousand Dollars ($12,900,000), and that such grant or donation does not require any matching funds.

The Developer shall not rely on the City's approval of the Financing Plan as a representation of any kind, including but not limited to the business advantage of the terms of any of the Supplemental Financing or any documentation thereof. The City's approval shall merely constitute satisfaction of the condition set forth in this Section. If the Financing Plan is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Financing Plan. The provisions of this Section relating to time periods for approval, disapproval and resubmission of a new Financing Plan shall continue to apply until the revised Financing Plan has been approved by the City; provided, however, that if the City's approval of the revised Financing Plan has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 7.

Section 2.4 Operating Pro Forma

No later than the date set forth in the Development Schedule, the Developer shall submit a ten-year operating pro forma for the completed Initial Improvements showing all costs and revenues. The City shall reasonably approve or disapprove the operating pro forma in writing within thirty (30) calendar days of the City's receipt of all such documentation; provided, however, in no event, shall the City approve of any operating pro forma that requires or contemplates that the City contribute funds to the operation of the Initial Improvements, other than the City's initial One Million Dollar ($1,000,000) contribution to the Operating Fund and the City's contribution of its share of operating revenue as described in the Lease.

The Developer shall not rely on the City's approval of the operating pro forma as a representation of any kind. The City's approval shall merely constitute satisfaction of the condition set forth in this Section. If the operating pro forma is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised operating pro forma. The provisions of this Section relating to time periods for approval, disapproval and resubmission of a new operating pro forma shall continue to apply until the operating pro forma has been approved by the City; provided, however, that if the City's approval of the operating pro forma has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 7.

Section 2.5 Gallery Operator

No later than the date set forth in the Development Schedule, the Developer shall have submitted to the City for its approval the organizational documents evidencing that the Gallery Operator is a validly formed entity with authority to conduct business in the State of California as well as any agreements between the Developer and the Gallery Operator including any sublease to be entered into pursuant to the Ground Lease and any operating agreements or other agreements. The City shall reasonably approve or disapprove the Gallery Operator organizational documents and agreements in writing within thirty (30) calendar days of the City's receipt of such documents. If the Gallery Operator is disapproved by the City or any agreements with the Gallery Operator are disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit revised Gallery Operator documents. The provisions of this Section relating to time periods for approval, disapproval and resubmission of the Gallery Operator documents will continue until the Gallery Operator organizational documents and the Gallery Operator sublease has been approved by the City, provided, however, that if the City's approval of the Gallery Operator organizational documents or the Gallery Operator's sublease has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 7.

Section 2.6 Arts Management Plan

No later than the date set forth in the Development Schedule, the Developer shall have submitted to the City for its approval the Arts Management Plan. The City shall reasonably approve or disapprove the Arts Management Plan in writing within thirty (30) calendar days of the City receipt of the Arts Management Plan. If the Arts Management Plan is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Arts Management Plan. The provisions of this Section relating to time periods for approval, disapproval and resubmission of the Arts Management Plan shall continue to apply until the Arts Management Plan has been approved by the City; provided, however, that if the City's approval of the Arts Management Plan has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 7.

Section 2.7 Community Outreach Plan.

No later than the date set forth in the Development Schedule, the Developer shall have submitted to the City the Community Outreach Plan. The City shall reasonably approve or disapprove the Community Outreach Plan in writing within thirty (30) calendar days of the City receipt of the Community Outreach Plan. If the Community Outreach Plan is disapproved by the City, the Developer shall have fifteen (15) calendar days from the date of the Developer's receipt of the City's notice of disapproval to submit a revised Community Outreach Plan. The provisions of this Section relating to time periods for approval, disapproval and resubmission of the Community Outreach Plan shall continue to apply until the Community Outreach Plan has been approved by the City; provided, however, that if the City's approval of the Community Outreach Plan has not been obtained by the date set forth in the Development Schedule, the City may terminate this Agreement pursuant to Article 7.

Section 2.8 Construction Plans and Building Permit.

(a) The Developer shall prepare final construction plans for the construction of the Initial Improvements that (1) are materially consistent with the Approved Plans, (2) consist of all construction documentation upon which the Developer and its contractors shall rely in building the Initial Improvements, and (3) include (without limitation) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications, mechanical, plumbing and HVAC (also known as "working drawings"). Prior to submitting the same pursuant to Section 2.8(b), below, and no later than the date set forth in the Development Schedule, the Developer shall submit the proposed "90%" final construction plans to the City for its proprietary review pursuant to Section 2.8(d), below.

(b) No later than the date set forth in the Development Schedule, the Developer shall apply for the City's regulatory building permit plan check approval of the final construction drawings for the Initial Improvements. After submitting applications for Building Permits as set forth above, the Developer shall diligently pursue and obtain the Building Permits for the Initial Improvements, no later than the date set forth in the Development Schedule. For the purposes of this Agreement, the Developer shall be deemed to have satisfied the condition precedent to obtain the Building Permit for the Initial Improvements by delivering evidence to the City that the Developer has received an Issue Ready Letter from the City to complete the following portion of the Initial Improvements; (1) interior demolition and clean up; and (2) if required to complete the Initial Improvements, (A) brick re-pointing; (B) temporary shoring; and (C) environmental abatement. Only upon delivery to the City of such evidence in a form reasonably satisfactory to the City shall the predisposition condition of this Section be deemed met.

(c) As set forth in Section 8.15, the Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits and in no way limits the discretion of the City in the permit approval process. The Developer's failure to satisfy the requirements of this Section by the specific date set forth in the Development Schedule shall constitute a Default pursuant to Article 7.

(d) In reviewing the 90% final construction plans submitted pursuant to Section 2.8(a), the City shall have the right to review and reasonably approve the proposed plans for conformance with the Scope of Development, the Approved Plans, and the other requirements of this Agreement. The Developer acknowledges that the City's right to review and

approve the proposed construction plans as allowed by this paragraph is in addition to, and shall not be limited by, the City's regulatory obligation to review the Developer's proposed construction plans for consistency with applicable building and construction code requirements. The Developer further acknowledges that the City shall have no obligation to approve such proposed plans in the event that the Developer fails to incorporate the City's reasonably requested changes or modifications to the proposed construction plans to conform to the Approved Plans and the Scope of Development.

(e) As approved, the final construction plans for the applicable component of the Improvements shall be referred to as the "Construction Plans". Following the Close of Escrow, any proposed change to the Construction Plans shall be governed by the Ground Lease.

Section 2.9 Construction Contract.

(a) The Developer shall enter into a contract for the construction of the Initial Improvements with a reputable general contractor (a "General Contractor") reasonably satisfactory to the City, having the reputation, experience, financial capability and qualification for serving as general contractor for similar developments in California. The Developer shall submit for the City's approval the identity of the proposed General Contractor and such additional information about the background, experience, and financial condition of any proposed General Contractor as is reasonably necessary for the City to determine whether the proposed General Contractor meets the standard for a qualified General Contractor set forth above. If the proposed General Contractor meets such standard, the City shall reasonably approve or disapprove the proposed General Contractor by notifying the Developer in writing within thirty (30) days of the submission. Any disapproval shall state with reasonable specificity the basis for disapproval.

(b) No later than the date set forth in the Development Schedule, the Developer shall submit to the City for its limited approval the proposed construction contract with the General Contractor for the Initial Improvements. The City's review and approval shall be limited exclusively to a determination whether: (i) the guaranteed maximum construction cost, or stipulated sum, set forth in the construction contract is consistent with the approved Financing Plan and is less than Twelve Million Nine Hundred Thousand Dollars ($12,900,000) or other such amount if a grant or philanthropic donation has been secured and included in the approved Financing Plan as provided for in Section 2.3(a); (ii) the construction contract is with a General Contractor duly licensed by the State of California and approved by the City pursuant to Section 2.9(a); (iii) that no changes to the provisions of the contract which, pursuant to this Agreement or the Ground Lease require the approval of City shall be made without the prior consent of the City; (iv) the construction contract contains provisions consistent with this Agreement and the Ground Lease; (v) the construction contract requires a retention of ten percent (10%) of hard costs until completion of the Initial Improvements (provided, however, the construction contract may provide for the release of retention, prior to completion of the Initial Improvements, to certain specified subcontractors that have completed all of their work on the Development as reasonably approved by the City, and, provided, further, that such early retention amount shall be based on the subcontractor's initial contract sum, and shall exclude any increase in the contract sum due to change orders, or otherwise); (vi) the construction contract requires the payment of prevailing wages in accordance with the Ground Lease Section 4.5 and Labor Code Sections 1720 et seq.; (vii) that the covenants as to equal opportunity in

construction, Living Wage, Minimum Wage and paid Sick Leave (collectively referred to "City Labor Standards") set forth in the Ground Lease have been met; (viii) the construction contract requires the contractor to make reasonable efforts to give a preference in the selection of subcontractors to Emeryville-based business and in the hiring of workers to Emeryville residents; (ix) that the construction contract includes a warranty for a period of at least one (1) year, (x) that the City is named as a specified third-party beneficiary with a direct right to enforce the indemnity and warranty requirements and requirements related to City Labor Standards (xi) the construction contract includes language indemnifying the City for any and all claims resulting from the construction in a form consistent with this Agreement; and (xii) the construction contract includes the applicable insurance requirements as set forth in the Agreement and the Ground Lease. The City's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract.

(c) Upon receipt by the City of the proposed construction contract, the City shall promptly review same and approve it within fifteen (15) days if it satisfies the limited criteria set forth above. If the construction contract is not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit a revised construction contract for City approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the City. Any construction contract executed by the Developer for the Improvements shall be in a form approved or deemed approved by the City.

(d) The Developer shall not rely on the City's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s). City approval shall merely constitute satisfaction of the condition set forth in this Section.

Section 2.10 Construction Bonds.

(a) No later than the date set forth in the Development Schedule, the Developer shall deliver to the City forms of one (1) labor and material bond and one (1) performance bond for the Improvements issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the City, each in a penal sum of not less than one hundred twenty five percent (125%) of the scheduled cost of construction of the Improvements as set forth in the approved construction contract for the City's review and approval. The bonds shall name the City as co-obligee. Upon receipt by the City of the proposed bonds, the City shall promptly review such bonds and approve them within fifteen (15) days if they satisfy the criteria set forth above, and include any other modification reasonably requested by the City. If the bonds are not approved by the City, the City shall set forth in writing and notify the Developer of the City's reasons for withholding such approval. The Developer shall thereafter submit revised payment and performance bonds for City approval, which approval shall be granted or denied in fifteen (15) days in accordance with the criteria and procedures set forth above. Failure of the City to respond within the fifteen (15) day period(s) set forth above shall be deemed approval by the City.

(b) Prior to the Close of Escrow, the Developer shall deliver to the City copies of actually issued bonds substantially identical to the forms previously delivered to, and approved by, the City. The Developer may elect to satisfy the obligation set forth in this Section 2.10 by delivering bonds which name the Developer's general contractor(s), and not the Developer, as the principal. Only upon City receipt of such bonds shall the pre-disposition conditions of this Section 2.10 be deemed met. If such bonds are not received within the time set forth above, this Agreement may be terminated pursuant to Article 7.

Section 2.11 Insurance.

The Developer shall furnish to the City evidence of the insurance coverage meeting the requirements set forth in the Ground Lease including any insurance required from the Contractor and any design professionals, no later than the date set forth in the Development Schedule.

Section 2.12 Assignment of Documents.

The Developer shall assign to the City its rights and obligations with respect to the Construction Plans and certain agreements, plans, specifications, other documents, and approvals, pursuant to an Assignment of Documents, substantially in the form set forth in the attached Exhibit F, which shall be executed by the Developer and all Contractors, as defined in the Assignment of Documents.

Section 2.13 Construction Staging License.

The Developer and the City shall have executed a license agreement allowing the Developer to use certain City owned property adjacent to the Property, including pathways and courtyards adjacent to City Hall for purposes of construction staging and ingress and egress to the Development, provided that accessible entrances to City Hall must be maintained at all times.

Section 2.14 Other Governmental Approvals.

The Developer shall have obtained any other governmental approvals and permits required for the construction of the Initial Improvements, including but not limited to, if applicable evidence of compliance with any closure letter or other requirement from the California Department of Toxic Substance Control.

Section 2.15 City Licenses.

The Developer, the City and any necessary third parties shall have agreed upon the form of the Pedestrian, Vehicle and Parking and Operations License.

Section 2.16 Tenant Letters of Intent.

Developer shall have submitted to the City for its approval letters of intent to lease from tenants for the café space (designated as Area 1 on the site plan included as part of Exhibit C) and thirty percent (30%) of the art studio space (designated as Area 2 of the site plan included as part of Exhibit C). The City shall reasonably approve of the letters of intent within thirty (30) calendar days of receipt if the rents agreed to in the letters of intent are consistent with the

approved operating pro forma and the tenants for the Commercial Component have demonstrated ability to meet the proposed lease terms.

Section 2.17 Defaults

The Developer shall not be in Default under this Agreement.

Section 2.18 No Litigation.

There shall be no litigation challenging the City Discretionary Approvals, the City's authority to enter in to this Agreement or the Ground Lease or the Development.

ARTICLE 3.
DISPOSITION OF THE LEASEHOLD INTEREST IN THE PROPERTY

Section 3.1 Opening Escrow.

To accomplish the transfer of the leasehold interest in the Property from the City to the Developer, the Parties shall, within ninety (90) days after the Effective Date, establish an escrow with the Title Company. The Parties shall execute and deliver all written instructions to the Title Company to accomplish the terms hereof, so long as such instructions are consistent with this Agreement.

Section 3.2 Close of Escrow.

(a) The Close of Escrow shall occur within thirty (30) days after the Developer has met all of its pre-disposition conditions as set forth in Article 2 above (including, but not limited to, the evidence of an Issue Ready Letter for the initial Building Permit pursuant to Section 2.8), but in no event shall the Close of Escrow occur later than the time set forth in the Development Schedule.

(b) At the Close of Escrow, the City shall convey the leasehold interest in the Property to Developer by the execution of the Ground Lease in substantially the form set forth in the attached Exhibit E, and the execution of the Memorandum of Ground Lease and the recordation of the Memorandum of Ground Lease against the Property.

Section 3.3 Conditions to Conveyance. The City's obligation to convey the leasehold interest in the Property to the Developer shall be subject to satisfaction of the following pre-conditions:

(a) The conditions precedent set forth in Article 2 above shall have been satisfied in accordance with the Development Schedule.

(b) The representations, warranties, and covenants of the Developer set forth in Section 8.19 shall be true and correct, and fully observed, as of the Effective Date and as of the Close of Escrow.

(c) There exists no Developer Event of Default nor any act, failure, omission or condition that would constitute a Developer Event of Default under this Agreement.

(d) The Developer has delivered to the City a copy of the Developer's organizational documents and corporate resolution(s) authorizing the Developer's execution of this Agreement and the transactions contemplated by this Agreement.

(e) The Developer has executed and delivered to the City the Ground Lease and the Memorandum of Ground Lease.

Section 3.4 Condition of Title. At the Close of Escrow, the City shall deliver title to the leasehold interest in the Property free and clear of all liens, encumbrances, clouds and conditions, rights of occupancy or possession, except those set forth in the Title Report.

Section 3.5 Condition of the Property.

(a) In fulfillment of the purposes of Health and Safety Code Section 25359.7(a), to the City's Current Actual Knowledge, no release of Hazardous Materials has come to be located on or beneath the Property, except as previously disclosed by the City to the Developer (as applicable). During the Negotiating Period, as defined in the ERN, the Developer completed all due diligence activities, including but not limited to a physical adequacy determination of the Property, and may not terminate this Agreement as a result of the purported physical unsuitability of the Property. As used in this Agreement, the phrase "to the City's Current Actual Knowledge" and words of similar import shall mean the actual knowledge of Michael Guina, the City Attorney (the "City Representative"), on behalf of the City, as of the Effective Date, without any duty of separate inquiry and investigation. The City represents and warrants that the City Representative is that person affiliated with the City most knowledgeable regarding the ownership and operation of the Property. Developer hereby agrees that the foregoing person shall not have or incur any personal liability for the breach of any representation or warranty in this Agreement, and that Developer's sole remedy for any such breach shall be against the City.

(b) **"AS IS" CONVEYANCE. EXCEPT AS SET FORTH IN THIS AGREEMENT AND THE GROUND LEASE, THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING AND THE DEVELOPER IS ACCEPTING THE LEASEHOLD INTEREST IN THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER; (C) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE,**

HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY FOR ANY PARTICULAR PURPOSE; (D) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE ADJOINING OR NEIGHBORING PROPERTY; AND (E) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(c) Survival. The terms and conditions of this Section 3.5 shall expressly survive the Close of Escrow, shall not merge with the provisions of the Ground Lease, or any other closing documents and shall be deemed to be incorporated by reference into the Ground Lease. The City is not liable or bound in any manner by any oral or written statements, representations or information pertaining to the Property furnished by any contractor, agent, employee, servant or other person. The Developer acknowledges that the lease payments reflect the "as is" nature of this transaction and any faults, liabilities, defects or other adverse matters that may be associated with the Property. The Developer has fully reviewed the disclaimers and waivers set forth in this Agreement with the Developer's counsel and understand the significance and effect thereof.

(d) Acknowledgment. The Developer acknowledges and agrees that (i) to the extent required to be operative, the disclaimers of warranties contained in Section 3.5 hereof are "conspicuous" disclaimers for purposes of all applicable laws and other legal requirements, and (ii) the disclaimers and other agreements set forth in such sections are an integral part of this Agreement, that the Ground Lease has been adjusted to reflect the same and that the City would not have agreed to convey the Property to the Developer pursuant to the Ground Lease without the disclaimers and other agreements set forth in this Section.

(e) Developer's Release of the City. The Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and

fully and irrevocably releases the City and its council members, employees, and agents (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or its suitability for any purpose whatsoever, (ii) any presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(f) Scope of Release. The release set forth in Section 3.5(e) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party."**
>
> **Developer's Initials:** VRD

Notwithstanding the foregoing, this release shall not apply to, nor shall the City be released from, the City's actual fraud or intentional misrepresentation.

Section 3.6 Costs of Escrow and Close of Escrow. Ad valorem taxes, if any, shall be prorated as of the Close of Escrow. The lien of any bond or assessment shall be assumed by the Developer and assessments payable thereon shall be prorated as of the date of conveyance. The City shall pay any delinquent ad valorem taxes and any amounts owning for delinquent bonds and assessments as of the date of conveyance. The Developer shall bear the costs of any owner's title insurance policy desired by the Developer. All other costs of escrow (including the Title Company's fee) shall be evenly borne by the Developer and the City. The costs borne by the Developer shall be in addition to the rent paid by the Developer to the City pursuant to the Ground Lease.

ARTICLE 4.
REQUIREMENTS AFTER CLOSE OF ESCROW

Section 4.1 Construction Pursuant to Plans. All works of construction and development on the Property shall be done in accordance with the approved Construction Plans, as may be amended pursuant to the Ground Lease, the construction staging license and the other applicable requirements of the Ground Lease.

Section 4.2 Encumbrance of the Property. The Developer shall not encumber the Property, including, but not limited to, a leasehold deed of trust or mortgage, other security financing interest, lien, or other encumbrance except in strict accordance with the conditions, requirements and limitations set forth in the Ground Lease for such encumbrances.

Section 4.3 Compliance With Ground Lease. Following the Close of Escrow, the Developer shall comply with all standards and requirements for construction, use, operation, maintenance, management and encumbrance of the Property and the Improvements which are set forth in the Ground Lease. As between the City and the Developer, the Developer shall be solely responsible for all costs necessary for the construction and operation of the Development, including, but not limited to, any construction cost overruns. The Developer shall commence the construction of the Improvements and complete the construction of the Improvements by the dates set forth in the Development Schedule and the Ground Lease. Any default by the Developer under the Ground Lease shall also be a Developer Event of Default under this Agreement.

Section 4.4 Mandatory Language in All Subsequent Leases and Contracts. All leases or contracts entered into by Developer as to any portion of the Property shall contain the following language:

(a) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

ARTICLE 5.
CITY FUNDS

Section 5.1 Amount; Use.

(a) Amount. The City hereby agrees to provide to the Developer the Construction Component of the City Funds in accordance with the terms set forth below.

(b) Use of the Construction Component. The Developer shall use the Construction Component of the City Funds solely for costs associated with the design, permitting and construction of the Improvements, the payment of the Developer Fee (subject to Section 5.3) and, if applicable, the payment of any tenant allowance designated for the improvement of all or a portion of the cafe space previously approved in writing by the City. The Developer shall not use the Construction Component for any other purpose. Use of the Construction Component of the City Funds for any unauthorized purposes shall be considered a Developer Event of Default under this Agreement and the City shall be entitled to exercise any and all of its rights and remedies set forth in Article 7 in such event.

Section 5.2 Construction Component Disbursement.

(a) Disbursements on Construction Draw Basis. The Construction Component of the City Funds remaining as of the Close of Escrow ($9,800,000) shall be disbursed in accordance with the following provisions of this Section. Satisfaction by the Developer of the following requirements shall be conditions precedent to the City's obligation to disburse any portion of the Construction Component of the City Funds:

(1) There shall exist no condition, event, or act which would constitute a breach or Default under this Agreement, or any of the City Documents or which, upon the giving of notice or the passage of time, or both would constitute such a breach or Default.

(2) The Close of Escrow has occurred.

(3) The Developer has furnished the City with evidence of the insurance coverage meeting the requirements set forth in the Ground Lease.

(4) The Developer has certified in writing to the City, and the City has approved such certification and has been provided any documentation, reasonably requested by the City, supporting such certification, that the undisbursed proceeds of the Construction Component of the City Funds, together with other funds or firm commitments for funds that the Developer has obtained in connection with the Development (including but not limited to Developer Equity Funds) are not less than the amount that is necessary to pay for the construction of the Initial Improvements and provide for the Developer to perform its obligations under this Agreement and the Ground Lease that are directly related to the construction of the Initial Improvements.

(5) The City has received a written draw request from Developer, including certification that the conditions set forth in this Section 5.2(a)(1) continue to be satisfied, and setting forth the proposed uses of funds consistent with the approved Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred. The written request must also be accompanied by: (i) certification by the Developer, the Developer's architect, or such other party acceptable to the City, that the work for which disbursement is requested has been completed (although the City reserves the right to inspect the Property and make an independent evaluation), and (ii) lien releases reasonably acceptable to the City. An architect's certificate shall not be required for disbursements related to required deposits or pre-payments or the acquisition of construction materials, rather, Developer shall provide the City with reasonable evidence that such payments are required or that the materials have been delivered to the Property or suitable storage areas, as applicable. The City shall review any such draw request and reasonably approve or disapprove such request in writing within ten (10) business days after receipt thereof. Any disapproval shall state with specificity the basis for the disapproval. If the City fails to timely approve or disapprove any such draw request, the City shall be deemed to have approved the same.

(b) Provided the conditions set forth above have been satisfied, the City shall from time to time (but not more frequently than one (1) time per month) disburse the Construction Component of the City Funds in the amount of the approved draw request (less ten percent (10%) retention for hard costs) to the Developer no later than thirty (30) days following the City's receipt and approval of draw request. In the event the City disapproves of the draw request, the City shall provide a written notice to the Developer setting forth the City's reasons for such disapproval. Thereafter, upon the disbursement of the City Funds to the Developer, the Developer shall directly pay the vendor as set forth on the approved invoice no later than thirty (30) days following receipt of such invoice. The Developer shall provide the City with a copy of each check and such other documentation reasonably requested by the City to document the use of the proceeds of the Construction Component of the City Funds. The Developer shall apply all disbursements for the purpose(s) requested. In the City's sole discretion, the City may determine

to disburse the Construction Component of the City Funds directly to the Developer's contractor, or such other third-parties set forth in the draw request.

(c) Release of Retention. The ten percent (10%) portion of the Construction Component of the City Funds retained pursuant to Section 5.2(a) shall be disbursed in accordance with the following provisions of this Section. Satisfaction by the Developer of the following requirements shall be conditions precedent to the City's obligation to disburse such funds:

(1) There shall exist no condition, event, or act which would constitute a breach or Default under this Agreement, or any City Document or which, upon the giving of notice or the passage of time, or both would constitute such a breach or Default.

(2) The City has issued the Certificate of Completion for the Development in accordance with the Ground Lease, and the Developer has obtained the Certificate of Occupancy.

(3) The Developer has obtained lien releases reasonably acceptable to City insuring that there are no liens against the Property or the Improvements.

Notwithstanding any other provisions of this Agreement, the City shall have no further obligation to disburse any portion of the Construction Component of the City Funds to the Developer following: (i) termination of this Agreement or the Ground Lease; or (ii) notification to the Developer of a Developer Event of Default under the terms of this Agreement or the Ground Lease (until such Developer Event of Default has been satisfied within the applicable cure period to the reasonable satisfaction of the City).

Section 5.3 Developer Fee.

(a) The Developer shall be entitled to a Developer Fee in accordance with this Section 5.3.

(1) If the Development Costs are equal to or less than Nine Million Six Hundred Four Thousand Dollars ($9,604,000), the Developer shall be entitled to a Developer Fee to be paid from the Construction Component of the City Funds in the amount of (i) One Hundred Ninety Six Thousand Dollars ($196,000) plus (ii) an amount equal to ten percent (10%) of the difference between the Development Costs as certified in accordance with subsection (b) below and Nine Million Six Hundred Four Thousand Dollars ($9,604,000).

(2) If the Development Costs are greater than Nine Million Six Hundred Four Thousand Dollars ($9,604,000), the Developer shall be entitled to a Developer Fee in the amount of One Hundred Ninety Six Thousand Dollars ($196,000) to be paid from the Construction Component of the City Funds to the extent that funds are available from any unexpended balance of the Construction Component or if the unexpended balance of the Construction Component is insufficient to pay the full Developer Fee, the remainder shall be paid from Net Revenues (as that term is defined in the Ground Lease) in accordance with the distribution of Net Revenue set forth in the Ground Lease.

(b) Determination of Development Costs. After the City has issued a Certificate of Completion for the Improvements and the Developer has obtained a Certificate of Occupancy, the Developer shall provide the City with a final cost accounting of the Development Costs for the City's approval. Upon approval of the final cost accounting, the City shall reasonably approve the applicable Developer Fee and to the extent that funds remain in the Construction Component of the City Funds, disburse such funds to the Developer. The City shall, at its option, have the right to inspect the Developer and its contractor's books and records to determine the accuracy of the final cost accounting prior to disbursing the Developer Fee.

Section 5.4 Operating Funds. The Developer and the City shall designate a community foundation to hold and manage the Operating Fund which shall be deposited into a segregated interest-bearing account. The Operating Fund and any interest earned thereon shall be used in accordance with the Ground Lease and the Arts Management Plan.

ARTICLE 6.
ASSIGNMENT AND TRANSFERS

Section 6.1 Definitions.

As used in this Article 6, the term "Transfer" means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Agreement or of the Developer's interest in the Property or the Improvements (other than as permitted pursuant to 6.1(d), below) or any part thereof or any interest therein or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, of any trust or power, or any transfer in any other mode or form, of or with respect to any ownership interest in Developer;

(c) Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer; or

(d) The subleasing of part or all of the Property or the Improvements thereon, except for subleasing allowed under the Ground Lease.

Section 6.2 Purpose of Restrictions on Transfer.

This Agreement is entered into solely for the purpose of the development and operation of the Development and its subsequent use in accordance with the terms hereof and the terms of the City Documents. The Developer recognizes that the qualifications and identity of Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The public assistance and other public aids that have been made available by law and by the government for the purpose of making such redevelopment possible; and

(c) The reliance by the City upon the unique qualifications and ability of the Developer to serve as the catalyst for development of the Property and upon the continuing interest which the Developer will have in the Property to assure the quality of the use, operation and maintenance deemed critical by the City in the development of the Property; and

(d) The fact that a change in ownership or control of the Developer as owner of the Property, or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or with respect to the identity of the parties in control of the Developer or the degree thereof is for practical purposes a transfer or disposition of the Property; and

(e) The fact that the Property is not to be acquired or used for speculation, but only for development and operation by the Developer in accordance with the Agreement; and

(f) The importance to the City and the community of the standards of use, operation and maintenance of the Property.

The Developer further recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 6.3 Prohibited Transfers.

The limitations on Transfers set forth in this Article shall apply throughout the Term. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law without the prior written approval of the City.

Any Transfer made in contravention of this Section 6.3 shall be void and shall be deemed to be a Default under this Agreement whether or not the Developer knew of or participated in such Transfer.

Section 6.4 Other Transfers with City Consent.

The City may, in its sole discretion, approve in writing other Transfers as requested by the Developer. In connection with such request, the Developer shall submit to the City for review all instruments and other legal documents proposed to effect any such Transfer and all other documents as reasonably requested by the City to determine the qualifications and identity of the proposed transferee. If a requested Transfer is approved by the City such approval shall be indicated to the Developer in writing. Such approval shall be granted or denied by the City within thirty (30) days of receipt by the City of all materials required by this Section 6.4.

No Transfer permitted pursuant to Section 6.4 shall be effective unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an instrument in writing approved as to form by the City Attorney and in form recordable among the Official Records, shall expressly assume the obligations of the Developer under the City Documents and agree to be subject to the conditions and restrictions to which the Developer is subject arising under the

City Documents, to the fullest extent that such obligations are applicable to the particular portion of or interest in the Property and Improvements conveyed in such Transfer.

In the absence of specific written agreement by the City, no such Transfer, assignment or approval by the City shall be deemed to relieve the Developer or any other party from any obligations under this Agreement.

ARTICLE 7.
DEFAULT AND REMEDIES

Section 7.1 General Applicability.

The provisions of this Article 7 shall govern the Parties' remedies for breach or Default under this Agreement.

Section 7.2 No Fault of Parties.

The following events constitute a basis for a Party to terminate this Agreement without the fault of the others:

(a) Prior to the Close of Escrow, the City, despite good faith and diligent efforts, is unable to convey the leasehold interest in the Property to the Developer and the Developer is otherwise entitled to such conveyance.

(b) Prior to the Close of Escrow, the City, despite good faith and diligent efforts, is unable to commit any portion of the City Funds to the Development and the Developer is otherwise entitled to such funds and Developer does not waive the right to receive such funds in writing.

(c) Any of the conditions precedent to the conveyance of the leasehold interest in the Property proves to be impossible to meet despite the Developer's good faith and diligent efforts and the City is otherwise ready and able to convey the leasehold interest in the Property to the Developer.

Upon the happening of the above-described event and at the election of either Party, this Agreement may be terminated by written notice to the other Party. After such termination of this Agreement, no Party shall have any rights against or liability to the others under this Agreement, except that the indemnification provisions of this Agreement shall survive such termination and remain in full force and effect.

Section 7.3 Events of Default.

(a) Except as to the events constituting a basis for termination under Section 7.2, a Party's violation of any material term of this Agreement or failure by any Party to perform any material obligation of this Agreement shall constitute a default ("Default").

(b) The following shall additionally constitute a Developer Event of Default:

(1) The Developer constructs or attempts to construct the Development in violation of Article 4 or the Ground Lease, or otherwise fails to comply with any obligation or requirement set forth in Article 4; or

(2) The Developer fails to complete construction of the Development by the date set forth in the Development Schedule (as may be extended pursuant to the limited circumstances more particularly set forth in Section 8.3), or abandons or suspends construction of the Improvements prior to completion of all construction for a period of thirty (30) days after written notice by the City of such abandonment or suspension; or

(3) A Transfer occurs, either voluntarily or involuntarily, in violation of Article 6; or

(4) The Developer shall have used the Construction Component of the City Funds for any unauthorized purpose; or

(5) Any representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made; or

(6) A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Developer, to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer, or seeking any arrangement for the Developer, under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer, in bankruptcy or insolvency or for any of their properties, or (iv) directing the winding up or liquidation of the Developer, if any such decree or order described in clauses (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days; or the Developer, shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive; or

(7) The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment, or execution. In the event that the Developer, is diligently working to obtain a return or release of the property and the City's interests under the City Documents are not immediately threatened, in the City's reasonable business judgment, the City may elect not to declare a Default under this subsection; or

(8) The Developer, shall have voluntarily suspended its business or, the Developer shall have been dissolved or terminated; or

(9) There shall occur any default declared by the City under the Ground Lease, or a default is declared by the City under any other City Document.

(c) Upon the happening of any of the above-described events, the non-defaulting Party shall first notify the other Party in writing of the purported breach, failure, or act above described, giving the defaulting Party sixty (60) days from receipt of such notice to cure or, if such cure cannot be accomplished within sixty (60) days, to commence to cure such breach, failure, or act. In the event the defaulting Party fails to cure within said sixty (60) days, or, if the breach or failure is of such a nature that it cannot be cured within sixty (60) days, the defaulting Party fails to commence to cure within such sixty (60) days and thereafter diligently complete such cure within a reasonable time thereafter but in no event later than one hundred twenty (120) days, then the subject Default shall be deemed, as applicable, an "Uncured Developer Default" or an "Uncured City Default" and the non-defaulting Party shall be afforded the applicable remedies described in Section 7.4 and 7.5 below.

(d) Notwithstanding the notice and cure periods set forth above, if a lesser cure period or notice requirement is allowed before a default occurs under any other City Document (including, but not limited to the Ground Lease), such periods shall control in this Agreement as well.

Section 7.4 City's Remedies for an Uncured Developer Default.

(a) Uncured Developer Default, Prior to the Close of Escrow. City and Developer agree that, in the event of an Uncured Developer Default occurring prior to the Close of Escrow, the only remedies available to the City shall be those listed in this Section 7.4 (a), as follows:

(i) Termination of this Agreement. The City may terminate this Agreement by written notice to Developer, provided, however, that the indemnification provisions of this Agreement shall survive such termination.

(ii) Construction Plans and Assignment of Documents. The Developer, at no cost to the City, shall deliver to the City copies of any and all Construction Plans and studies in the Developer's possession or to which Developer is entitled related to development of the Improvements on the Property, as provided in the Assignment of Documents.

(b) Uncured Developer Default, After the Close of Escrow. City and Developer agree that, in the event of an Uncured Developer Default occurring after the Close of Escrow, the City shall be entitled to elect between the following remedies as its sole remedy for such Uncured Developer Default:

(i) Action for Specific Performance. The City may prosecute an action for specific performance; or

(ii) Termination of Agreement and Ground Lease and Other Remedies. The City may terminate this Agreement and the Ground Lease by written notice to Developer, provided, however, that the indemnification provisions of this Agreement and the Ground Lease shall survive such termination, and in conjunction with such termination, (A) the City may prosecute an action for damages, provided however, any action for damages shall be limited to

actual damages and in no event shall the City be entitled to consequential damages- provided however, any action for damages shall be limited to actual damages and in no event shall the City be entitled to consequential damages and (B) the Developer, at no cost to the City, shall deliver to the City copies of any and all Construction Plans and studies in the Developer's possession or to which Developer is entitled related to development of the Improvements on the Property, as provided in the Assignment of Documents.

Nothing in this Section 7.4 shall limit the City's rights under Section 8.24, below, or the City's rights under the Ground Lease.

Section 7.5 Developer Remedies for an Uncured City Default.

City and Developer agree that, in the event of an Uncured City Default, the Developer shall be entitled to elect between the following remedies as its sole remedy for such Uncured City Default:

(a) Action for Specific Performance. The Developer may prosecute an action for specific performance; or

(b) Termination and Other Remedies. The Developer may terminate this Agreement and, if applicable, the Ground Lease, provided, however, that the indemnification provisions of this Agreement and, if applicable, the Ground Lease shall survive such termination, and in conjunction with such termination, prosecute an action for damages, provided however, any action for damages shall be limited to actual damages and in no event shall Developer be entitled to consequential damages.

Nothing in this Section 7.5 shall limit the Developer's rights under Section 8.24, below, or the Developer's rights under the Ground Lease.

Section 7.6 Waiver of Lis Pendens.

It is expressly understood and agreed by the Parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 7.7 Remedies Cumulative.

Subject to the provisions of Section 7.4 and 7.5, no right, power, or remedy given by the terms of this Agreement or the City Documents is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given by the terms of any such instrument, or by any statute or otherwise. Neither the failure nor any delay to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

Section 7.8 Waiver of Terms and Conditions.

No waiver of any Default or breach by the Developer hereunder shall be implied from any omission by the City to take action on account of such Default if such Default persists or is repeated, and no express waiver shall affect any Default other than the Default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by the City to, or of, any act by the Developer requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any Default under this Agreement or the applicable City Documents, nor shall it invalidate any act done pursuant to notice of Default, or prejudice the City in the exercise of any right, power, or remedy hereunder or under the applicable City Documents, unless in the exercise of any such right, power, or remedy all obligations of the Developer to the City under the applicable City Documents are paid and discharged in full.

ARTICLE 8.
GENERAL PROVISIONS

Section 8.1 Notices, Demands and Communications.

Formal notices, demands, and communications between the City and the Developer shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

City:
Christine Daniel, City Manager
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Phone: (510) 596-4371
Fax: (510) 658-8095

With copy to:
Michael Guina, City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Phone: (510) 450-7801
Fax: (510) 596-3724

Developer:
4060 Hollis, LLC
c/o Orton Development, Inc.
1475 Powell Street, Suite 101
Emeryville, CA 94608
Attention: Nicholas Orton
Telephone: (510) 428-0800
Email: norton@ortondevelopment.com

With copy to: 4060 Hollis, LLC
c/o Orton Development, Inc.
1475 Powell Street, Suite 101
Emeryville, CA 94608
Attention: David Dial
Telephone: (510) 907-3268
Email: ddial@ortondevelopment.com

Stice & Block, LLP
Attention: Marc Stice
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: (510) 735-0032
Email: mstice@sticeblock.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 8.1. Telephone numbers are only provided for the Parties' convenience, and formal notices may not be transmitted by telephone. In addition, any notice or demand from the City to the Developer may be delivered by e-mail to the Developer's e-mail set forth above; provided, however, in no event shall the Developer deliver any formal notice or demand to the City by e-mail.

Section 8.2 Non-Liability of City Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City for any amount which may become due to the Developer or successor or on any obligation under the terms of this Agreement.

Section 8.3 Forced Delay.

Section 8.4 In addition to specific provisions of this Agreement, performance by either Party shall not be deemed to be in Default only if such delay or Default is due solely to: war; acts of terrorism; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; energy shortages or rationing; lack of transportation; or court order; or any other similar causes (other than lack of funds of the Tenant or the Tenant's inability to finance the Development) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for cause will be deemed granted if notice by the Party claiming such extension is sent to the other Party within ten (10) days from the date the Party seeking the extension first discovered the cause and such extension of time is not rejected in writing by the other Party within ten (10) days after receipt of the notice. In no event shall the cumulative delays exceed one hundred twenty (120) days, unless otherwise agreed to by the Parties in writing. Inspection of Books and Records.

Upon request, the Developer shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of the Developer necessary to determine Developer's compliance with the terms of this Agreement.

Section 8.5 Provision Not Merged with Ground Lease.

None of the provisions of this Agreement are intended to or shall be merged by the Ground Lease transferring title to any interest in the real property which is the subject of this Agreement from City to Developer or any successor in interest, and any such Ground Lease shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.6 Title of Parts and Sections.

Any titles of the articles, sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 8.7 General Indemnification.

The Developer agrees to indemnify, protect, hold harmless and defend (with counsel reasonably selected by the City) the City, and its council members, employees, agents, and volunteers from any and all (i) third-party Claims arising out of, pertaining to, or relating to, directly or indirectly, in whole or in part, the Developer's performance or non-performance under any of the City Documents, or any other agreement executed pursuant to the City Documents, or (ii) any Claims arising out of acts or omissions of any of Developer's contractors, subcontractors, or persons claiming under any of the aforesaid, in each case except as directly caused by the City's willful misconduct or gross negligence. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect and are not limited by the amount of insurance as may be required. As used herein, the term "Claims" means any and all suits, actions, claims, losses, liabilities, damages, injuries, causes of action, costs, and expenses of any kind, whether actual or alleged, including without limitation, court costs, reasonable attorneys' fees, and other litigation expenses, demands, judgments and liens

Section 8.8 Applicable Law.

This Agreement shall be interpreted under and pursuant to the laws of the State of California without regard to choice of law principles.

Section 8.9 No Commissions.

The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Developer represents that it has engaged no broker, agent or finder in connection with this transaction, and the Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer. The provisions of this section shall survive expiration of the Term or other termination of this Agreement, and shall remain in full force and effect.

Section 8.10 Severability.

If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 8.11 Legal Actions.

Any legal action commenced to interpret or to enforce the terms of this Agreement shall be filed in the Superior Court of the County.

Section 8.12 Binding Upon Successors.

This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the Parties hereto except that there shall be no Transfer of any interest by any of the Parties hereto except pursuant to the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor or assign of such Party who has acquired an interest in compliance with the terms of this Agreement, or under law.

The covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property. Each and every contract, deed, or other instrument hereafter executed covering or conveying any interest in the Property shall be held conclusively to have been executed, delivered, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed, or other instrument, unless the City expressly releases the leasehold interest in the Property from the requirements of this Agreement.

Section 8.13 Parties Not Co-Venturers.

Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 8.14 No Third Party Beneficiaries.

This Agreement and the City Documents are made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement or the City Documents.

Section 8.15 Discretion Retained by City.

Neither the execution of this Agreement by the City, nor any approval by the City Manager pursuant to this Agreement, constitutes approval by the City acting in its capacity as a municipal government, and in no way limits the discretion of the City (acting in its regulatory capacity) in the permit and approval process in connection with development of the Improvements, or any proposed subsequent development of the Property. The Developer acknowledges that nothing in this Agreement (including any approval by the City Manager in

accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Community Development Department, acting in its regulatory capacity in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a Building Permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Property and Improvements during the Term.

Section 8.16 Time of the Essence.

In all matters under this Agreement, the Parties agree that time is of the essence.

Section 8.17 Action by the City.

Except as may be otherwise specifically provided in this Agreement or another applicable City Document, whenever any approval, notice, direction, finding, consent, request, or other action by the City is required or permitted under this Agreement or another applicable City Document that is in substantial compliance with the terms of this Agreement, including, but not limited to, any approval of a proposed Transfer pursuant to Article 6, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing to the Developer by the City Manager, without further approval by the City Council. Any such action shall be in writing.

Section 8.18 Operating Memoranda; Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time during the Term of this Agreement, the Parties find that refinements or adjustments are necessary, such refinements or adjustments shall be made through Operating Memoranda or Implementation Agreements approved by the Parties which, after execution, shall be attached to this Agreement as addenda and become a part hereof.

(b) Operating Memoranda or Implementation Agreements may be executed on the City's behalf by the City Manager. In the event a particular subject requires notice or hearing or any significant modification is proposed to the terms of this Agreement, the matter shall be processed as an amendment to this Agreement and must be approved by the City Council.

Section 8.19 Representation and Warranties of Developer.

The Developer hereby represents and warrants to the City as follows:

(a) Organization. The Developer is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Developer. The Developer has full power and authority to execute and deliver this Agreement and all other documents and instruments to be executed and delivered, pursuant to this Agreement, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Developer, and all actions required under the Developer's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Agreement, have been duly taken.

(d) Valid Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Developer enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Developer, or any provision of the organizational documents of the Developer, or will conflict with or constitute a breach of or a default under any agreement to which the Developer is a party, or will result in the creation or imposition of any lien upon any assets or property of the Developer, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Developer is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Developer, threatened against or affecting the Developer, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Developer, materially affect the Developer's ability to develop the Improvements.

(h) Financial Statements. The financial statements of the Developer, and other financial data and information furnished by, or on behalf of the Developer, to the City fairly present the information contained therein. As of the Effective Date, there has not been any adverse, material change in the financial condition of the Developer from that shown by such financial statements and other data and information.

(i) Sufficient Funds. Upon the acquisition of the leasehold interest in the Property the Developer will hold sufficient funds or binding commitments for sufficient funds to obtain the leasehold interest in the Property, and complete the construction of the Improvements in accordance with this Agreement.

Section 8.20 Conflict Among City Documents.

Unless otherwise provided in a particular City Document, in the event of a conflict between the terms of this Agreement and any other City Document, the terms of this Agreement shall control to the extent of such conflict until such time as the Ground Lease is effective, after which the Ground Lease shall control.

Section 8.21 Entry by the City.

Subject to the provisions of the Ground Lease, the Developer shall permit the City, through its officers, agents, or employees, at all reasonable times to enter into the Property (a) to inspect the work of construction to determine that the same is in conformity with the requirements of this Agreement, and (b), following completion of construction, to inspect the ongoing operation and management of the Property and Improvements to determine that the same is in conformance with the requirements of this Agreement. The Developer acknowledges that the City is under no obligation to supervise, inspect, or inform the Developer of the progress of construction, or operations and the Developer shall not rely upon the City therefor. Any inspection by the City during the construction is entirely for its purposes in determining whether the Developer is in compliance with this Agreement and is not for the purpose of determining or informing the Developer of the quality or suitability of construction. The Developer shall rely entirely upon its own supervision and inspection in determining the quality and suitability of the materials and work, and the performance of architects, subcontractors, and material suppliers.

Section 8.22 Entire Understanding of the Parties.

This Agreement, in conjunction with the City Documents, constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the leasehold interest in the Property, and the development of the Improvements. The Parties further intend that this Agreement constitute the final and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceedings involving this Agreement. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared it. The Parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including but not limited to Civil Code Section 1654 as may be amended from time to time) shall not apply to the interpretation of this Agreement.

Section 8.23 Counterparts; Multiple Originals.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original.

Section 8.24 Attorney's Fees.

If either party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the prevailing party in -any lawsuit shall be entitled to a reimbursement of any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. Any such attorneys' fees and other expenses 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 attorneys' fees obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment."

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

DEVELOPER:

4060 HOLLIS LLC, a
California limited liability company

By: _____
Its: MANAGER

CITY:

CITY OF EMERYVILLE, a municipal corporation

By: _____
Christine Daniel, City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

_____
Michael Guina
City Attorney

Note: Section 3.5 require the Developer's initials

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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

Portion of Block 15, as said block is shown on the "Map of Part of Plot 6, Kellersbergers Survey of Vicente & Domingo Peralta Rancho, Property of J.S. Emery", etc., filed March 1, 1889, in Book 19 of Maps, Page 68, in the Office of the County Recorder of Alameda County, described as follows:

Beginning at a point on the Eastern line of Hollis Street, distant thereon 125 feet Southerly from the Southern line of Park Avenue, as said street and avenue are shown on said map; running thence Southerly along said line of Hollis Street, 275 feet; thence Easterly, parallel with said line of Park Avenue, 75 feet; thence Northeasterly, in a direct line, 54.231 feet to a point on the direct extension Southerly of the Eastern line of Lot 16 in said Block 15, distant thereon 204 feet Southerly from the Southeastern corner of said Lot 16; thence along the extension of said Eastern line of Lot 16 and along the Eastern line of said Lot 16, Northerly 254 feet to the Northern line of said Lot 16; thence Westerly along said last named line, 125 feet to the point of beginning.

APN: 049-0618-004-00

EXHIBIT B

DEVELOPMENT SCHEDULE

This Development Schedule summarizes the schedule for various activities under the Lease Disposition and Development Agreement (the "Agreement" or the "LDDA") to which this exhibit is attached. Times for performance set forth in this Development Schedule are subject to Section 8.3 of the LDDA, and may be amended or otherwise revised in accordance with Section 8.17 and Section 8.18 of the LDDA. The description of items in this Development Schedule is meant to be descriptive only, and shall not be deemed to modify in any way the provisions of the LDDA to which such items relate. Section references herein to the LDDA are intended merely as an aid in relating this Development Schedule to other provisions of the LDDA and shall not be deemed to have any substantive effect.

Whenever this Development Schedule requires the submission of plans or other documents at a specific time, such plans or other documents, as submitted, shall be complete and adequate for review by the City, within the time set forth herein. Prior to the time set forth for each particular submission, the Developer shall consult with City staff, informally as necessary concerning such submission in order to assure that such submission will be complete and in a proper form within the time for submission set forth herein.

Action	**Date**
1. Effective Date. The LDDA is executed by the Parties.	September ___, 2020 (the "Effective Date").
2. Developer Obtains City Discretionary Approvals. The Developer shall obtain all City Discretionary Approvals. [LDDA § 2.2]	Completed prior to the Effective Date
3. Submittal of Financing Plan. The Developer shall submit the proposed Financing Plan. [LDDA § 2.3]	60 days from the Effective Date
4. Submittal of Operating Pro Forma. The Developer shall submit an Operating Pro Forma [LDDA §2.4]	60 days from the Effective Date
5. Submittal of Gallery Operator Organizational Documents and Sublease. The Developer shall submit the Gallery Operator Organizational Documents and sublease [LDDA §2.5]	60 days from the Effective Date
6. Submittal of Arts Management Plan. Developer shall submit to the City the Arts Management Plan [LDDA § 2.6]	60 days from the Effective Date

Action	Date
7. Submittal of Community Outreach Plan. The Developer shall submit the community outreach plan to the City. [LDDA § 2.7]	60 days from the Effective Date
8. Submittal of 90% Final Construction Plans. Developer shall submit the 90% final construction plans [LDDA § 2.8(a)]	30 days from the Effective Date
9. City Approval of 90% Final Construction Plans. The City shall either approve or disapprove of the 90% final construction plans. [LDDA § 2.8(d)]	30 days from submittal of 90%final construction plans (Action #8)
10. Approval of Financing Plan. The Developer shall obtain City approval of the Financing Plan. [LDDA § 2.3]	No later than the Close of Escrow
11. Approval of Operating Pro Forma. The Developer shall obtain City approval of the Operating Pro Forma. [LDDA § 2.4]	No later than the Close of Escrow
12. Approval of Gallery Operator Organizational Documents and Sublease. The Developer shall obtain City approval of the Gallery Operator Organizational Documents and Sublease. [LDDA § 2.5]	No later than the Close of Escrow
13. Approval of Arts Management Plan. The Developer shall obtain City approval of the Arts Management Plan. [LDDA § 2.6]	No later than the Close of Escrow
14. Approval of Community Outreach Plan. The Developer shall obtain City approval of the Community Outreach Plan. [LDDA § 2.7]	No later than the Close of Escrow
15. Application for Building Permit. The Developer shall apply for building permits for the base building improvements as described in Section 2.8. [LDDA § 2.8]	30 days from date City approves the 90% final construction plans (Action #9)
16. Construction Contract. The Developer shall submit the proposed construction contract to the City. [LDDA § 2.9]	45 days from the Effective Date
17. Construction Bonds. The Developer shall deliver the construction bonds to the City. [LDDA § 2.10]	No later than the Close of Escrow

Action	**Date**
18. Building Permit. The Developer shall have received an Issue Ready Letter for the initial building improvements as described in Section 2.8. [LDDA § 2.8]	No later than the Close of Escrow
19. Closing of all Supplemental Financing. The Developer shall close on all Supplemental Financing as set forth in the Financing Plan. [LDDA § 2.3]	No later than the Close of Escrow
20. Developer Insurance. The Developer shall provide the City all applicable insurance policies and endorsements required by LDDA and the Ground Lease. [LDDA § 2.11]	No later than the Close of Escrow
21. Close of Escrow. The Close of Escrow for the execution of the Ground Lease and recordation of the Memorandum of Ground Lease shall occur upon the satisfaction of the predisposition requirements in accordance with the LDDA but no later than the date set forth in the Development Schedule. [LDDA § 3.2]	Thirty days after satisfaction of all predisposition requirements but in no event later than 300 days from Effective Date
22. Commencement of Construction. The Developer shall commence the construction of the Improvements. [LDDA § 4.1]	No later than thirty (30) days following the Close of Escrow (Action #21).
23. Completion of Construction. The Developer shall complete the construction of the Improvements. [LDDA § 4.3]	No later than 540 days from Close of Escrow Date (Action #21)

EXHIBIT C

SCOPE OF DEVELOPMENT

Project Site and Surroundings.

The project site consists of a single, approximately 0.79-acre parcel that is currently developed with a 30,000 square-foot one-story, unreinforced masonry brick building. The building is currently vacant and is roughly divided into a large factory floor that takes up about two-thirds of the square footage, and a series of offices, hallways, and bathroom facilities in the northern one-third of the building. The site is adjacent to Old Town Hall and a public parking lot that is utilized by residents of the Besler Building (a live-work building located across Haven Street at 4053 Harlan Street), City employees and visitors. The surrounding development consists of a mix of residential, commercial, retail and office buildings including Rudy's Can't Fail Café, Granite Expo, Michael's, Besler Building and Bridgecourt Apartments.

Proposed Use(s) and Site Improvements.

Uses:

The Emeryville Arts Center will be a center for visual arts. A large visual arts gallery and flexible use theater space will anchor the project. The project will consist of approximately 30,000 square feet of space including a theater, flexible gallery and performance space, leasable studio space, a café, office space, multipurpose and co-working space. The project includes provisions for a future watchperson's unit and storage space. The Emeryville Arts Center is proposed to be a first-class regional arts exhibition space. Use of the Building shall comply with Planning Entitlements for the project and the Lease Agreement as generally depicted in the Use Distribution Floor Plan (see below).

Site Improvements:

The building will feature new windows, doors, and exterior finishes detailed further below, and building systems will be modernized and/or replaced, including roof, electrical, mechanical, plumbing, and fire safety. All site improvements will substantively comply with the level of quality of design and materials approved with the Planning Entitlements for the project.

A new glass wall along the Hollis St. façade will serve as the building's main entrance. A new restaurant/café will open at the northwest corner of the building, which will also feature windows along Hollis St. The remainder of the Hollis St. façade will retain its historic brick façade and openings. The openings will provide natural light to the art studios facing Hollis St. as well as roll-up doors that tenants may use for small deliveries.

Along 40th Street, Developer plans to replace the existing corrugated metal addition with a new jewel box that will provide display space supportive of the art gallery and venue.

The unreinforced masonry at the north and a portion of the east elevations of the building will be replaced with panels of vertically aligned corrugated metal façade panels, which will lighten the building's weight and improve its seismic performance. The existing sculptured fountain on the north façade will be left as is and the façade will feature a green wall.

If sufficient funding is available, a new watchmen's unit is proposed for the second level as an additional scope. It will be accessed through an internal stairway and lift. Where entitled by the related Planning Permits and allowed by Building Code, attic storage space would also be created. Street trees along Hollis Street and 40th Street would be removed and replacement street trees and other landscaping will be installed as required per the Planning Entitlements for the project.

Interior improvements will include completion of the flexible gallery/multipurpose space to a finished tenant-ready condition including but not limited to seating, lighting and audio/video systems typical for a performance arts facility. The studios and office/coworking spaces will also be finished to a tenant-ready level of completion, and the café space will be finished to a "cold shell" level of completion, with tenant improvements pending identification of occupant subtenants.

See below for floor plans.

Use Distribution Floor Plan.

This illustration is intended to show macro-level square footage allotments by use including arts-dedicated uses and commercial uses. Specific floor plans may change where permitted by the Planning Entitlements and where they are in substantive compliance with arts-dedicated use percentage requirements.

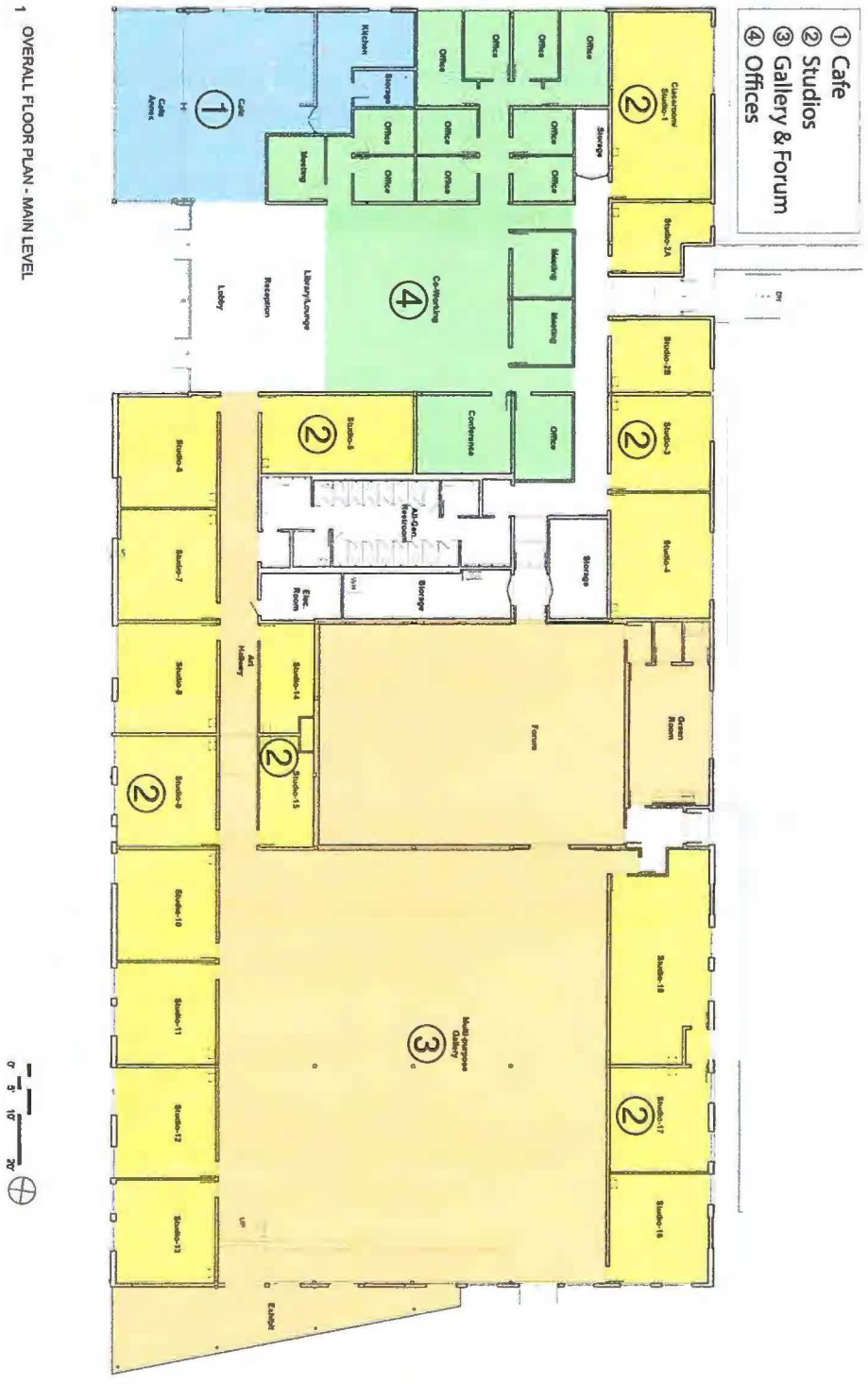


EXHIBIT D

APPROVED PLANS

[PRIOR TO CITY EXECUTION, INSERT UPDATED EXHIBIT D REFERENCING THE PLANS APPROVED BY THE PLANNING COMMISSION AT AUGUST 27, 2020 MEETING.]

EXHIBIT E

FORM OF GROUND LEASE

GROUND LEASE AGREEMENT

By and Between the

The City of Emeryville

and

4060 Hollis LLC

(Emeryville Arts Center)

GROUND LEASE AGREEMENT
(Emeryville Arts Center)

THIS GROUND LEASE AGREEMENT (the "Lease") is entered into as of _____, 20__ (the "Effective Date"), by and between the City of Emeryville, a municipal corporation (the "City", or the "Landlord"), and 4060 Hollis LLC, a California limited liability company, (the "Tenant").

RECITALS

A. Capitalized terms used, but not defined, in these Recitals shall have the meaning set forth in Section 1.1.

B. The City and Tenant entered into the LDDA.

C. Pursuant to the LDDA, the City agreed to lease the Property more particularly described in Exhibit A, and the Tenant agreed to lease and cause the development of the Property.

D. The City owns the Property, which is located in the 4060 Hollis Street (APN No. 049-0618-004-00), as more particularly described in the attached Exhibit A.

E. The City desires to lease the Property to the Tenant in accordance with the provisions of this Lease in order to facilitate the use of the Property for an arts and cultural center benefiting the citizens of Emeryville and the general public consistent with the City's Long Range Property Management Plan ("LRPMP) approved by the California Department of Finance.

F. In accordance with the terms of this Lease, the Tenant intends to operate the Property and Improvements, including subleasing portions of the Improvements to the Gallery Operator and other subtenants in accordance with the terms of this Ground Lease.

Therefore, the City and the Tenant agree as follows:

AGREEMENT

The foregoing recitals are hereby incorporated by reference and made part of this Lease.

ARTICLE 1
DEFINITIONS AND EXHIBITS.

Section 1.1 Definitions.

The following capitalized terms have the meanings set forth in this Section 1.1 wherever used in this Lease, unless otherwise provided:

(a) "Annual Operating Expenses" with respect to a particular calendar year shall mean the following costs reasonably and actually incurred for the operation and maintenance of the Art Center to the extent that they are consistent with an annual independent audit performed by a certified public accountant, acceptable to the City, using generally accepted accounting principles; property and other taxes and assessments imposed on the Property; premiums for property damage and liability insurance; utility services not paid for directly by the subtenants, including water, sewer, trash collection, gas and electricity; maintenance and repair, including but not limited to pest control, landscaping and grounds maintenance, painting, cleaning, common systems repairs, general repairs, janitorial supplies, any annual license or certificate of occupancy fees required for operation of the Arts Center, general administrative expenses including but not limited to advertising and marketing, security services and systems, professional fees for legal, audit, accounting and tax returns, property management fees not to exceed two percent (2%) of Gross Revenues, cash deposited into a reserve for capital improvements equal to $1.20 per square foot, escalated annually by the increase in the Consumer Price Index for all items, and extraordinary operating costs specifically approved by the City. Annual Operating Expenses shall not include the following: depreciation, amortization, depletion or other non-cash expenses or any amount expended from a reserve account.

(b) "Arts Center" means the Improvements improved in accordance with the LDDA and the Scope of Development including all portions of the Property.

(c) "Art Uses" means any of the following:

(1) Arts production. Practice of an art or craft such as studios for art production including, without limitation, painting, photography, jewelry, glass, textile, graphic art, and pottery studios, with or without sales of materials produced on-site. Art production on a medium or large scale generally using heavy equipment may be allowed where it does not interfere with the reasonable operation of other uses in the Arts Center and may include large scale metal and wood working studios and recording studios only if designed for the purpose of recording, editing, producing or broadcasting live and/or recorded music or videos.

(2) Flexible Gallery. Display and selling of art. Typical uses include, but are not limited to, art galleries and show rooms.

(3) Indoor Entertainment. Indoor entertainment uses, including, without limitation, a pop-up movie theater, rehearsal space, concert hall, and playhouse (live theatre or creative digital/tech presentations).

(4) Arts-based Instructional Services. Services for the purpose of personal enrichment related specifically to the arts. Typical uses include classes or instruction in music, art, or STEAM-based academics (instruction providing a connection between science/technology/engineering/art/math disciplines).

(5) Libraries and Museums. Uses primarily engaged in public access to, and preservation of, items that promote the arts. This may also include items of historical value. Activities associated with Libraries and Museums may include related gatherings, events and performances as well as accessory uses including gift shops, cafes and auditoriums.

(6) Arts-Supportive Uses. Uses that are (a) allowed by the underlying zoning or permitted by any use permit issued for the Property and (b) directly supportive of the arts; provided, however, Arts-Supportive Uses that are the primary use intended for the applicable space may not occupy more than fifty percent (50%) of the Arts Dedicated Spaces. Arts-Supportive Uses include, without limitation, facilities with a primary focus on support of the arts such as a printing press dedicated to art production, offices such as legal services or foundations with a focus primarily on support and promotion of the arts, production or sale of musical instruments, or the retail of arts supplies, dance or theatre arts materials.

(d) "Arts Dedicated Spaces" means the approximately 20,000 square feet of the Improvements that is (1) subject to the use restrictions set forth in Section 5.1(a) and (2) more specifically described in the Scope of Development attached as Exhibit B.

(e) "Bankruptcy/Insolvency Event" means any of the following:

(1) Insolvency. A court having jurisdiction shall have made or entered any decree or order (i) adjudging the Tenant to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Tenant or seeking any arrangement for the entity in question under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Tenant in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Tenant, if any such decree or order described in clause (i) to (iv), inclusive, shall have continued unstayed or undischarged for a period of ninety (90) days unless the Tenant shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (i) to (iv), inclusive.

(2) Assignment; Attachment. The Tenant shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event or prior to sooner sale pursuant to such sequestration, attachment or execution.

(3) Suspension; Termination: The Tenant shall have voluntarily suspended its business or fails to maintain its good standing.

(f) "Besler Parking Lot" means that certain portion of the Parking Lot adjacent to the Property commonly referred to as APN Number 49-618-2-3.

(g) "Building Permit" means all building permits for the Improvements required to be obtained from the City or other Governmental Authorities.

(h) "CEQA" means the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and any state or local implementing guidelines in connection therewith.

(i) "Certificate of Completion" means the certificate issued by the City to the Tenant, or such other documentation provided by the City, after completion of the Improvements in accordance with the provisions set forth in this Lease, as more particularly described in Section 4.1(c).

(j) "City" means the City of Emeryville, a municipal corporation.

(k) "City Documents" means, collectively, this Lease and the LDDA, and all other documents required by the City, to be executed by the Tenant in connection with the transaction contemplated by this Lease or the LDDA.

(l) "City Funds" means an amount not to exceed Ten Million Eight Hundred Thousand Dollars ($10,800,000) in City funds earmarked for the Emeryville Arts Center, Nine Million Eight Hundred Thousand Dollars ($9,800,000) of which is the Construction Component, and One Million ($1,000,000) is to be set aside for the Operating Fund.

(m) "City Parking Lot" means that City owned property located adjacent to the Property and commonly referred to as Assessor Parcel Numbers 49-618-2-2 and -29.

(n) "Commercial Component" means the café space, the studio space and office space as designated on the site plan attached as part of the Scope of Development.

(o) "Commercial Component Lease" means a lease(s), rental agreement(s), or equivalent document(s) for the sublease of the Commercial Component or any portion thereof by Tenant to a third-party.

(p) "Construction Contracts" means, collectively, all the contracts between the Tenant and any general contractor(s) covering the construction of the Improvements or any Major Additional Improvements.

(q) "Control" means (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(r) "Default Interest Rate" means the rate of ten percent (10%) per month during the relevant period over which the Default Interest Rate is to be applied under this Lease, but in no event greater than the maximum rate permitted by law.

(s) "Development" means Tenant's design, planning and construction of the Improvements as contemplated in the LDDA and this Lease.

(t) "Developer Equity" means any of the Tenant's own funds invested in the Development. Developer Equity shall not mean the City Funds or any distributions to the Tenant of Net Revenues. Developer Equity shall include Developer's unreimbursed third party expenses related to the design, entitlement and construction of the Development, and those amounts designated herein as Developer Equity related to Developer's performance under this Lease.

(u) "Developer Fee" means the fee to be earned by the Tenant for the development of the Improvements as set forth in Section 5.3 of the LDDA.

(v) "Effective Date" means the date first written above.

(w) "Final Construction Plans" means those certain construction plans for the Improvements approved by the City pursuant to the LDDA (as may be amended pursuant to this Lease), and attached hereto as Exhibit B.

(x) "Financing Plan" means the Tenant's financing plan for the development of the Improvements as approved by the City in accordance with the LDDA.

(y) "Gallery Lease" means the sublease between the Tenant and the Gallery Operator pursuant to which the Gallery Operator will manage, operate and program the Arts Dedicated Spaces.

(z) "Gallery Operator" means _____.

(aa) "General Contractor" shall have the meaning set forth in Section 4.3(j).

(bb) "Governmental Authority(ies)" means any federal, state, and/or local agency, department, commission, board, bureau, administrative or regulatory body, or other public instrumentality having jurisdiction over the Property or any portion thereof.

(cc) "Gross Revenue" means, with respect to a particular calendar year, all revenue, income, receipts and other consideration actually received by Tenant from the operation and leasing of the Arts Center. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by subtenants, deposits forfeited by subtenants, all cancellation fees, price index adjustments and any other rental adjustments for subleases or rental agreements, proceeds of business interruption or similar insurance, the proceeds of casualty insurance (if the Tenant does not use such funds to rebuild the Improvements); and condemnation awards for a taking of part or all of the Property or Improvements for a temporary period. Gross Revenues shall not include tenants' security deposits, loan proceeds or the Developer Equity.

(dd) "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste", "hazardous material", "hazardous substance", "extremely

hazardous waste", "restricted hazardous waste", "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos and asbestos containing materials; (4) polychlorinated biphenyls; (5) radioactive materials; (6) mold; (7) MTBE; or (8) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Improvements, including but not limited to, alcoholic beverages, aspirin, tobacco products, nutrasweet and saccharine, so long as such materials and substances are stored, used, and disposed of in compliance with all applicable Hazardous Materials Laws.

(ee) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials.

(ff) "Improvements" means the existing Building located on the Property as improved in accordance with the LDDA and the Scope of Development attached thereto.

(gg) "Insurance Trustee" shall have the meaning set forth in Section 8.5(c).

(hh) "Land Use Approvals" means any governmental or regulatory approvals, permits or authority, other than the Building Permit, necessary for the development and operation of the Improvements, including but not limited to, mitigation measures or other conditions imposed under CEQA.

(ii) "LDDA" means that certain Lease Disposition and Development Agreement dated _____, 2020, by and between the City, and Tenant, and as may be amended from time to time.

(jj) "Lease" means this Ground Lease Agreement.

(kk) "Major Additional Improvements" shall have the meaning set forth in Section 4.2(c).

(ll) "Memorandum of Lease" means the memorandum of this Lease to be recorded against the Property substantially in the form attached as Exhibit D.

(mm) "Net Revenues" means the Gross Revenues minus Annual Operating Expenses.

(nn) "Operating Losses" means for any fiscal year the Gallery Operator's operating expenses including, but not limited to the Gallery Operator's proportionate share of building operating expenses, operating expenses for the Arts Dedicated Spaces and salaries and

other expenses that exceeds revenues received from the operation of the Arts Dedicated Spaces.

(oo) "Parties" means the City and the Tenant.

(pp) "Pedestrian, Vehicle and Parking and Operations License" means that certain agreement between the City and, the Developer and the owner of the Besler Parking Lot whereby the Tenant will be provided a license to reconfigure the Parking Lot, use parking spaces in the Parking Lot, install and use a trash enclosure within the Parking Lot, install and use certain drainage and utility improvements within the Parking Lot, install and use an ADA access ramp for ingress and egress to and from the Property and use the courtyard area for ingress and egress.

(qq) "Preferred Return" means an eight percent (8%) non-compounding annual return on the Developer Equity provided, however, Developer Equity invested in the Development as required by Section 5.6 shall only earn a four percent (4%) non-compounding annual return.

(rr) "Preliminary Title Report" means that certain Preliminary Title Report for the Property, dated July 15, 2019, issued by Chicago Title Company.

(ss) "Property" means that certain real property located in the City and more particularly described in the attached Exhibit A.

(tt) "Rent" means the applicable amount set forth in Article 3, plus all other amounts owed by the Tenant to the City, under this Lease.

(uu) "Scope of Development" means the general description of the Improvements attached hereto as Exhibit B.

(vv) "Tenant" means 4060 Hollis LLC, a California limited liability company, and its permitted successors or assigns as more particularly set forth herein.

(ww) "Tenant Event of Default" means an event described in Section 11.1

(xx) "Term" means the term of this Lease, commencing on the Effective Date and ending on the earlier to occur of (1) thirty-fourth (34th) anniversary of the Effective Date, as may be extended pursuant to Article 2; or (2) the date of any termination of this Lease in accordance with the provisions hereof.

(yy) "Transfer" has the meaning set forth in Section 7.1.

Section 1.2 Exhibits.

The following exhibits are attached to and incorporated into this Lease:

Exhibit A: Legal Description of the Property
Exhibit B: Scope of Development and Final Construction Plans

Exhibit C: Memorandum of Lease
Exhibit D: Insurance Requirements

ARTICLE 2.
LEASE OF THE PROPERTY

Section 2.1 Property.

Subject to the terms, covenants, and conditions hereof and in consideration of rents to be paid pursuant to this Lease, the City hereby leases the Property to the Tenant, and the Tenant hereby leases and takes from the City, the Property.

Section 2.2 Term.

Unless sooner terminated pursuant to the provisions of this Lease, this Lease shall continue in full force and effect for the Term, commencing on the Effective Date and shall expire on midnight the day immediately preceding the thirty-fourth (34th) anniversary of the Effective Date. Notwithstanding the foregoing, the Tenant shall have three (3) ten (10) year options to extend the Term of this Lease for a total term of sixty-four (64) years in accordance with the requirements of this Section. Each ten (10) year option period is referred to herein as an "Extension Term". No less than six (6) months prior to the expiration of the initial Term or each Extension Term, the Tenant shall deliver a written notice (the "Tenant Notice") to the Landlord setting forth that the Tenant shall either: (i) exercise the option to extend the term of this Lease for an additional ten (10) years commencing on the date of the expiration of the initial Term or the Extension Term, or (ii) not exercise the option to extend the Term. In the event the Tenant exercises the option to extend the initial Term or an Extension Term, then commencing on the first day of the extended Term, the Tenant shall be obligated to pay the Rent for the extended Term to the Landlord as set forth in Section 3.1(a). In the event the Tenant does not exercise the option to extend the Term, then the Lease will terminate on the last day of the initial Term or the applicable Extension Term, unless sooner terminated pursuant to the terms of this Lease. Notwithstanding any provision to the contrary, the Tenant shall have no ability to extend the initial Term if at the time the Tenant delivers the Tenant Notice, or anytime thereafter, a Tenant Event of Default under Section 11.1 is in existence and Tenant fails to cure the same prior to the expiration of the applicable cure period.

Section 2.3 Use.

Subject to the provisions of this Lease, the Tenant shall use the Property for the redevelopment thereof and for the construction, development and operation of the Improvements on the Property in accordance with the restrictions and requirements set forth in Article 5 and, during the term of the LDDA, the LDDA.

Section 2.4 Possession.

The City agrees to, and shall, transfer exclusive possession of the Property to the Tenant immediately following the Effective Date. To the best of the City's knowledge, the Property is subject only to the encumbrances listed in the Preliminary Title Report and such encumbrances approved by the City and recorded concurrently with the Memorandum of Lease. The City shall convey the Property to the Tenant in the physical condition set forth in the LDDA.

Section 2.5 Memorandum of Lease.

The Parties shall execute and acknowledge the Memorandum of Lease, in the form attached hereto as Exhibit C, which the Tenant shall cause to be recorded against the Property at the Tenant's expense.

ARTICLE 3.
RENT

Section 3.1 Annual Rent.

(a) Rent Amount During Initial Term. Each year the Tenant shall pay to the City its share of Net Revenue in accordance with the distributions set forth below. On March 1 of each year or such other date as agreed to by the Parties, the Tenant shall distribute the Net Revenue as follows:

(1) First, to cover any remaining Developer Fee owed to the Tenant pursuant to the LDDA;

(2) Second, to pay the Tenant the applicable Preferred Return on any Developer Equity;

(3) Third, a return of the Developer Equity, first applied to return of any Developer Equity subject to a Preferred Return of 8%;

(4) Fourth, the remaining Net Revenue shall be distributed equally to the City and the Tenant unless the Gallery Operator has an Operating Loss for such year after the abatement of rent and the application of funds from the Operating Fund pursuant to Section 5.1(e), in which case the City's fifty percent (50%) share of Net Revenue, or such amount as is necessary to cover the Operating Loss, shall be distributed to the Gallery Operator to cover such Operating Loss and if the City's fifty percent (50%) share of Net Revenue is insufficient to cover such Operating Loss, the Tenant's fifty percent (50%) share of Net Revenue, or such amount as is necessary to cover the remaining Operating Loss, shall be distributed to the Gallery Operator to cover such Operating Loss.

If in any year, the remaining Net Revenue to be distributed to the City and the Tenant in accordance with Section 3.1(a)(4) is insufficient to cover the Operating Losses of the Gallery Operator, then prior to making any distribution under Section 3.1(a)(1), the Tenant shall make a distribution to the Gallery Operator or other party as agreed to by the Tenant and the Gallery Operator, necessary to cover the Operating Losses of the Gallery Operator.

(b) Audited Financial Statement. In conjunction with the determination of Net Revenue and the payment of Rent during the Term and any extension of the Term, but in no event later than one hundred twenty (120) days of the end of each fiscal year for the Tenant during the Term, the Tenant shall furnish to the City an audited statement pertaining to the Arts Center duly certified by an independent firm of certified public accountants approved by the City, which audited financial statement shall include an audited financial statement for the Gallery Operator.

(c) Books and Records. The Tenant shall keep and maintain on the Property, or at its principal place of business, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Arts Center. Books, records and accounts relating to the Tenant's compliance with the terms, provisions, covenants and conditions of this Lease shall be kept and maintained in accordance with generally accepted accounting principles consistently applied, and shall be consistent with requirements of this Lease. All such books, records, and accounts shall be open to and available for inspection by the City, its auditors or other City authorized representatives at reasonable intervals during normal business hours. Copies of all tax returns and other reports that the Tenant may be required to furnish any governmental agency shall at all reasonable times be open for inspection by the City at the place that the books, records and accounts of the Tenant are kept upon prior reasonable notice to the Tenant. The Tenant shall preserve records on which any statement of the Rent is based for a period of not less than five (5) years after such statement is rendered, and for any period during which there is an audit undertaken pursuant to subsection (3) below then pending.

(d) Audits. The receipt by the City of any statement pursuant to subsection (b) above or any payment by the Tenant or acceptance by the City of any Rent for any period shall not bind the City as to the correctness of such statement or such payment. Within three (3) years after the receipt of any such statement, the City or any designated agent or employee of the City, at any time, shall be entitled to audit the books, records, and accounts pertaining to the Rent payment and the operation of the Arts Center including the books, records and accounts of the Gallery Operator. Such audit shall be conducted during normal business hours at the principal place of business of the Tenant and other places where records are kept. Immediately after the completion of an audit, the City shall deliver a copy of the results of such audit to the Tenant. If it shall be determined as a result of such audit that there has been a deficiency in the payment of Rent to the City, then such deficiency shall become immediately due and payable with interest at the Default Interest Rate, determined as of and accruing from the date that said payment should have been made. In addition, if the Tenant's auditor's statement for any fiscal year shall be found to have understated the Rent amount by more than five percent (5%), and the City is entitled to any additional Rent as a result of said understatement, then the Tenant shall pay, in addition to the interest charges referenced hereinabove, all of the City's reasonable costs and expenses connected with any audit or review of the Tenant's accounts and records. To the extent necessary, this Section shall survive termination of this Lease.

(e) Location. The Tenant shall pay the Rent to the City, without deduction or offset whatsoever, in lawful money of the United States of America, to the City at the address for the City set forth in Section 13.1, or to such other person or at such other place as the City may

from time to time designate by notice in writing to Tenant, during the Term in accordance with the terms of this Lease.

(f) City Rights Under the LDDA. Nothing in this Section shall be deemed to waive, limit, or modify any right of the City under the LDDA, or any other City Document, in connection with the City's review and audit of the Tenant's payment of Rent.

Section 3.2 Advances for Lease Obligations.

In addition to and not by way of limitation of City's rights under specific provisions of this Lease, the City shall at all times have the right (at its sole election and without any obligation so to do) to advance on behalf of the Tenant any amount payable under this Lease by the Tenant, or to otherwise satisfy any of the Tenant's obligations under this Lease, provided that (except in case of emergency calling for immediate payment) the City shall first have given the Tenant no less than fifteen (15) days advance written notice of the City's intention to advance such amounts on behalf of the Tenant. No advance by the City shall operate as a waiver of any of the City's rights under this Lease and the Tenant shall remain fully responsible for the performance of its obligations under this Lease. All amounts advanced by the City shall be separate from and additional to the Rent, and shall be immediately due and payable by the Tenant to the City and shall bear interest from the date of advance at the Default Interest Rate. All amounts advanced by the City pursuant to this Section 3.2 or similar provisions of this Lease are hereinafter referred to as "Advances".

Section 3.3 Net-Net-Net Lease.

This Lease is a net-net-net lease, and Rent and other payments payable to or on behalf of the City shall: (a) be paid without notice or demand and without offset, counterclaim, abatement, suspension, deferment, deduction or defense; and (b) be an absolute net return to the City, free and clear of any expenses, charges or offsets whatsoever.

Section 3.4 No Termination.

Except as otherwise expressly provided in this Lease, this Lease shall not terminate nor shall the Tenant be entitled to the abatement of any Rent or other payment due or any reduction or allocation thereof, nor shall the obligations of the Tenant under this Lease be otherwise affected by reasons of any damage to or destruction of all or any part of the Improvements from whatever cause, or a taking of the Property or Improvements or any portion thereof by condemnation, requisition or otherwise for any reason whatsoever, or the prohibition, limitation or restriction of the Tenant's use of all or any part of the Property or Improvements, or the interference with such use by any person, or by reason of the termination or foreclosure of any mortgage, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the Parties that the obligations of the Tenant shall be separate and independent covenants and agreements, that the Rent and all other payments payable by the Tenant under this Lease shall continue to be payable in all events, and that the obligations of the Tenant under this Lease shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an

express provision of this Lease; provided, however, that during the continuance of any such damage, destruction, taking, prohibition, limitation, interference, eviction or foreclosure, the Tenant shall not be obligated to perform any obligations which are no longer capable of being performed as a result of such event.

ARTICLE 4.
CONSTRUCTION OF IMPROVEMENTS

Section 4.1 Construction of Improvements.

(a) Specific Standards. Within the time and in the manner set forth in this Lease, the Tenant shall construct, or cause to be constructed on the Property, the Improvements, as required by the LDDA, and this Lease. The Improvements shall be constructed in full conformity with the LDDA, Land Use Approvals, the Scope of Development, the Final Construction Plans, attached as Exhibit B as may be amended pursuant to this Lease, the Building Permits and any construction staging license or other agreements related to the construction of the improvements.

If the Tenant desires to make any material change (as defined below) in the Final Construction Plans then in effect, the Tenant shall first submit, or cause to be submitted, to the City such plans or other information which document the desired change. If the Final Construction Plans, as modified by the desired change, conform to the requirements of this Lease, the LDDA, and the Land Use Approvals, the City shall reasonably approve or disapprove the change by notifying the Tenant in writing within thirty (30) days of the submission of the request for the material change. If the proposed change is disapproved by the City, the disapproval shall state with reasonable specificity the basis for disapproval. Until and unless such change is approved by the City, the previously approved Final Construction Plans shall remain in effect. If the City fails to provide written notice disapproving any proposed material change in a timely manner, the City shall be deemed to have approved the proposed material change. The City's approval or disapproval of a proposed material change pursuant to this section shall be solely in its capacity as the lessor of Property and not in its regulatory capacity. Tenant shall be responsible for obtaining any and all regulatory approvals for such material change in addition to the approval set forth herein.

For purposes of this paragraph, a "material change" is one involving a change in exterior design, building materials or colors, a change in interior design that would materially affect the uses to which the Improvements may be put, or a change that will reduce the square footage of the Improvements devoted to Arts Uses.

(b) Commencement and Completion. The Tenant shall commence and complete the construction of the Improvements as and when required by the LDDA. Once the Tenant commences construction of the Improvements, the Tenant shall not halt, or permit the cessation of construction for such work for a period of more than thirty (30) days, subject to excused delays.

(c) Certificate of Completion. Promptly after completion of the Improvements, in accordance with those provisions of this Lease and the LDDA relating solely to the obligations of the Tenant to construct, or cause the construction of, the Improvements (including the dates for beginning and completing construction of the Improvements), the City shall provide an instrument so certifying, (collectively, the "Certificate of Completion"). The Certificate of Completion shall constitute a conclusive determination that the covenants in this Lease solely with respect to the obligations of the Tenant to construct the Improvements (including the dates for the beginning and completing construction of the Improvements) have been met. The Certificate of Completion shall not constitute evidence of compliance with, or satisfaction of, any obligation of the Tenant to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof, shall not be deemed a notice of completion under the California Civil Code, and shall not constitute evidence of compliance with, or otherwise waive, modify, or limit any of the requirements regarding the payment of prevailing wages as set forth in this Lease.

Section 4.2 Additional Construction on Property.

(a) General Standards. Any alteration, construction, remodeling, reconstruction or repair work undertaken on or within any existing building on any portion of the Property (other than the initial construction of the Improvements pursuant to Section 4.1) shall at all times be of first-class construction and architectural design. All such additional alteration, construction, remodeling, reconstruction or repair work shall be diligently prosecuted, and completed (1) only after the Tenant has obtained the City's prior written approval for such additional construction, (2) without cost to the City, (3) in good and workmanlike manner, and (4) in accordance with any plans and specifications approved by the City pursuant to subsection (b) below. The Tenant shall secure the City's approval under this Section 4.2 and all necessary Land Use Approvals and Building Permits prior to commencing any such additional construction.

(b) Approval of Plans. Prior to commencing construction of any Major Additional Improvements (as defined below), the Tenant shall submit to the City for the City's approval plans and specifications for such work which, to the extent relevant, shall contain the same information as set forth in the Final Construction Plans. The plans for Major Additional Improvements submitted by Tenant for City approval shall (1) consist of all construction documentation upon which the Tenant and its contractors shall rely in building the Major Additional Improvements, and (2) include (without limitation and as applicable) final architectural drawings, landscaping plans and specifications, final elevations, building plans and specifications, mechanical, plumbing and HVAC (also known as "working drawings"). The City reasonably shall approve or disapprove (in the City's reasonable discretion) such plans and specifications in writing within sixty (60) days of submission. Any disapproval shall state with specificity the reasons for such disapproval.

If rejected by the City in whole or in part, the Tenant shall submit new or corrected construction plans within thirty (30) days of notification of the City's disapproval. The City shall then have thirty (30) days to review and approve the Tenant's new or corrected construction plans. The City's failure to either approve or disapprove the construction plans within such thirty (30) day

period shall be deemed approval. The provisions of this Section 4.2 relating to time periods for approval, rejection, or resubmission of new or corrected construction plans shall continue to apply until construction plans have been approved by the City (or deemed approved) at which time they shall be attached to and become a part of this Lease as if fully set forth herein. Only upon approval of the construction plans shall this condition be met.

The City's approval or disapproval of the plans and specifications pursuant to this Lease shall be solely in its capacity as the lessor of Property and not in its regulatory capacity. Tenant shall be responsible for obtaining any and all regulatory approvals for such improvements in addition to the approvals set forth herein.

In the event that prior to or during the course of construction, the Tenant desires to make any material change in the Major Additional Improvements from that contemplated in the approved plans and specifications, the Tenant shall, prior to making such change, submit to the City such plans or other information which document the desired change. The City shall reasonably approve or disapprove such change within thirty (30) days of its submission to the City. Any disapproval shall state with reasonable specificity the basis for such disapproval. Unless such change is approved, the previously approved plans and specifications shall remain in effect. If the City fails to provide written notice disapproving any proposed material change in a timely manner, the City shall be deemed to have approved the proposed material change.

(c) "Major Additional Improvements" means any of the following: (1) any new buildings, structures or outdoor facilities to be located on the Property, (2) any substantial alterations, remodeling or rehabilitation of existing buildings, structures, or remodeling or rehabilitation of existing buildings, structures, or outdoor facilities, (3) construction of additional spaces or facilities, (4) any other alteration, construction, remodeling or reconstruction with a cost in excess of Twenty-Five Thousand Dollars ($25,000), or (5) a change that will reduce the square footage of the space devoted to Art Uses or increase the Commercial Component. Alteration, construction, remodeling, or reconstruction not constituting a Major Additional Improvement shall not require the City's consent or approval of plans and specifications pursuant to this Lease , but must be designed and performed in accordance with the General Standards set forth in subsection (a) above and will be subject to any applicable regulatory approvals and permits.

Section 4.3 Construction Standards.

(a) General Standards. All construction of the Improvements, Major Additional Improvements and any other alteration or repair work permitted by this Lease shall be accomplished expeditiously and diligently by reputable licensed contractor(s), approved by the City in accordance with the provisions of Section 4.3(j), below.

The Tenant shall take all reasonably necessary measures to minimize any damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected thereby. The Tenant shall repair, at the Tenant's own cost and expense any and all damage caused by such work and shall restore the area upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the

beginning of such work. In addition, the Tenant shall pay all costs of and expenses associated herewith, and shall indemnify, defend, and hold harmless the City and the City's councilmembers, agents, employees and volunteers from any and all suits, actions, claims, losses, liabilities, damages, injuries, causes of action, costs and expenses of any kind, whether actual or alleged, including without limitation, court costs, reasonable attorneys' fees and other litigation expenses, demands, judgments and liens arising out of, pertaining to or relating to, directly or indirectly, in whole or in part, the performance of such work, except directly caused by the City's willful misconduct or gross negligence.

(b) Compliance with Construction Documents and Laws; Issuance of Permits. All Improvements and any Major Additional Improvements shall be constructed in compliance with the requirements of the construction documents approved by the City, in accordance with this Lease (if applicable), the LDDA, and also in strict compliance with all applicable local, state and federal laws and regulations. The Tenant shall have the sole responsibility for obtaining all necessary permits and shall make any application for such permit directly to the Governmental Authority having jurisdiction. In addition to any other applicable local, state and federal laws and regulations, all contractors and subcontractors shall comply with the City's Living Wage Ordinance (Chapter 31 of Title 5 of the Emeryville Municipal Code) or the Minimum Wage, Paid Sick Leave and other Employment Standards (Chapter 37 of Title 5 of the Emeryville Municipal Code), as applicable.

(c) Construction Safeguards. The Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by the Tenant, all reasonable safeguards for the protection of workers and the public.

(d) Rights of Access. Representatives of the City shall have the reasonable right of access to the Property and the Improvements thereon without charges or fees, at normal construction hours during the period of construction, for the purposes of ascertaining compliance with the terms of this Lease, including, but not limited to, the inspection of the construction work being performed, provided that such representatives shall be those who are so identified in writing by the City Manager, shall be accompanied by the Tenant's representatives if the Tenant so desires, shall comply with the Tenant's contractor's reasonable rules for the construction site, and shall provide the Tenant with forty-eight (48) hours' notice prior to any such inspection.

(e) Notice of Completion. Upon completion of any Major Improvements, the Tenant shall file or cause to be filed in the Official Records of the County of Alameda a notice of completion with respect to the applicable construction, and the Tenant shall deliver to the City, at no cost to the City, two (2) sets of the final as-built plans and specifications of the Improvements, or Major Additional Improvements.

(f) Discharge of Liens. The Tenant shall not create or permit or suffer to be created or to remain, and will discharge, any lien (including, but not limited to, the liens of mechanics, laborers, material men, suppliers or vendors for work or materials alleged to be done or furnished in connection with the Property and the Improvements thereon), encumbrances or other charge upon the Property and the Improvements thereon, or any part thereof, or upon the Tenant's leasehold interest therein.

The Tenant shall have the right to contest in good faith and by appropriate legal proceedings the validity or amount of any mechanics', laborers', materialmen's, suppliers' or vendors' lien or claimed lien; provided that the Tenant shall utilize all reasonable means (including the posting of adequate security for payment) to protect the Property, and any part thereof, or the Improvements thereon against foreclosure, and shall indemnify and hold harmless the City from any adverse effects resulting from such lien.

(g) Protection of the City. Nothing in this Lease shall be construed as constituting the consent of the City, expressed or implied, to the performance of any labor or the furnishing of any materials or any specific improvements, alterations of or repairs to the Property or the Improvements thereon, or any part thereof, by any contractor, subcontractor, laborer or materialman, nor as giving the Tenant or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services or the furnishing of any materials in such manner as would give rise to the filing of mechanics' liens or other claims against the fee interest of the Property or the Improvements thereon, if any. The City shall have the right at all reasonable times to post and keep posted on the Property any notices which the City may deem necessary for the protection of the City and of the Property and the Improvements thereon from mechanics' liens or other claims. In addition, but subject to the second paragraph of subsection (f) above, the Tenant shall make, or cause to be made, prompt payment of all monies due and legally owing to all persons doing any work or furnishing any materials or supplies to the Tenant, or any of its respective contractors or subcontractors in connection with the Property and the Improvements thereon.

(h) The Tenant to Furnish and Equip the Improvements. The Tenant covenants and agrees to furnish and equip the Improvements, or any Major Additional Improvements, with all fixtures, furnishings, equipment and other personal property (collectively, the "Personal Property") of a quantity as necessary to operate the Improvements in accordance with the standards set forth in this Lease and the LDDA. The Tenant further agrees to take good care of such Personal Property, to keep the same in good order and condition ordinary wear and tear excepted, and promptly, at the Tenant's own cost and expense, to make all necessary repairs, replacements and renewals thereof. As used in this Lease, the term "Personal Property" includes all such replacements and renewals, and all fixtures, furnishings, equipment and other personal property of the Tenant located in, on or about the Property and the Improvements thereon (and excluding the personal property of any of the Commercial Component Tenants or the Gallery Operator). Any and all fixtures, furnishings, equipment and other personal property placed in, on or about the Property excluding the personal property of any of the Commercial Component Tenants or the Gallery Operator shall be the Personal Property of the Tenant during the Term of this Lease. Nothing in this Section shall require Tenant to improve the cafe space beyond the "cold-shell" condition required under the LDDA.

(i) Performance and Payment Bonds. Prior to commencing construction of any Major Additional Improvements, the Tenant shall obtain and provide to the City evidence of one (1) labor and material, and, one (1) performance, bond issued by a reputable insurance company licensed to do business in California, and named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department, and reasonably acceptable to the City, each in a

penal sum of not less than one hundred twenty five percent (125%) of the scheduled cost of construction on the Property. The City shall be named as a co-obligee under those bonds.

Within ten (10) days after receipt, the City shall review and approve or disapprove the bonds or other security, providing said bonds meet the requirements of the City as to form, content, and issuer, and shall notify the Tenant of any deficiency. If the bonds are not approved, the Tenant shall resubmit updated bonds within five (5) days after receipt of notice. The review and submittal periods shall continue to apply until the bonds or other security are approved by the City. Only upon final approval shall this condition be met. No work shall be initiated until approval of the bonds has been received. As of the Effective Date, the City has approved the Tenant's payment bond and performance bond for the Improvements.

(j) Contractor(s). Any Major Additional Improvements shall be performed by a general contractor (a "General Contractor") reasonably satisfactory to the City, having the reputation, experience, financial capability and qualification for serving as general contractor for similar developments in California. The Tenant shall submit for the City's approval the identity of any proposed General Contractor and such additional information about the background, experience, and financial condition of any proposed General Contractor as is reasonably necessary for the City to determine whether the proposed General Contractor meets the standard for a qualified General Contractor set forth above. If the proposed General Contractor meets such standard, the City shall reasonably approve or disapprove the proposed General Contractor by notifying the Tenant in writing within thirty (30) days of the submission. Any disapproval shall state with reasonable specificity the basis for disapproval. As of the Effective Date, the City has approved the Tenant's General Contractor for the Improvements.

(k) Construction Contracts. The Tenant shall enter into contracts for the construction of any Major Additional Improvements with reputable contractors as set forth above. Those contracts shall provide for the work to be performed for fixed and specified maximum amounts for allowances.

Within ten (10) days following the issuance of a Building Permit for construction of any Major Additional Improvements, the Tenant shall submit a copy of all construction contracts for such construction to the City, for the sole and limited purposes of determining: (a) that the amount of the costs of work has been clearly fixed and determined; (b) that no changes to the provisions of the contract which, pursuant to this Lease or the LDDA require the approval of City shall be made without the prior consent of the City; (c) that the covenants as to equal opportunity in construction, Prevailing Wages, Living Wage, Minimum Wage and Paid Sick Leave set forth in this Lease (collectively, the "City Labor Standards") have been met; (d) that the City is named as a specified third-party beneficiary with a direct right to enforce any indemnity or warranty and the requirements related to the City Labor Standards; (e) the construction contract is with a contractor duly licensed by the State of California and reasonably acceptable to the City; (f) the construction contract contains provisions consistent with this Lease; (g) the construction contract requires a retention of ten percent (10%) of hard costs until completion of any Major Additional Improvements (provided, however, the construction contract may provide for the release of retention, prior to completion of any Major Additional Improvements, to certain specified subcontractors that have completed all of their work on any

Major Additional Improvements as reasonably approved by the City, and, provided, further, that such early retention amount shall be based on the subcontractor's initial contract sum, and shall exclude any increase in the contract sum due to change orders, or otherwise); (h) the construction contract includes indemnifications from the contractor indemnifying the City for any and all claims resulting from the construction; and (i) the construction contract includes the applicable insurance requirements as set forth in this Lease. Unless the City notifies the Tenant in writing within ten (10) days following the submittal of the contract(s) that the contract has been disapproved, it shall be deemed approved. The City's approval shall merely constitute satisfaction of the conditions set forth in this Section 4.3. The City's approval of the construction contract shall in no way be deemed to constitute approval of, or concurrence with, any other term or condition of the construction contract. The Tenant shall not rely on the City's approval of the construction contract(s) as a representation regarding the enforceability or business advantage of the construction contract(s).

(l) Conditions to Commencement of Construction. In no event shall the Tenant commence any Major Additional Improvements on the Property until the following conditions have been satisfied or waived by the City, in addition to other conditions and requirements imposed by this Lease:

(1) The City has approved the final plans and specifications for the improvements to be constructed;

(2) The Tenant has obtained financing and equity capital necessary for the full payment of construction of the Major Additional Improvements and delivered evidence of such financing to the City;

(3) The Tenant has obtained building permits and all other governmental approvals necessary for the construction of the Major Additional Improvements to the extent required by applicable law;

(4) The Tenant has entered into complete and binding contracts with its contractor or contractors for the construction of the Major Additional Improvements, which contracts shall meet the requirements of subsection (k) above;

(5) The Tenant has obtained the performance bond and the payment bond meeting the requirements of subsection (i) above; and

(6) There exists no Tenant Event of Default nor any act, failure, omission or condition that would constitute a Tenant Event of Default under this Lease, the LDDA, or any other City Documents.

Section 4.4 Equal Opportunity.

During the construction of the Improvements or any Major Additional Improvements there shall be no discrimination on the basis of race, color, creed, religion, sex, sexual orientation, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged

in the construction work. The Tenant and its construction contractors, employees and agents shall comply with all applicable state laws, including all equal opportunity and fair employment laws and regulations applicable to the Property.

Section 4.5 Prevailing Wages.

(a) Tenant shall and shall cause its contractors and subcontractors to pay prevailing wages in the construction of the Improvements or any Major Additional Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"), to employ apprentices as required by Labor Code Sections 1777.5 et seq., and the implementing regulations of the DIR and comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1777.5 et seq., 1810-1815 and implementing regulations of the DIR.

(b) All calls for bids, bidding materials and the construction contract documents for the Improvements or any Major Additional Improvements must specify that:

(i) No contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Improvements or any Major Additional Improvements unless registered with the DIR pursuant to Labor Code Section 1725.5.

(ii) The Improvements or any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR.

(b) Tenant, as the "awarding body", shall register the Improvements or the Major Additional Improvements as required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within two (2) days after entering into the construction contract and provide evidence of such registration to the City within two (2) days of such registration and any additional registration reporting to the DIR.

(c) In accordance with Labor Code Sections 1725.5 and 1771.1, Tenant shall require that its contractors and subcontractors be registered with the DIR, and maintain such registration as required by the DIR.

(d) Pursuant to Labor Code Section 1771.4, the Improvements and any Major Additional Improvements are subject to compliance monitoring and enforcement by the DIR. Tenant shall and shall require its contractors and subcontractors to submit payroll and other records electronically to the DIR pursuant to Labor Code Sections 1771.4 and 1776 et seq, or in such other format as required by the DIR.

(e) Tenant shall and shall cause its contractors and subcontractors to keep and retain such records as are necessary to determine if prevailing wages have been paid as required pursuant to Labor Code Sections 1720 et seq., and that apprentices have been employed as required by Labor Code Section 1777.5 et seq., and shall, from time to time upon the request of Landlord provide to Landlord such records and other documentation reasonably requested by Landlord.

(f) Tenant shall and shall cause its respective contractors and subcontractors to comply with all other applicable provisions of Labor Code, including without limitation, Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and implementing regulations of the DIR in connection with construction of the Improvements or any Major Additional Improvements or any other work undertaken or in connection with the Property.

(g) Copies of the currently applicable current per diem prevailing wages are available from the DIR website, www.dir.ca.gov. Tenant shall cause its respective contractors to post the applicable prevailing rates of per diem wages at the Property site and to post job site notices, in compliance with Title 8 California Code of Regulations 16451(d) or as otherwise as required by the DIR.

(h) Tenant shall indemnify, hold harmless and defend (with counsel reasonably selected by the City), to the extent permitted by applicable law, the City, its councilmembers, commissioners, officials, employees, volunteers, and agents, against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Tenant, or its contractors or subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., to hire apprentices in accordance with Labor Code Sections 1777.5 et seq., or to comply with the other applicable provisions of Labor Code Sections 1720 et seq., 1725.5, 1771, 1771.1, 1771.4, 1776, 1777.5 et seq., 1810-1815 and the implementing regulations of the DIR in connection with the work performed pursuant to this Agreement. The provisions of this Section shall survive termination of this Agreement.

Section 4.6 No Liens.

The Tenant shall not have any right, authority or power to bind the City, or the City's fee interest in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Improvements or any change, alteration or addition thereto including, but not limited to any Major Additional Improvements. The Tenant shall not have any right to encumber the Tenant's estate in the Property without the written consent of the City. Any easements necessary and incidental to the development, construction and operation of the Improvements over the Property are subject to the approval of the City, which shall not be unreasonably withheld, delayed, or conditioned.

Section 4.7 Permits, Licenses and Utility Easements.

At no cost to the City, the City shall cooperate with the Tenant in the submittal of applications for all required permits, licenses, applications for utility services and easements, provided that the Tenant shall be responsible for obtaining any and all permits, licenses, easements and other authorizations required by any Governmental Authorities with respect to any construction or other work to be performed on the Property and for granting or causing to be granted all permits, licenses, easements and other governmental authorizations that are necessary or helpful for electric, telephone, gas, water, sewer, drainage, access and such other public or private utilities or facilities as may be reasonably necessary or desirable in connection with the

construction or operation of the Improvements. The Tenant shall be entitled, without separate payment to the City for tap or connection fees, to tap into the existing lines, facilities and systems of applicable electric, gas, cable, water, sewer, sewer treatment and other utilities serving the Property (if any), provided the Tenant remains responsible for payment of such fees therefor.

ARTICLE 5.
USE, CHARACTER, OPERATION AND MAINTENANCE OF IMPROVEMENTS

Section 5.1 Required and Permitted Uses. Subject to Sections 5.1 and 5.2, the Premises may be used for any use permitted by law.

(a) Art Uses. For the term of this Lease, at least two-thirds (2/3rds) of the net rentable square footage of the Improvements will be reserved for Art Uses, uses pursuant to Section 5.1(b) or use pursuant to Section 5.1(c) (collectively, the "Designated Uses"). Space rented on a daily, hourly or special event basis, including the Arts Dedicated Space, space made available to the City for use pursuant to Section 5.1(b) or space made available pursuant to Section 5.1(c), classroom space, and co-working space shall be considered to be occupied by a Designated Use so long as the use of the space for at least half of the days that the space is occupied is for a Designated Use. A Designated Use is considered to have occupied the space for a day if at least half of the hours that the space was available was occupied by a Designated Use. Further, so long as Tenant is using commercially reasonable efforts to market any particular space within the Improvements for a Designated Use, such space shall be deemed to be occupied by a Designated Use.

In addition to the above requirement, all interior walls denoted on the Scope of Development as "Art Display" or "Display Wall" shall be reserved for art exhibit use (collectively the Art Display and Display Walls are referred to herein as the "Art Display Areas").

(b) City Use. The City shall have the right to use the Arts Dedicated Space for City Use (as defined below) for up to ten (10) calendar days per year (4 of which shall be weekend days) at no cost except as provided in this Section. City Use includes use by the City or an institution or group that is part of or sponsored by the City, as approved by the City Council. The City acknowledges that it (or its sponsored user) shall be responsible for the following costs: (a) requested catering, (b) all equipment rentals and (c) extraordinary set up or staffing requested in conjunction with the City Use (beyond basic lighting and audio and typical operating staff).

(c) Emeryville Celebration of the Arts. At least ten thousand (10,000) square feet of the Arts Dedicated Space shall be made available for the exclusive use of the Emeryville Celebration of the Arts for a period of seven (7) consecutive weeks each year annually, free of charge, in October or at such other time as mutually agreed upon by the Tenant and Emeryville Celebration of the Arts. The Gallery Operator shall be entitled to schedule events in the Arts Dedicated Space during the time period that the Arts Dedicated Space is reserved for Emeryville

Celebration of the Arts so long as such events do not conflict with the Emeryville Celebration of the Arts, as mutually agreed by Tenant and Emeryville Celebration of the Arts.

(d) Gallery Operator. The Tenant shall enter into the Gallery Lease with the Gallery Operator, subject to the City's review and approval of the Gallery Lease. Pursuant to the terms of the Gallery Lease, the Gallery Operator shall be responsible for operations of the Arts Dedicated Space, including programming of the Arts Dedicated Space as well as the Art Display Areas. The Gallery Lease shall require the Gallery Operator to pay an annual rent of not more than Six Dollars ($6.00) per square foot of rentable area, triple net, adjusted by the increase in the Consumer Price Index for the San Francisco-Oakland-Hayward Core Based Statistical Area annually, with such increases commencing after the first full year of the Gallery Lease term, provided however no rent shall be charged for the first three full years of the Gallery Lease term, and provided further, that rent for the Gallery Operator shall be abated in any year to the extent that the Gallery Operator has Operating Losses.

If the Gallery Operator has Operating Losses in any year after abatement of rent as provided in the Gallery Lease, such loss shall be covered as follows:

(i) First from any interest earned on the Operating Fund;

(ii) Second, from the City's share of Net Revenues paid as Rent, pursuant to Section 3.1;

(iii) Third, from the Tenant's share of Net Revenues pursuant to Section 3.1;

(iv) By the Tenant;

provided, however any contribution by the Tenant to operating losses from clause (iv) above shall be considered Developer Equity, subject to the Preferred Return and returned to the Developer in accordance with the distribution of Net Revenue set forth in Section 3.1 above.

(e) Quality of Operations. The Parties recognize and acknowledge that the manner in which the Property and the Improvements are developed, used and operated are matters of critical concern to the City by reason of: (1) the prominence of the location of the Property, (2) the impact which the Improvements are expected to have upon the economic development of the surrounding area, and (3) the City's financial assistance to the Developer for the Improvements. In order to give the City assurance as to the manner in which the Improvements will be used and operated, the Tenant agrees that at all times during the Term of this Lease, the Tenant will operate the Improvements as a first-class mixed-use project developed in support of cultural and arts uses.

(f) Annual Report. The Tenant shall provide the City with an annual report regarding its compliance with this section, including the use of the Arts Dedicated Space, as well as a financial report on the Arts Center not later than 120 days after the end of the Tenant's fiscal

year.

(g) Covenant regarding Commercial Component. Throughout the Term, as may be extended, the use of the Commercial Component shall be subject to the terms of Section 7.7.

(h) Maintaining Quality. In order to maintain the quality of operation set forth in subsection (a) above following initial construction and opening of the Improvements, the Tenant shall periodically upgrade the furniture, fixtures, equipment and facilities within the Improvements as necessary to maintain the quality of operation of similar art facilities, in the San Francisco Bay Area. Upon request of the City, the Tenant shall confer with the City regarding actions necessary to meet the requirements of this subsection.

Section 5.2 Limitations on Use.

In addition to the covenants regarding the use of the Property set forth above, the Tenant further agrees:

(a) Not to use or permit the Property for any disorderly or unlawful purpose;

(b) Not to cause or permit any party from committing or maintaining any nuisance or unlawful conduct on or about the Property;

(c) Not to cause or permit any action by any party that would cause the Tenant to violate any of the covenants and conditions of this Lease with respect to the Improvements;

(d) Upon notice from the City, to take reasonable action, if necessary, to abate any action by any party that would cause a violation of this Lease;

(e) To permit the City and its agents upon not less than forty-eight (48) hours written notice to inspect the Property or any part thereof at any reasonable time during the Term, subject to the rights of the tenants of the Commercial Component;

(f) Not to commit or suffer to be committed any waste in, on or about the Property;

(g) Not to cause or permit obnoxious odors to emanate or be dispelled from the Improvements;

(h) Not to permit undue accumulations of garbage, trash, rubbish, or any other refuse; and

(i) Not to use or permit to be used the Property for any purpose inconsistent with this Lease or the LDDA.

The Tenant shall maintain all portions of the Property in good repair and in a neat, clean and orderly condition.

In the event that there arises at any time prior to the expiration of this Lease a condition in contravention of these maintenance and use standards, then the City shall give written notice to the Tenant of the deficiency. If the Tenant fails to cure the deficiency within thirty (30) days of the City's notice (or, if the deficiency is not susceptible of cure within such thirty (30) day period, the Tenant fails to commence the cure and thereafter to diligently pursue the cure to completion, in no event to exceed sixty (60) days from the date of the City's written notice), then the City shall have the right to enter the Property and perform all acts necessary to cure the deficiency or to take other recourse at law or in equity the City may then have and to receive from Tenant the City's cost in taking such action. The Parties further mutually agree that the rights conferred upon the City expressly include the right to enforce or establish a lien or other such encumbrance against the Property. The foregoing provisions shall be covenants running with the land until expiration of the Lease, enforceable by the City.

Section 5.3 Maintenance of Improvements.

During the Term of this Lease, the Tenant shall operate and maintain the Improvements in a first-class manner. All Improvements repaired or replaced under this Lease shall be repaired or replaced with materials, apparatus and facilities of a quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced in accordance with Section 4.2.

Section 5.4 Cost of Operation and Maintenance of Improvements.

As between the City and the Tenant, subject to the express provisions of this Lease and the LDDA, all costs incurred in the development, operation, and maintenance of the Improvements shall be paid by the Tenant.

Section 5.5 The City Not Obligated to Repair.

The City shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Improvements, and the Tenant hereby expressly waives all right to make repairs at the City's expense under Section 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated.

Section 5.6 Reserves.

The Tenant shall maintain a capital improvement reserve fund and shall deposit into the capital reserve fund annually an amount equal to $1.20 per square foot of Improvements, escalated annually by the increase in the Consumer Price Index for the San Francisco-Oakland-Hayward Core Based Statistical Area. The capital improvement reserve fund shall only be used to fund replacement of capital improvements and equipment and major maintenance and shall not be used for routine maintenance or operating expenses. The Tenant shall give the City notice prior to any withdrawal from the capital improvement reserves. If capital improvements or major maintenance is required and such work is not due to the negligence or acts of omission by Tenant

and there are insufficient funds in the capital improvement reserve, the Tenant shall be responsible for payment of such costs and the amount of costs in excess of the capital improvement reserve, and such amount shall be added to Developer Equity.

Section 5.7 Non-discrimination.

There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Improvements, or any part thereof, and the Tenant or any person claiming under or through the Tenant, shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Improvements, or any part thereof.

The Tenant shall refrain from restricting the use of the Improvements, or any portion thereof, on the basis of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin of any person. All such leases or contracts shall contain or be subject to substantially the following nondiscrimination or no segregation clause:

(i) In Leases:

"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(j) In Contracts:

"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of

the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

Section 5.8 Compliance with Laws.

The Tenant shall, at Tenant's sole cost and expense, comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances affecting the Improvements, the use thereof, or construction thereon, including those which require the making or any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted were within the contemplation of the Parties at the time of execution of this Lease, or involve a change of policy on the part of the Governmental Authority enacting the same.

The Tenant shall comply with each and every requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Improvements.

Section 5.9 Property Taxes.

The Tenant acknowledges and agrees that this Lease may create a possessory interest subject to property taxation. Subject to the Tenant's rights of contest as provided in Section 5.16, the Tenant agrees to pay and discharge, or cause the payment and discharge, during the Term of the Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Property, the Lease, and any so-called value added tax), assessments (including without limitation, all assessments for public improvements or benefits, whether or not to be completed prior to the date hereof and whether or not to be completed within the Term of the Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen, currently or hereafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "Taxes") which are or may be at any time or from time to time during the Term of the Lease levied, charged, assessed or imposed upon or against the Property or the Improvements which are located thereon, or against any of the Tenant's Personal Property located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby or which may be imposed upon any taxable interest of the Tenant acquired pursuant to

the Lease. The Tenant shall pay or reimburse the City, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any Taxes required to be paid by the Tenant hereunder.

Section 5.10 Limits of Tax Liability.

The provisions of this Lease shall not be deemed to require the Tenant to pay municipal, county, state or federal income or gross receipts taxes (except as provided below) or excess profits taxes assessed against the City, or municipal, county, state or federal capital levy, estate, succession, inheritance, gift or transfer taxes of the City, or corporation franchise taxes imposed upon any corporate owner of the fee of the Property; except, however, that the Tenant shall pay all taxes assessed by any Governmental Authorities by virtue of any operations by the Tenant conducted on or out of the Improvements.

Section 5.11 Apportionment of Taxes.

All Taxes for the fiscal or tax years in which the Term begins and ends shall be apportioned so that the Tenant shall pay only those portions thereof that will correspond with the portion of said years as are with the Term.

Section 5.12 Tax Receipts.

The Tenant, upon the request of the City, shall furnish to the City within thirty (30) days after the date when any such Taxes would become delinquent, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to the City evidencing the payment of such Taxes.

Section 5.13 Evidence of Nonpayment.

The receipt by the City of a certificate, advice, receipt or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Taxes, stating the nonpayment of such Taxes shall be prima facie evidence that such Taxes are due and unpaid or have not been paid at the time of the making or issuance of such certificate, advice, receipt or bill.

Section 5.14 Assistance in Making Payments.

The Parties acknowledge that Tenant is responsible under this Lease for making various payments to third parties, such as tax and utility payments in accordance with the provisions of this Article 5. In case any person or entity to whom any sum is directly payable by the Tenant under any of the provisions of this Lease (e.g., a tax collector or utility company) shall refuse to accept payment of such sum from the Tenant (due to the fact that the Tenant is not the fee owner of the Property or for any other reason), the Tenant shall thereupon give written notice of such fact to the City and shall pay such sum directly to City at the address specified in Section 13.1 hereof, and City shall thereupon pay such sum to such person or entity.

Section 5.15 The City's Right to Cure.

If the Tenant, in violation of the provisions of this Lease, shall fail to pay and to discharge any Taxes, or any other tax or fee, the City may (but shall not be obligated to) pay or discharge such Taxes, and the amount paid by the City and the amount of all costs, expenses, interest and penalties connected therewith, including attorneys' fees, together with interest at the Default Interest Rate shall be deemed to be and shall, upon demand of the City, be payable by the Tenant as repayment of an Advance.

Section 5.16 Permitted Contests.

The Tenant shall not be required to pay, discharge or remove any Taxes (including penalties and interest) upon or against the Improvements, or any part thereof, so long as the Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give to the City prompt notice in writing of such contest at least ten (10) days before any delinquency occurs and such legal proceedings shall operate to prevent the collection of the taxes so contested, or the sale of the Improvements, or any part thereof, to satisfy the same; and the Tenant shall, prior to the date such taxes are due and payable, (a) meet all requirements for contest imposed by the taxing entity whose Tax is being contested (including, without limitation, depositing any sums required by such taxing entity), and (b) if the taxing entity does not otherwise require such a deposit, deposit with the City, in a form reasonably acceptable to the City, that portion of the Tax which the Tenant in good faith does not propose to contest. In the event the final determination of any such contest is adverse to the Tenant, the Tenant shall, before any fine, interest, penalty or cost may be added thereto for nonpayment thereof, pay fully and discharge the amounts involved in or affected by such contest, together with any penalties, fines, interest, costs and expenses that may have accrued thereon or that may result from any such contest by the Tenant, and after such payment and discharge by the Tenant, the City shall promptly return to the Tenant any deposit that the Tenant shall have placed with the City. Any proceedings to contest the validity or amount of taxes or to recover back any taxes paid by the Tenant shall be brought by the Tenant, at the Tenant's sole expense, in the name of the Tenant. If any such proceedings are brought by the Tenant, the Tenant shall indemnify and hold harmless the City against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by the City in connection with those proceedings.

The City shall cooperate with the Tenant in providing the Tenant information in connection with contests permitted under this Section.

Section 5.17 Service and Utilities.

The Tenant shall pay promptly as the same become due and payable all charges, costs, bills and expenses of and for water, gas, electricity, sewer, air-conditioning, telephone and all other public or private services and utilities of whatever kind furnished or supplied to or used by the Tenant or any other party in connection with the use, occupancy, maintenance or operation of the Improvements or any part thereof, and shall comply with all contracts relating to such services and shall do all other things necessary and required for the maintenance and continuance

of such services (other than services and utilities charged directly to the tenants of the Commercial Component Lease).

Section 5.18 Hazardous Materials.

(a) Covenants.

(1) No Hazardous Materials Activities. The Tenant hereby represents and warrants to the City that, at all times from and after the Effective Date, the Tenant shall not cause or permit the Property or the Improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials.

(2) Hazardous Materials Laws. The Tenant hereby represents and warrants to the City that, at all times from and after the Effective Date, the Tenant shall comply and cause the Property and the Improvements thereon to comply with all Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

(3) Notices. The Tenant hereby represents and warrants to the City that, at all times from and after the Effective Date, the Tenant shall immediately notify the City in writing of: (i) the discovery of any Hazardous Materials on or under the Property; (ii) any knowledge by Tenant that the Property does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Tenant, the Property or the Improvements thereon by any Governmental Authorities or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims").

(4) Remedial Action. In response to the presence of any Hazardous Materials on, under or about the Property, the Tenant shall immediately take, at Tenant's sole expense, all remedial action required by any Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

(b) Inspection by City. Upon reasonable prior written notice to the Tenant, the City, its employees and agents, may from time to time enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Property.

(c) Environmental Indemnity. Without limiting the generality of the indemnity set forth elsewhere in this Lease, the Tenant shall defend, indemnify, and hold the City and its council members, employees, agents, volunteers, successors, and assigns free and harmless against any claims, loss, damage, costs, expense or liability they may incur directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, or disposal by the Tenant or its contractors, subcontractors, tenants, agents, and employees, of Hazardous Materials on, under, or about the Property or the Improvements, including without limitation: (1) all foreseeable consequential damages; (2) the costs of any

required or necessary repair, cleanup or detoxification of the Property or the Improvements, and the preparation and implementation of any closure, remedial or other required plans; and (3) all reasonable costs and expenses incurred by the City in connection with clauses (1) and (2), including but not limited to reasonable attorney's fees. This obligation to indemnify and defend shall survive termination of this Lease.

ARTICLE 6.
TITLE TO IMPROVEMENTS; QUIET ENJOYMENT; INSPECTIONS.

Section 6.1 During the Term.

The City hereby grants to the Tenant, without warranty express or implied, any right, title, or interest that the City has or may have in the improvements now or hereafter located on the Property, which improvements are and shall at all times during the Term be deemed real property. Notwithstanding any provision in this Lease to the contrary, the Improvements and all alterations, additions, equipment and fixtures built, made or installed by the Tenant in, on, under or to the Property or the Improvements shall be the sole property of the Tenant until the expiration of the Term or other termination of this Lease; provided, however, that the Tenant shall have no right to destroy, demolish or remove the Improvements, or any portion thereof, except as specifically provided for in this Lease or as approved in writing by the City. It is the intent of the Parties hereto that this Lease shall create a constructive notice of severance of the Improvements from the Property without the necessity of a deed from the City after the Improvements have been constructed.

Section 6.2 After the Term.

Upon the expiration of the Term or other termination of the Lease, the Improvements and all alterations, additions, equipment and fixtures shall be deemed to be and shall automatically become the property of the City, without cost or charge to the City. The Tenant agrees to execute, at the request of the City at the end of the Term, a quitclaim deed of the Improvements to the City to be recorded at the City's option and expense and any other documents that may be reasonably required by the City or the City's title company to provide the City title to the Property and the Improvements free and clear of all monetary liens and monetary encumbrances not caused or agreed to by the City.

Section 6.3 Benefits of Improvements During Term.

The City acknowledges and agrees that any and all depreciation, amortization, tax credits and other tax benefits for federal or state tax purposes relating to the Improvements located on the Property and any and all additions thereto, substitutions therefor, fixtures therein and other property relating thereto shall be deducted or credited exclusively to the Tenant during the Term and for the tax years during which the Term begins and ends.

Section 6.4 Quiet Enjoyment.

The City covenants and warrants that the Tenant shall peaceably and quietly have, hold, occupy, use and enjoy, and shall have the full, exclusive and unrestricted use and enjoyment of, all of the Property during the Term, subject only to the provisions of this Lease and all applicable legal requirements of the Governmental Authorities.

Section 6.5 The City's Right of Inspection.

Notwithstanding Section 6.4 above, the City, in person or through its agents, upon at least forty-eight (48) hours prior written notice to the Tenant, shall have the right to enter upon the Property for purposes of reasonable inspections performed during reasonable business hours in order to assure compliance by the Tenant with its obligations under this Lease, subject to the rights of the tenants of the Commercial Component.

ARTICLE 7.
ASSIGNMENT AND SUBLETTING

Section 7.1 Definitions.

Transfer means:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to this Lease or of the leasehold in the Property or fee estate in the Improvements or any part thereof or any interest therein, of the Improvements constructed thereon (except as set forth in 7.1(d), expressly excluding any subletting of Premises in compliance with the Use requirements set forth in Section 5);

(b) Any total or partial sale, assignment or conveyance, any trust or power, or any transfer in any other mode or form, of or with respect to the majority ownership of the Tenant or any contract to any of the same, including without limitation, any transfer or sale of any interest in the Tenant for financing purposes unless approved by the City as part of the approved Financing Plan;

(c) Any merger, consolidation, sale, lease, assignment or conveyance of all or substantially all of the assets of Tenant; or

(d) The subletting of the entirety of the Premises pursuant to a single sub-tenant;

(e) Any change in the Gallery Operator or the organizational or corporate structure of the Gallery Operator.

Section 7.2 Purpose of Restrictions on Transfer; Applicability.

This Lease is granted to the Tenant solely for the purpose of development and operation of the Improvements, and its subsequent use in accordance with the terms of this Lease, and not for speculation in landholding. The Tenant recognizes that, in view of the following factors, the qualifications and identity of the Tenant are of particular concern to the community and City:

(a) The importance of the redevelopment of the Improvements to the general welfare of the community;

(b) The fact that a Transfer as defined in Section 7.1 above is for practical purposes a transfer or disposition of the leasehold interest in the Property then owned by Tenant; and

(c) The fact that the Improvements are not to be acquired, developed or used for speculation, but only for development and operation by Tenant in accordance with this Lease and the LDDA.

Tenant further recognizes that it is because of such qualifications and identity that City is entering into this Lease with Tenant and that Transfers are permitted only as provided in this Lease.

Section 7.3 Prohibited Transfers.

Except as expressly permitted in this Lease, Tenant represents and agrees that Tenant has not made or created, and shall not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law.

Any Transfer made in contravention of this Section 7.3 shall be void and shall be deemed to be a default under this Lease whether or not Tenant knew of or participated in such Transfer.

Section 7.4 Permitted Transfers.

Notwithstanding the provisions of Section 7.3, the following Transfers shall be permitted and approved by City:

(a) Any Transfer solely and directly resulting from the death or incapacity of an individual; and

(b) The transfer of this Lease or Tenant's interest in the Developer any time after the fifth anniversary of the issuance of the Certificate of Occupancy, provided the transferee is approved by the City in accordance with Section 7.5 below.

Section 7.5 Procedure for City Approval of Certain Transfers.

In the event the Tenant desires to effect a Transfer, including a Transfer pursuant to Section 7.4(b), the Tenant shall first submit to City information regarding such proposed Transfer including the proposed documents to effectuate the Transfer, a description of the type

and amount of consideration for the Transfer, and information regarding the proposed transferee's financial strength and the proposed transferee's capacities and expertise with respect to operation and management of similar arts based developments. The City shall approve the Transfer by written notice to the Tenant if, based upon the information submitted by the Tenant and any other information available to the City, it appears that following the Transfer, the new Tenant will be of sound reputation and will have sufficient financial strength and management and operation expertise in the ownership and operation of art based developments, to fully perform and comply with all terms of this Lease, and if, in addition, the proposed transferee meets the following criteria:

(a) The proposed transferee has continuously been in the business of owning and operating similar developments for at least five (5) years prior to the proposed Transfer;

(b) As of the date of the proposed Transfer, the proposed transferee has a net worth equal to or greater than that of the Tenant as of the Effective Date or as of the proposed Transfer, whichever is greater;

(c) The City determines that any proposed Transfer will not negatively impact the City's share of Net Revenues from the Art Center;

(d) If as a result of the proposed Transfer, the Gallery Operator is changed or the corporate structure of the Gallery Operator is changed, the City has approved the new Gallery Operator or the change in corporate structure of the existing Gallery Operator.

(e) The proposed transferee agrees to forfeit the return of Developer Equity and its Preferred Return on any Developer Equity outstanding as of the date of the transfer.

Unless the proposed Transfer is disapproved by City within sixty (60) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 7.6 Effectuation of Certain Permitted Transfers.

No Transfer of this Lease (as opposed to a Transfer in whole or in part of an interest in the Tenant) permitted pursuant to Section 7.4 (other than the lease of the Commercial Component in accordance with this Lease, or the lease of the Arts Dedicated Space to the Gallery Operator) shall be effective unless, at the time of the Transfer, the person or entity to whom such Transfer is made, by an instrument in writing reasonably satisfactory to City and in form recordable among the land records, shall expressly assume all of the obligations of the Tenant under this Lease and the applicable City Documents and agree to be subject to all conditions and restrictions to which the Tenant is subject arising during such person's or entity's ownership of this Lease.

Section 7.7 Tenants of the Commercial Component.

The Parties acknowledge that the quality of the tenants in the Commercial Component are important to the overall success of the Property and is important to the Landlord in order to maintain the quality and character of the Property consistent with the goals and objectives of the City. In addition, in using the Property, the Tenant shall, at all times during the Term, operate the Property in a manner consistent with this Lease and as a publicly-owned building for the benefit of residents of the City and the general public, and the Tenant shall not, and shall not permit, the use of the Property in any manner that will injure the reputation of the City, or the Property. To that end the Parties agree that, to the extent the Tenant, or any party on behalf of the Tenant, selects or approves tenants, subtenants, or assignees of the Commercial Component, certain uses shall be prohibited and shall not be allowed under any circumstances. Prohibited uses include any use which emits a noxious or obnoxious odor, dust, vibration, noise or sound which can be heard or smelled outside any space within the Improvements; any operation primarily used as a wholesale or warehouse operation and any assembling, refining, smelting, agricultural or mining operation; any second hand store, thrift store, surplus store or flea market; any fire sale, bankruptcy sale (unless under court order) or auction house operation; any central laundry, dry cleaning plant, or laundromat; any recycling facility except as required by law; any business where the primary enterprise is the sale of liquor or beer for off premise consumption; any adult-entertainment oriented establishments whether for sale, rent or on-site use, or viewing, including adult book stores/adult cabaret/adult motion picture theater/or adult arcade;, any day spa, any church, or house of worship, any veterinary hospital or kennel or similar animal-related uses; any establishments for sale or rent of funerary supplies, mortuary or related activities or services; any manufacturing facility; any facility for repair of any appliances or other products; any establishments for the sale, storage, rental, and/or servicing of vehicles and vehicle parts; any facility using/storing or treating Hazardous Materials or facility for rent or storage spaces or for warehousing; any facility for the housing of passive components such as digital switching units; any sale of firearms, guns or explosives; any sale of military or security supplies or surplus; any massage parlor; any card room, fortune teller, any tattooing or body piercing parlors; or any sale of drug paraphernalia or supplies. The prohibitions set forth herein shall not interfere with or prohibit the use of the Commercial Components or any other portion of the Arts Center for Art Uses.

Section 7.8 Transfer by City.

In the event of a sale, assignment, transfer or conveyance by the City of the fee interest in the Property or of the City's rights under this Lease, the City shall be released from any future liability upon any of the covenants or conditions of this Lease, expressed or implied, in favor of the Tenant, and, in such event, the Tenant agrees to look solely to the successor in interest of the City in and to the Property or this Lease. This Lease shall not be affected by any such sale, and the Tenant agrees to attorn to any such purchaser or assignee.

Section 7.9 Gallery Operator.

The City shall be required to consent to any changes in the organizational or corporate structure of the Gallery Operator including any amendments to the Bylaws, Articles of

Incorporation, or Operating Agreement and no such amendments shall be effective unless and until approved by the City.

Section 7.10 Successors and Assigns.

The terms, covenants and conditions contained in this Article 7 shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators and assigns of the Parties hereto; provided, however, that there shall be no Transfer of any interest by the Tenant except pursuant to the terms of this Lease.

ARTICLE 8.
INSURANCE; DAMAGE AND DESTRUCTION OF IMPROVEMENTS

Section 8.1 Insurance Requirements.

The Tenant shall submit to City evidence of the insurance coverage meeting the general requirements set forth in Exhibit D, on, or before, the Effective Date, provided any evidence of insurance required for construction purposes shall be submitted ten (10) days prior to commencement of any construction work on the Property. The City shall review and reasonably approve or disapprove of the evidence of insurance not less than ten (10) days after submission of complete information in the form required by the City. If the City disapproves the evidence of insurance, it shall specify in writing the reasons for such disapproval. The Tenant shall resubmit the information required within fifteen (15) days of the Tenant's receipt of the City's written notification. The review and submission periods shall continue to apply until the City approves the evidence of insurance coverage. Notwithstanding any provision to the contrary, this Lease shall not commence prior to City's approval of Tenant's insurance and no construction work shall be initiated on the Property prior to receipt of the City's approval of Tenant's insurance relating to construction. The City shall not unreasonably withhold, delay or condition approval of any insurance.

Each contractor, and sub-contractor shall have furnished the City with evidence of the insurance coverage meeting the general insurance requirements set forth in Exhibit D, prior to initiating any work on the Property. The periods for submission, review and approval shall apply as stated above.

Section 8.2 No Termination of Lease; Obligation to Restore.

Except as otherwise provided in Section 8.3 or 8.4, no loss or damage by fire or any other cause resulting in either partial or total destruction of any buildings or the Improvements now or hereafter located in, upon or on the Property, or any fixtures, equipment or machinery used or intended to be used in connection with the Improvements shall operate to terminate this Lease, or to relieve or discharge the Tenant from the payment of any Rent or other amounts payable under this Lease, as Rent or otherwise, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by the Tenant. The Tenant hereby waives the

provisions of Section 1932, subsection 2, and of Section 1933, subsection 4, of the California Civil Code, as either or both may from time to time be amended, replaced or restated. Except as provided in Section 8.3 and 8.4, the Tenant shall promptly repair, or cause the prompt repair of, any damage or destruction caused to the Improvements and restore the Improvements to at least as good a condition as existed prior to the damage or destruction, as more specifically provided in Section 8.5. The Tenant's failure to make such full repair and restoration under any conditions in which it has elected or is required so to do shall constitute a Tenant Event of Default under this Lease.

Section 8.3 Damage or Destruction Occurring Prior to Final Years of Term.

The following provisions shall apply in cases of damage or destruction not described in Section 8.4:

(a) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Lease, and (2) the insurance proceeds available are in an amount of not less than ninety-five percent (95%) of the amount necessary to repair and restore such Improvements, then the Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5.

(b) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Lease, (2) the Tenant is not in default with respect to its obligation under this Lease to maintain insurance against the casualty causing such damage or destruction, and (3) the insurance proceeds available are in an amount that is less than ninety-five percent (95%) of the amount necessary to repair and restore such Improvements, then the Tenant shall have the right, at the Tenant's election, to (1) terminate this Lease in accordance with the provisions of Section 8.6, or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5, or (3) repair such damage or restore the Improvements to the extent necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

(c) If the Improvements on the Property are damaged or destroyed by any casualty where (1) the casualty causing such damage or destruction is required to be insured against under the terms of this Lease, and (2) the Tenant is in default with respect to its obligation under this Lease to maintain insurance against the casualty causing such damage or destruction, then the Tenant shall make full repair of such damage and shall restore the Improvements in accordance with the provisions of Section 8.2 and 8.5.

(d) If the Improvements on the Property are damaged or destroyed by any casualty where the casualty causing such damage or destruction is not required to be insured against under the terms of this Lease, then the Tenant shall have the right, at the Tenant's election, to (1) terminate this Lease in accordance with the provisions of Section 8.6, or (2) make full repair of such damage and to restore the Improvements in accordance with the provisions of Section 8.2 and 8.5, or (3) repair such damage or restore the Improvements to the extent

necessary to preserve them and make them safe, and in addition, to the extent of the insurance proceeds available.

Section 8.4 Damage or Destruction During Final Years of Term.

In the event of major damage or destruction to the Improvements on the Property during the last five (5) years of the Term (as may be extended), the Tenant shall have the right, at the Tenant's election, to either make full repair of such damage and fully restore the Improvements on the Property in accordance with the provisions of Sections 8.2 and 8.5 or to terminate this Lease, and provided that if the Tenant elects to terminate this Lease, the Tenant shall comply with all of the following conditions:

(a) The Tenant shall give the City written notice of the damage or destruction within ten (10) days after the event causing such damage or destruction;

(b) There shall not then exist an Event of Default (or an event which, after notice and the passage of time as required by this Lease without cure of such event, would constitute an Event of Default);

(c) As promptly as is feasible, the Tenant shall repair or restore the damaged Improvements to the extent necessary to preserve them and make them safe from immediate danger to the public; and

(d) The Tenant shall deliver possession of the Property and the Improvements thereon to the City and shall quitclaim to the City all right, title and interest in the Property and the Improvements thereon.

Major damage or destruction to the Improvements on the Property (as used in this Section) means damage or destruction where the cost to make full repair of such damage and restore the Improvements in accordance with the provisions of Sections 8.2 and 8.5 would be fifty percent (50%) or more of the replacement cost of all of the Improvements on the Property in their entirety. The calculation of such percentage shall be based upon the replacement cost of the Improvements on the Property as of the date of the damage or destruction. The determination of whether any particular damage or destruction constitutes major damage or destruction within the meaning of this paragraph shall be determined and certified by a professional cost estimator experienced in such matters and mutually designated by the City and the Tenant within ten (10) days of the occurrence of such damage or destruction. If the Parties are unable to designate a mutually acceptable cost estimator within such period, either party may apply to the presiding judge of the Superior Court of Alameda County who shall appoint such cost estimator.

Section 8.5 Procedure for Repair and Restoration.

The provisions of this Section shall apply whenever the Improvements on the Property are to be repaired or restored under the provisions of this Article.

(a) In the event of any damage or destruction to the Property or the Improvements, the Tenant shall promptly give the City written notice of such damage or destruction, setting forth the cause (if known), the date on which such damage or destruction occurred, and the estimated cost of repair and restoration as certified by a professional cost estimator experienced in such matters. Whenever any part of the Property or the Improvements shall have been damaged or destroyed, the Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which the Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided below, sums of money received as payments for any losses pursuant to said insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Property or the Improvements which have been destroyed or damaged in accordance with the procedures of subsections (b) and (c) below, unless the Tenant has established alternate procedures that, in the City's reasonable judgment, will accomplish the use and expenditure of the insurance proceeds to effectuate full repair or reconstruction of the portions of the Property or the Improvements which have been destroyed or damaged in a more effective manner than the procedures set forth in subsections (b) and (c).

The provisions of subsection (d) below shall apply regardless of the procedure employed for the use and expenditure of insurance proceeds.

(b) Within one hundred eighty (180) days after the event of damage or destruction, the Tenant shall make available to the Insurance Trustee, described in subsection (c) below, the difference, if any, between the certified estimated cost of repair and restoration and the amount of insurance proceeds anticipated to be received for such repair and restoration (such amount is hereinafter referred to as the "Tenant Contribution").

(c) All proceeds of insurance together with the Tenant Contribution, if any, shall be paid by the Tenant to the insurance trustee, which insurance trustee shall be a commercial bank or trust company experienced in such matters and designated by the City (the "Insurance Trustee"). The Insurance Trustee shall hold such proceeds in trust and shall disburse same to the Tenant as follows: from time to time as the work of restoration progresses, the Tenant shall submit to the Insurance Trustee a certificate of the Tenant, signed by an authorized officer or representative thereof, and approved by an architect selected by the Tenant and approved by the City (the "Architect"), which certificate shall:

(1) accurately describe the work for which the Tenant is requesting payment and the cost incurred by the Tenant in connection therewith,

(2) certify that the Tenant has not theretofore received payment for such work, and

(3) conditional lien releases based upon payment executed by all persons or entities supplying labor or materials in connection with such work; and

(4) contain or be accompanied by a statement by the Tenant that the work for which the Tenant is requesting payment has been performed substantially in accordance with plans and specifications therefor approved by the City.

Within five (5) days after receipt of any such certificate, the Insurance Trustee shall pay to the Tenant, from the funds on hand, an amount equal to ninety percent (90%) of the amount of the cost of the work for which the Tenant is requesting payment, as shown on such certificate. Upon completion of such work, the remainder of such cost (to the extent of the balance of the funds held by the Insurance Trustee) and all other insurance proceeds held by the Insurance Trustee shall be paid to the Tenant within five (5) days after the delivery to the Insurance Trustee of a certificate of the Tenant, signed by an authorized officer or representative thereof and approved by the Architect for the work, stating that the work has been completed and setting forth the total cost thereof, which certificate shall: (1) contain or be accompanied by a statement by the Tenant that the work has been completed substantially in accordance with plans and specifications therefor approved by the City; and (2) be accompanied by either (A) an unconditional waiver or release of mechanics' and materialmen's liens executed by all persons or entities supplying labor or materials in connection with such work or (B) other evidence reasonably satisfactory to the City that the period for filing any such lien has expired and no such lien has been filed, or, if filed, has been bonded by the Tenant to the reasonable satisfaction of the City and the Insurance Trustee. The Insurance Trustee shall not be required to invest or pay interest on any funds held by such trustee, except in accordance with any agreement between the Tenant and the Insurance Trustee.

(d) The Tenant shall promptly commence and complete, in a good and workmanlike manner and in accordance with Article 4, the reconstruction or repair of any part of the Property or the Improvements thereon damaged or destroyed after (1) the City has approved the Tenant's plans, drawings, specifications and construction schedule for such reconstruction or repair as such approval may be required under Article 4, and (2) the proceeds of insurance, if any, applicable to such reconstruction or repair have been made available for such purpose.

Section 8.6 Procedures Upon Permitted Termination.

Upon termination of this Lease pursuant to Section 8.3 or 8.4, insurance proceeds for the Improvements not used in repair or restoration shall be distributed as follows:

(a) First, at the option of the City, to the City in the amount necessary to raze the remaining Improvements, clear the Property, make it safe, and return the Property to the condition of a developable pad.

(b) Second, to the City in the amount necessary to repay the City the City Funds.

(c) Third, to the Tenant in the amount of any Developer Equity and accrued Preferred Return not previously repaid.

(d) Fourth, any balance shall be paid to the City and to Tenant as follows:

(i) if paid during the first ten (10) years of the Term, in proportion to the amount of City Funds and Developer Equity provided to fund the Improvements, respectively

(ii) If paid thereafter, 50% to the City and 50% to Tenant.

All other insurance proceeds shall be paid to and become the sole property of the Tenant.

Section 8.7 Prosecution of Claims.

In connection with and as a condition of any termination pursuant to Section 8.3 or 8.4, the Tenant shall make proof of loss and proceed to collect or commence collection of all valid claims which the Tenant may have against insurers or others based upon such damage or destruction, and shall assign and transfer to the City all rights under insurance policies and against others and proceeds of insurance and other claims resulting from the casualty.

Upon termination of this Lease, the Tenant shall deliver possession of the Property and the Improvements thereon to the City and quitclaim to the City all right, title and interest in the Property and the Improvements thereon.

ARTICLE 9.
SURRENDER; HOLDING OVER

Section 9.1 Surrender of Property.

(a) The Tenant shall, at least ninety (90) days before the last day of the Term (as may be extended), give to City a written notice of Tenant's intention to surrender the Property and the Improvements thereon on that date, but nothing contained in this Section shall be construed as an extension of the Term of this Lease or as consent of City to any holding over by Tenant.

(b) At the end of the Term or other sooner termination of this Lease, Tenant shall surrender and deliver to City the Property and the possession of the Property, together with all Improvements and Personal Property the City is entitled to retain on the Property pursuant to the terms of this Lease, in condition required for the Property and Improvements to be maintained under this Lease, and free and clear of all liens and encumbrances other than those, if any, presently existing or created by City, without payment or allowance whatever by City on account of any such Improvements.

(c) Concurrently with the surrender of the Property, the Tenant agrees, if requested by City and for the benefit of City, to execute, acknowledge and deliver to the City a quitclaim deed to the Property and such instruments as may be reasonably requested by the City to evidence or otherwise effect such passage and vesting of title to the Improvements and Personal Property, if any, retained on the Property to the City.

Section 9.2 Holding Over.

If the Tenant shall retain possession of the Property or the Improvements thereon or any part thereof without the City's prior written consent following the expiration or sooner termination of this Lease for any reason, then the Tenant shall pay to the City an amount equal to two hundred percent (200%) of the fair market rent for the Property (as reasonably determined by the City) and other payments that would have been due had the Lease not expired or been terminated and had the Rent and other payment terms in effect at the time of the expiration or sooner termination of the Lease remained in effect. These payments shall be applicable to a holding over of any kind by the Tenant. The Tenant shall also indemnify and hold the City harmless from any loss or liability resulting from delay by the Tenant in surrendering the Property, including, without limitation, any claims made by any succeeding tenant founded on such delay. Acceptance of Rent by the City following expiration or termination shall not constitute a renewal of this Lease and nothing contained in this Section 9.2 shall waive the City's right of reentry or any other right. The Tenant shall be only a tenant at sufferance, whether or not the City accepts any Rent from the Tenant while the Tenant is holding over without the City's written consent.

Section 9.3 No Merger.

Except upon expiration of the Term or upon termination of this Lease pursuant to an express right of termination set forth herein, there shall be no merger of either this Lease or the Tenant's estate created hereunder with the fee estate of the Property or any part thereof by reason of the fact that the same person may acquire, own or hold, directly or indirectly, (a) this Lease, the Tenant's estate created hereunder or any interest in this Lease or the Tenant's estate (including the Improvements), and (b) the fee estate in the Property or any part thereof or any interest in such fee estate (including the Improvements), unless and until all persons, including any assignee of the City, having an interest in (i) this Lease or the Tenant's estate created hereunder, and (ii) the fee estate in the Property or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 10.
EMINENT DOMAIN

Section 10.1 Total Taking.

If either the entire Property (or any improvements thereon) or a substantial and essential portion of the Property (or any improvements thereon), the taking of which portion materially impairs the use of the Improvements then being made by Tenant and renders the remainder of the Improvements unsuitable or economically not feasible for such use, as reasonably determined by Tenant in good faith, is taken under the power of eminent domain during the Term of this Lease, then this Lease shall terminate as of the date of such taking. The City and the Tenant shall together make one claim for an award for their combined interests in the Property and all

buildings, structures, Improvements and fixtures thereon which are so taken. Such award shall be paid to and divided between the City and the Tenant in priority as follows:

(a) All compensation and damages payable for or on account of the underlying fee title to the Property, assuming that the Property were unimproved but encumbered by this Lease, shall be payable to and be the sole property of the City.

(b) All compensation and damages payable for or on account of the buildings and Improvements located on the Property shall be divided between the City and the Tenant in the manner specified in Section 8.6 of this Lease.

Section 10.2 Partial Taking.

If less than the whole of the Property is taken under the power of eminent domain during the Term of this Lease and this Lease is not terminated as provided in Section 10.1 hereof, then this Lease shall terminate only with respect to the portion of the Property taken and this Lease shall continue in full force and effect with respect to the portion of the Property not taken. The Tenant shall, but only to the extent of the amount of the award received, promptly reconstruct and restore the portion of the Property not taken and the buildings and Improvements located on the portion of the Property not taken as an integral unit of the same general quality and character as existed prior to such taking. Such reconstruction and restoration shall be performed in a good and workmanlike manner and undertaken in accordance with plans and specifications submitted to and approved by the City in accordance with Article 4, and otherwise in accordance with the applicable provisions of this Lease.

All awards or other payments received on account of a partial taking as described in this Section 10.2 shall be paid to the Insurance Trustee referred to in Section 8.5 above to be held and disbursed in the same manner as insurance proceeds, except that any portion of such award remaining after completion of any restoration shall be divided between the City and the Tenant and disbursed by the Insurance Trustee in the manner provided in Section 8.6.

Section 10.3 Temporary Taking.

If the use of all or any part of the Property is taken under the power of eminent domain during the Term on a temporary basis for a period less than the time remaining after the date of such taking to the end of the Term, then this Lease shall continue in full force and effect and the Tenant shall continue to be obligated to perform and observe all of the agreements, covenants and conditions on the part of the Tenant to be performed and observed as and when performance and observance is due to the full extent that such agreements, covenants and conditions are physically capable of performance and observance by the Tenant after such taking. The award payable for or on account of such taking shall be paid to the Tenant.

Section 10.4 Notice of Taking; Single Proceeding.

In case of a taking of all or any part of the Property or the Improvements thereon or the commencement of any proceeding or negotiations which might result in such taking, the party

having notice of such taking or of the commencement of any such proceeding or negotiations shall promptly give written notice thereof to the other party. The City and the Tenant shall jointly prosecute their claims for an award in a single proceeding. In any eminent domain proceeding affecting the Property, both the City and the Tenant shall have the right to appear in the proceeding and to defend against the eminent domain action as they deem proper in accordance with their own interests. To the extent possible, the City and the Tenant shall cooperate with each other to maximize the amount of the award payable by reason of the eminent domain. Issues between the City and the Tenant that arise under this Article 10 shall be joined in any such eminent domain proceeding to the extent permissible under then applicable rules governing such joinder.

As used in this Lease: (1) a "taking" means the acquisition of all or any part of the Property for a public use by exercise of the power of eminent domain; (2) the taking shall be considered to occur as of the earlier of the date on which possession of the Property by the entity exercising the power of eminent domain is authorized as stated in an order for possession, or the date on which title to the Property vests in the person exercising the power of eminent domain; and (3) "award" means the compensation paid for the taking.

ARTICLE 11.
EVENTS OF DEFAULT

Section 11.1 Events of Default.

Each of the following, subject to the applicable notice and cure period below, shall be a "Tenant Event of Default" by the Tenant hereunder:

(a) Failure by the Tenant to pay any Rent when due or to pay or cause to be paid any, insurance premiums or other liquidated sums of money herein stipulated to be paid by the Tenant, if such failure shall continue for a period of ten (10) days after notice thereof has been given by the City to the Tenant;

(b) The Tenant breaches, and thereafter fails to cure within the time frame set forth in subsection (g) below, any provision of Article 4;

(c) The Tenant breaches, and thereafter fails to cure within the time frame set forth in subsection (g) below, any provision of Article 5;

(d) A Bankruptcy/Insolvency Event occurs with respect to the Tenant;

(e) The Tenant attempts or completes a Transfer without obtaining the City's prior written consent as required pursuant to this Lease;

(f) The failure of the Tenant to fully repair and restore the Improvements in accordance with the requirements of Article 8;

(g) Failure by the Tenant to perform or observe any other provisions of this Lease, the LDDA, or the applicable City Documents to be observed and performed by the Tenant, if such failure shall continue for a period of sixty (60) days after notice thereof has been given by the City to the Tenant; provided, however, that if any such failure cannot reasonably be cured within such sixty (60) day period, then the City shall not have the right to terminate this Lease or the Tenant's right to possession hereunder so long as the Tenant promptly commences the curing of any such failure and thereafter proceeds in good faith and with due diligence to remedy and correct such failure within a reasonable period of time; provided, however, that such period shall not extend for more than one hundred twenty (120) days after the date of the City's notice to the Tenant.

Section 11.2 Rights and Remedies.

(a) At any time after the occurrence of a Tenant Event of Default hereunder, the City, subject in all respects to the provisions of this Lease with respect to the City's rights to cure defaults by the Tenant, may terminate this Lease by giving the Tenant written notice thereof, setting forth in such notice an effective date for termination which is not less than thirty (30) days after the date of such notice, in which event this Lease and the Tenant's estate created hereby and all interest of the Tenant and all parties claiming by, through or under the Tenant shall automatically terminate upon the effective date for termination as set forth in such notice, with the same force and effect and to the same extent as if the effective date of such notice had been the date originally fixed in Article 2 hereof for the expiration of the Term. In such event, the City, its agents or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Property (including all buildings, the Improvements, and other improvements comprising any part thereof) at any time from and after the effective termination date without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of covenants or any other remedy available at law or equity to the City.

(b) In addition to the remedy set forth in subsection (a) above, upon any Tenant Event of Default the City may exercise any other remedy set forth in any applicable City Documents or any other remedy available at law or at equity.

(c) Upon the exercise of the City's remedies pursuant to this Section 11.2, the Tenant shall execute such releases, deeds and other instruments in recordable form as the City shall reasonably request in order to accurately set forth of record the then current status of the Tenant's estate in the Property and the Tenant's rights hereunder. The obligations set forth in this subsection shall survive the termination of the Lease.

Section 11.3 Default by the City.

(a) Events of Default. The City shall be in default of this Lease if it fails to perform any material provision of this Lease that it is obligated to perform, and if the failure to perform is not cured within thirty (30) days after written notice of the default has been given to the City. If the default cannot reasonably be cured within thirty (30) days, the City shall not be

in default of this Lease if the City commences to cure the default within such thirty (30) day period and diligently and in good faith continues to cure the default until completion.

(b) Right to Cure; the Tenant's Remedies. If the City shall have failed to cure a default by the City after expiration of the applicable time for cure of a particular default, the Tenant, at its election, but without obligation therefor (i) may seek specific performance of any obligation of the City, after which the Tenant shall retain, and may exercise and enforce, any and all rights that the Tenant may have against the City as a result of such default, (ii) from time to time without releasing the City in whole or in part from the obligations to be performed by the City hereunder, may cure the default at the City's cost, and/or (iii) may terminate this Lease.

(c) Notices. Notices given by the City under Section 11.1 or by the Tenant under Section 11.3 shall specify the alleged default and the applicable Lease provisions, and shall demand that the Tenant or the City, as applicable, perform the appropriate provisions of this Lease within the applicable period of time for cure. No such notice shall be deemed a forfeiture or termination of this Lease unless expressly set forth in such notice.

ARTICLE 12.
MISCELLANEOUS PROVISIONS

Section 12.1 Notice, Demands and Communication.

Formal notices, demands, and communications between the City and the Tenant shall be in writing and shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by facsimile with a copy delivered the following day by reputable overnight delivery service, or delivered personally, to the principal office of the Parties as follows:

City: Christine Daniel, City Manager
City of Emeryville
1333 Park Avenue
Emeryville, CA
Phone: (510) 596-4371
Fax: (510) 658-8095

With copy to: Michael Guina, City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, CA
Phone: (510) 450-7801
Fax: (510) 596-3724

Tenant: 4060 Hollis LLC
c/o Orton Development, Inc.
1475 Powell Street, Suite 101

Emeryville, CA 94608
Attention: Nicholas Orton
Telephone: (510) 428-0800
Email: norton@ortondevelopment.com

With copy to:

4060 Hollis, LLC
c/o Orton Development, Inc.
1475 Powell Street, Suite 101
Emeryville, CA 94608
Attention: David Dial
Telephone: (510) 907-3268
Email: ddial@ortondevelopment.com

Stice & Block, LLP
Attention: Marc Stice
2335 Broadway, Suite 201
Oakland, CA 94612
Telephone: (510) 735-0032
Email: mstice@sticeblock.com

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section 12.1. No party shall evade or refuse delivery of any notice. Telephone numbers are only provided for the Parties' convenience, and formal notices may not be transmitted by telephone. In addition, any notice or demand from the City to the Tenant may be delivered by e-mail to the Tenant's e-mail set forth above; provided, however, in no event shall the Tenant deliver any formal notice or demand to the City by e-mail.

Section 12.2 Conflict of Interests.

No member, official or employee of the City shall make any decision relating to the Lease which affects his or her personal interests or the interest of any corporation, partnership or association in which he is directly or indirectly interested.

Section 12.3 Non-Liability of Officials, Employees and Agents.

No member, official, employee or agent of the City shall be personally liable to the Tenant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Tenant or successor or on any obligation under the terms of this Lease.

Section 12.4 Enforced Delay.

In addition to specific provisions of this Lease, performance by either party shall not be deemed to be in default where delays or defaults are due to war; acts of terrorism; insurrection;

strikes; lock-outs; riots; floods; earthquakes; fires; quarantine restrictions; freight embargoes; energy shortages or rationing; lack of transportation; or court order; or any other similar causes (other than lack of funds of the Tenant or the Tenant's inability to finance the Development) beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any cause shall be deemed granted if notice by the party claiming such extension is sent to the other within ten (10) days from the commencement of the cause and such extension of time is not rejected in writing by the other party within ten (10) days of receipt of the notice. In no event shall the cumulative delays exceed one hundred twenty (120) days unless otherwise agreed to in writing by the Parties. Times of performance under this Lease may also be extended by written agreement of the City and the Tenant.

Section 12.5 Inspection of Books and Records.

The City and its agents have the right at all reasonable times to inspect on a confidential basis the books, records and all other documentation of the Tenant pertaining to its obligations under this Lease. The Tenant shall retain such books, records and documentation for a period of five (5) years after their creation.

Section 12.6 Title of Parts and Sections.

Any titles of the sections or subsections of this Lease are inserted for convenience of reference only and shall be disregarded in construing or interpreting any part of its provision.

Section 12.7 Indemnity.

The Tenant shall indemnify, defend, hold harmless the City, and its council members, employees, agents, volunteers, successors, and assigns against any and all suits, actions, claims, causes of actions, whether actual or alleged, administrative proceedings, arbitrations or enforcement actions which arise out of or in connection with directly or indirectly, in whole or in part, the Tenant's ownership, occupancy, development, or operation of the Improvements or construction, maintenance, rehabilitation or repair on the Property or of the Improvements by the Tenant or the Tenant's contractors, subcontractors, agents, employees or tenants and all damages (direct or consequential), costs, losses, injuries, fines, penalties, liens, encumbrances, charges, liabilities, demands, judgments, remedial action requirements, obligations, and all costs and expenses incurred in connection therewith (including, but not limited to, attorney fees and costs); provided, however, that this indemnity shall not extend to any claim arising solely from the City's failure to perform its obligations under this Lease or solely from the gross negligence or willful misconduct of the City, or its council members, employees, agents, volunteers, successors, and assigns. The provisions of this section shall survive expiration of the Term or other termination of this Lease and shall remain in full force and effect, and are not limited by the amount of insurance as may be required.

Section 12.8 Applicable Law.

This Lease shall be interpreted under and pursuant to the laws of the State of California.

Section 12.9 Severability.

If any term, provision, covenant or condition of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 12.10 Legal Actions.

(a) Any legal action commenced to interpret or to enforce the terms of this Lease shall be filed in the Superior Court of Alameda County.

(b) In the event legal action is commenced by a third party or parties, the effect of which is to directly or indirectly challenge or compromise the enforceability, validity, or legality of the Lease and/or the power of the City to enter into this Lease or perform its obligations hereunder, either the City or the Tenant may (but shall have no obligation to) defend such action. Upon commencement of any such action, the City and the Tenant shall meet in good faith and seek to establish a mutually acceptable method of defending such action.

Section 12.11 Binding Upon Successors; Covenants to Run With Land.

This Lease shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest and assigns of each of the parties; provided, however, that there shall be no transfer of any interest by the Tenant except pursuant to the terms of this Lease. Any reference in this Lease to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired an interest in compliance with the terms of this Lease, or under law.

The terms of this Lease shall run with the land and shall bind all successors in title to the Property during the Term of this Lease, except that the provisions of this Lease that are specified to survive termination of this Lease shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property or the Improvements or any portion thereof shall be held conclusively to have been executed, deliver, and accepted subject to such covenants and restrictions, regardless of whether such covenants or restricts are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, the Improvements, or the applicable portion of the Property, from the requirements of this Lease.

Section 12.12 Discretion Retained by City.

The City's execution of this Lease, in its capacity as the landlord and the fee owner of the Property, does not constitute approval by the City, in its capacity as a Governmental Authority, and in no way limits the discretion of the City in the permit and approval process in connection with development of the Improvements, any Major Additional Improvements, or any other proposed use or development on the Property by the Tenant. The Developer acknowledges that nothing in this Lease (including any approval by the City Manager in accordance with this Lease) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Community Development

Department, in connection with the review and approval of the proposed construction plans for the Improvements (or any change to such plans), any Major Additional Improvements, or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a Governmental Authority with jurisdiction over the development, use, or operation of the Development.

Section 12.13 Parties Not Co-Venturers.

Nothing in this Lease is intended to or does establish the parties as partners, co-venturers, or principal and agent with one another.

Section 12.14 Employment Opportunity.

The Tenant and its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the construction and operation of the Improvements because of race, color, religion, sex, sexual preference, marital status, ancestry or national origin. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rate of pay and other forms of compensation; and selection for training including apprenticeship.

Section 12.15 Warranties.

As more particularly set forth in the LDDA, the City expresses no warranty or representation to the Tenant as to fitness or condition of the Property or any portion thereof for the building or construction to be conducted thereon.

Section 12.16 Action by the City or Tenant; Time.

(a) Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent, request, or other action by the City is required or permitted under this Lease, such action may be given, made, or taken by the City Manager, or by any person who shall have been so designated in writing to the Tenant by the City Manager, without further action or approval by the City Council, and any such action shall be in writing. The City Manager may, in his or her discretion, agree in writing to modification of the dates by which action are to be complete or to waive any terms and conditions of this Lease or to make reasonable modifications to the Lease requested by the Tenant's lenders; provided, however, in no event shall the City Manager have any authority to subordinate the City's fee interest in the Property.

(b) The Tenant shall take all actions necessary to implement the provisions of this Lease and to complete those performances required of the Tenant.

(c) Time is of the essence for all matters set forth in this Lease.

Section 12.17 No Third-Party Beneficiary.

No person or entity other than the City, the Tenant, and their permitted successors and assigns shall have any right of action under this Lease.

Section 12.18 Amendments.

The parties can amend this Lease only by means of a writing signed by both parties; provided, however, the parties may enter into Operating Memoranda or Implementation Agreements in furtherance of the intent of this Lease without formal amendment of this Lease for purposes, in the manner, and with the effect set forth in Section 12.19.

Section 12.19 Operating Memoranda; Implementation Agreements.

(a) The Parties acknowledge that the provisions of this Lease require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Lease. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Lease. If and when, from time to time during the Term of this Lease, the Parties find that refinements or adjustments are necessary or appropriate, then such refinements or adjustments shall be made through Operating Memoranda or Implementation Agreements approved by the Parties which, after execution shall be attached to this Lease as addenda and become a part hereof.

(b) Operating Memoranda or Implementation Agreements may be executed on the City's behalf by the City Manager. In the event a particular subject requires notice or hearing, such notice or hearing shall be appropriately given. Any significant modification to the terms of performance under this Lease shall be processed as an amendment of this Lease in accordance with Section 12.18 and must be approved by the City Council.

Section 12.20 Representation and Warranties of Tenant.

The Tenant hereby represents and warrants to the City as follows:

(a) Organization. The Tenant is a duly organized, validly existing California corporation, and is in good standing under the laws of the State of California and has the power and authority to own its property and carry on its business as now being conducted.

(b) Authority of Tenant. The Tenant has full power and authority to execute and deliver this Lease, and all other documents or instruments to be executed and delivered, pursuant to this Lease, and to perform and observe the terms and provisions of all of the above.

(c) Authority of Persons Executing Documents. This Lease and all other documents or instruments executed and delivered, or to be executed and delivered, pursuant to this Lease have been executed and delivered by persons who are duly authorized to execute and deliver the same for and on behalf of Tenant, and all actions required under the Tenant's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Lease and all other documents or instruments executed and delivered, or

to be executed and delivered, pursuant to this Lease, have been duly taken.

(d) Valid Binding Agreements. This Lease and all other documents or instruments which have been executed and delivered pursuant to or in connection with this Lease constitute or, if not yet executed or delivered, will when so executed and delivered constitute, legal, valid and binding obligations of the Tenant enforceable against it in accordance with their respective terms.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Lease or of any other documents or instruments executed and delivered, or to be executed or delivered, pursuant to this Lease, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency whatsoever binding on the Tenant, or any provision of the organizational documents of the Tenant, or will conflict with or constitute a breach of or a default under any agreement to which the Tenant is a party, or will result in the creation or imposition of any lien upon any assets or property of the Tenant, other than liens established pursuant hereto.

(f) Compliance With Laws; Consents and Approvals. The construction of the Improvements, and any other construction work, will comply with all applicable laws, ordinances, rules and regulations of federal, state and local governments and agencies and with all applicable directions, rules and regulations of the fire marshal, health officer, building inspector and other officers of any such government or agency.

(g) Pending Proceedings. The Tenant is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and there are no claims, actions, suits or proceedings pending or, to the knowledge of the Tenant, threatened against or affecting the Tenant, at law or in equity, before or by any court, board, commission or agency whatsoever which might, if determined adversely to the Tenant, materially affect the Tenant's ability to develop the Improvements.

(h) Title to Property. Upon the recordation of the Memorandum of Lease, the Tenant will have good and marketable leasehold title to the Property and there will exist thereon or with respect thereto no mortgage, lien, pledge or other encumbrance of any character whatsoever other than those liens approved by the City, liens for current real property taxes and assessments not yet due and payable, and liens in favor of the City or approved in writing by the City.

(i) Financial Statements. The financial statements of the Tenant, and other financial data and information furnished by the Tenant to the City, fairly present the information contained therein. As of the date of this Lease, there has not been any adverse, material change in the financial condition of the Tenant from that shown by such financial statements and other data and information.

(j) Sufficient Funds. The Tenant holds sufficient funds or binding commitments for sufficient funds to complete the construction of the Improvements in accordance with this Agreement.

Section 12.21 Multiple Originals; Counterparts.

This Lease may be executed in counterparts and multiple originals, each of which shall be deemed to be an original.

Remainder of Page Left Intentionally Blank

WHEREFORE, the Parties have executed this Lease as of the Effective Date.

CITY:

THE CITY OF EMERYVILLE, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

_____
Michael Guina
City Attorney

TENANT:

4060 Hollis LLC a California limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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

Portion of Block 15, as said block is shown on the "Map of Part of Plot 6, Kellersbergers Survey of Vicente & Domingo Peralta Rancho, Property of J.S. Emery", etc., filed March 1, 1889, in Book 19 of Maps, Page 68, in the Office of the County Recorder of Alameda County, described as follows:

Beginning at a point on the Eastern line of Hollis Street, distant thereon 125 feet Southerly from the Southern line of Park Avenue, as said street and avenue are shown on said map; running thence Southerly along said line of Hollis Street, 275 feet; thence Easterly, parallel with said line of Park Avenue, 75 feet; thence Northeasterly, in a direct line, 54.231 feet to a point on the direct extension Southerly of the Eastern line of Lot 16 in said Block 15, distant thereon 204 feet Southerly from the Southeastern corner of said Lot 16; thence along the extension of said Eastern line of Lot 16 and along the Eastern line of said Lot 16, Northerly 254 feet to the Northern line of said Lot 16; thence Westerly along said last named line, 125 feet to the point of beginning.

APN: 049-0618-004-00

EXHIBIT B

SCOPE OF DEVELOPMENT AND FINAL CONSTRUCTION PLANS

Project Site and Surroundings.

The project site consists of a single, approximately 0.79-acre parcel that is currently developed with a 30,000 square-foot one-story, unreinforced masonry brick building. The building is currently vacant and is roughly divided into a large factory floor that takes up about two-thirds of the square footage, and a series of offices, hallways, and bathroom facilities in the northern one-third of the building. The site is adjacent to Old Town Hall and a public parking lot that is utilized by residents of the Besler Building (a live-work building located across Haven Street at 4053 Harlan Street), City employees and visitors. The surrounding development consists of a mix of residential, commercial, retail and office buildings including Rudy's Can't Fail Café, Granite Expo, Michael's, Besler Building and Bridgecourt Apartments.

Proposed Use(s) and Site Improvements.

Uses:

The Emeryville Arts Center will be a center for visual arts. A large visual arts gallery and flexible use theater space will anchor the project. The project will consist of approximately 30,000 square feet of space including a theater, flexible gallery and performance space, leasable studio space, a café, office space, multipurpose and co-working space. The project includes provisions for a future watchperson's unit and storage space. The Emeryville Arts Center is proposed to be a first-class regional arts exhibition space. Use of the Building shall comply with Planning Entitlements for the project and the Lease Agreement as generally depicted in the Use Distribution Floor Plan (see below).

Site Improvements:

The building will feature new windows, doors, and exterior finishes detailed further below, and building systems will be modernized and/or replaced, including roof, electrical, mechanical, plumbing, and fire safety. All site improvements will substantively comply with the level of quality of design and materials approved with the Planning Entitlements for the project.

A new glass wall along the Hollis St. façade will serve as the building's main entrance. A new restaurant/café will open at the northwest corner of the building, which will also feature windows along Hollis St. The remainder of the Hollis St. façade will retain its historic brick façade and openings. The openings will provide natural light to the art studios facing Hollis St. as well as roll-up doors that tenants may use for small deliveries.

Along 40th Street, Developer plans to replace the existing corrugated metal addition with a new jewel box that will provide display space supportive of the art gallery and venue.

The unreinforced masonry at the north and a portion of the east elevations of the building will be replaced with panels of vertically aligned corrugated metal façade panels, which will lighten the

building's weight and improve its seismic performance. The existing sculptured fountain on the north façade will be left as is and the façade will feature a green wall.

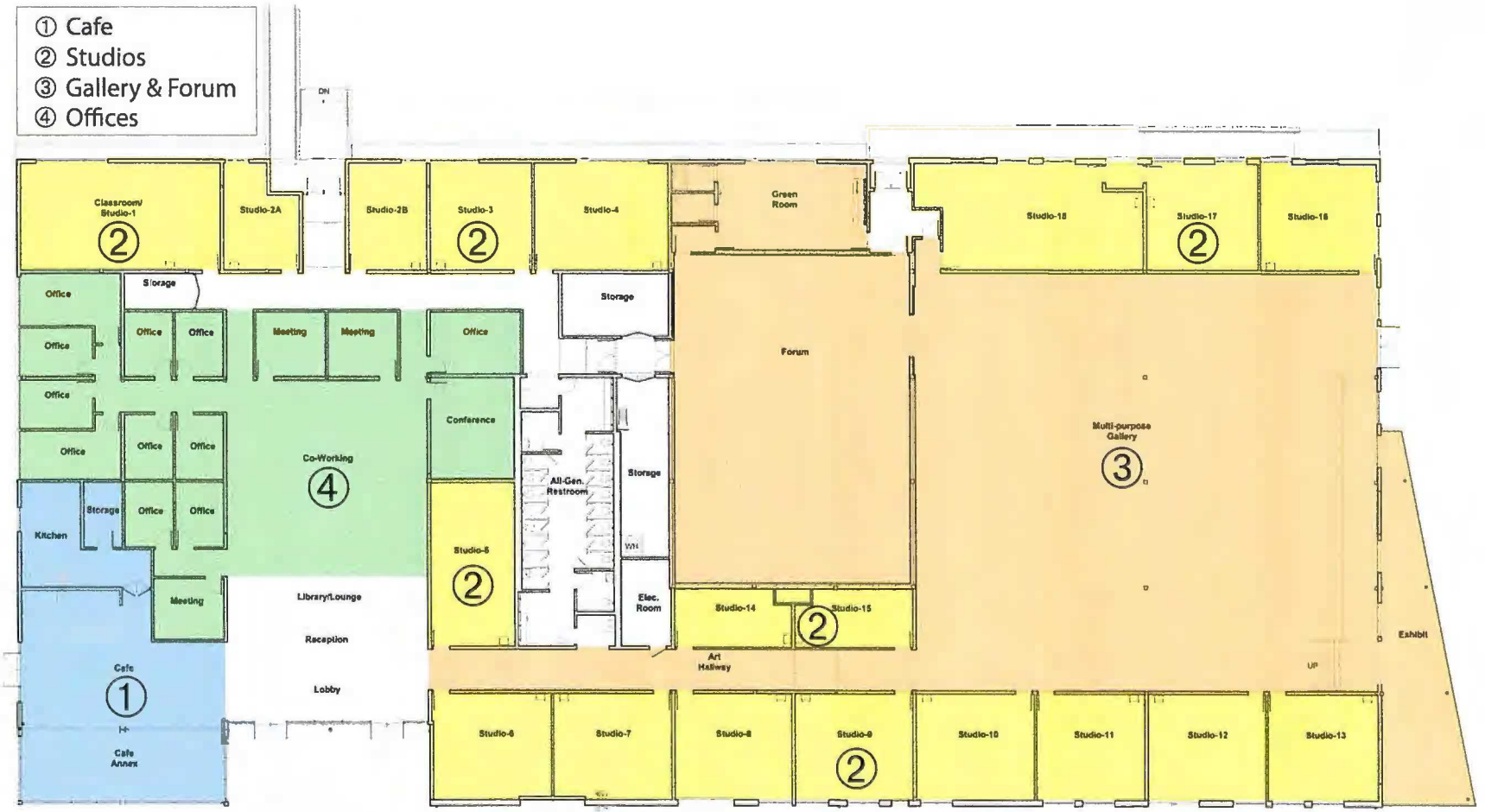
If sufficient funding is available, a new watchmen's unit is proposed for the second level as an additional scope. It will be accessed through an internal stairway and lift. Where entitled by the related Planning Permits and allowed by Building Code, attic storage space would also be created. Street trees along Hollis Street and 40th Street would be removed and replacement street trees and other landscaping will be installed as required per the Planning Entitlements for the project.

Interior improvements will include completion of the flexible gallery/multipurpose space to a finished tenant-ready condition including but not limited to seating, lighting and audio/video systems typical for a performance arts facility. The studios and office/coworking spaces will be finished to a tenant-ready level of completion, and the café space will be finished to a "cold shell" level of completion, with tenant improvements pending identification of occupant subtenants.

See below for floor plans.

Use Distribution Floor Plan.

This illustration is intended to show macro-level square footage allotments by use including arts-dedicated uses and commercial uses. Specific floor plans may change where permitted by the Planning Entitlements and where they are in substantive compliance with arts-dedicated use percentage requirements.



1 OVERALL FLOOR PLAN - MAIN LEVEL

0' 5' 10' 20'

1828111128

EXHIBIT C

MEMORANDUM OF LEASE

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Emeryville
1333 Park Avenue
Emeryville, CA
Attn: City Attorney

No fee for recording pursuant to
Government Code Section 27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF GROUND LEASE AGREEMENT

THIS MEMORANDUM OF GROUND LEASE AGREEMENT (this "Memorandum") is made as of _____, 20___ (the "Effective Date") by and between the City of Emeryville, a municipal corporation ("Landlord"), and 4060 Hollis LLC, a California limited liability company ("Tenant"), with respect to that certain Ground Lease Agreement dated _____, 20____ (the "Lease"), between Landlord and Tenant.

Pursuant to the Lease, Landlord hereby leases to Tenant, and Tenant leases from Landlord, that certain real property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property"), for the term of the Lease. The Lease commenced on the Effective Date, and shall end on the earlier to occur of: (1) the thirty-fourth (34th) anniversary of the Effective Date, unless extended pursuant to Article 2 of the Lease; or (2) the date of any termination of the Lease in accordance with the provisions thereof.

This Memorandum shall incorporate herein all of the terms and provisions of the Lease as though fully set forth herein.

This Memorandum may be executed in multiple originals, each or which is deemed to be an original, and may be signed in counterparts.

This Memorandum is solely for recording purposes and shall not be construed to alter, modify, amend or supplement the Lease of which this is a memorandum.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be duly executed as of the date first above written.

LANDLORD:

CITY OF EMERYVILLE, a municipal corporation

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

_____
Michael Guina
City Attorney

TENANT:

4060 HOLLIS LLC, a California limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT D

INSURANCE REQUIREMENTS

Tenant shall procure and maintain for the term of this Lease insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Tenant, its agents, representatives or employees.

Minimum Limits of Insurance

Tenant shall maintain insurance limits not less than:

1. General liability: $2,000,000 per occurrence for bodily injury, personal injury and property damage, combined single limit and $2,000,000 aggregate limit, with a $10,000,000 umbrella policy limit (provided, however, subcontractors shall only be required to obtain $1,000,000 per occurrence, and $2,000,000 aggregate). Such liability insurance shall be adjusted every five (5) years in accordance with increase in the Consumer Price Index for All Urban Consumers, U.S. Urban Wage Earners and Clerical Workers (Oakland-Hayward, CA, for All Items (1982-84 = 100)) to the extent such readjusted amount of insurance is commercially and reasonably available. Any combination of general liability primary policy's occurrence limits and excess/umbrella liability policy's limits may be utilized to achieve the total required limits.

2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage. Any combination of automobile liability primary policy's occurrence limits and excess/umbrella liability policy's limits may be utilized to achieve the total required limits.

3. Workers' Compensation: As required by State law.

4. Professional Liability (Errors & Omissions) insurance, when any architect, engineer, or consultant is employed by Tenant to perform professional services for the Property or Improvements. Tenant shall cause Professional Liability (Errors & Omissions) Insurance, to be carried by each architect, engineer, or consultant hired directly or indirectly by Tenant to perform professional services for any part of the Property. To the extent possible, all Professional Liability Insurance Policies shall include Landlord as an indemnified party for vicarious liability caused by professional services performed under this Lease. The Architect of record for the initial construction of the Improvements shall provide a minimum coverage limit per claim of not less than three million dollars ($2,000,000) for each claim and three million dollars ($3,000,000) in the annual aggregate, or such lesser amount as Landlord may approve in writing. Lower tier architects, engineers, and professional consultants shall carry limits not less than one million dollars ($1,000,000) per claim and two million ($2,000,000) in the annual aggregate. Such policy may be written on a "claims made" basis provided it has a retroactive date of placement prior to or coinciding with the commencement of any professional services performed on any part of the Property, and shall remain continuously in effect for three (3) years after completion. In the event professional errors and omissions liability insurance is canceled or

not renewed, an extended reporting period endorsement or tail coverage shall be purchased for the required three (3) years. Such policy shall provide coverage against loss or liability arising out of willful, negligent or innocent errors, omissions and misfeasance of the insured party in performing its contractual and professional obligations relating to the design, engineering and construction of the Property, as the case may be, or subsequent alteration or work of improvement, as applicable, and shall include such endorsements as reasonably required by Landlord.

5. Real estate environmental liability insurance ("Pollution Liability Insurance") covering pre-existing conditions with a ten (10) year term and a per claim limit of $2,000,000. The Pollution Liability Insurance shall provide the following types of coverage; (i) Pollution Legal Liability; (ii) on-site and off-site clean up costs; (iii) non-owned disposal site; (iv) in-bound and out-bound contiguous transportation; (v) legal defense expenses and (vi) business interruption for the Tenant.

6. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the Improvements and no coinsurance penalty provisions.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

A. City, and its council members, employees, and volunteers are to be covered as additional insureds on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of Tenant premises owned, occupied or used by Tenant; and automobiles owned, leased, hired or borrowed by Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City, and its council members, employees or volunteers. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 or both CG 20 10 and CG 20 37 forms if later revisions used).

B. Tenant's insurance coverage shall be primary insurance in respect to the City, and its council members, employees and volunteers.

C. Any insurance or self-insurance maintained by City, councilmembers, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it.

D. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to City, its councilmembers, employees or volunteers.

E. Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. Each insurance policy required by this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City.

Builder's Risk (Course of Construction) Insurance

Contractor shall submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name the City of Emeryville as a loss payee as their interest may appear.

For Major Additional Improvements not involving new or major reconstruction, at the sole determination of the City, an Installation Floater may be acceptable. For such Major Additional Improvements, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the work, including during transit, installation, and testing at the Property or on any property owned by the City.

Subcontractors

Before permitting any subcontractors to perform work under this Lease, Tenant shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by Tenant as may be applied to each subcontractor's work.

Acceptability of Insurers

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by the City.

Verification of Coverage

Tenant shall furnish City with original endorsements of effective coverage for policies on which the City are included as additional insureds as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by City before work commences.

Upon request, Tenant shall furnish City a certified copy of any or all policies of insurance covering the work required under this Lease. Upon the City's request, from time to time, during the term of this Lease, the Tenant shall increase the coverage of such insurance policies (or add additional insurance policies) as reasonably requested by the City.

EXHIBIT F

ASSIGNMENT OF DOCUMENTS

ASSIGNMENT OF AGREEMENTS, PLANS AND SPECIFICATIONS, AND APPROVALS

FOR VALUE RECEIVED, the undersigned, 4060 Hollis LLC, a California limited liability company (the "Developer"), hereby assigns and transfers to the City of Emeryville, a municipal corporation (the "City"), all of its right, title and interest in and to:

(1) All architectural, design, engineering, and construction contracts and development agreements, and any and all amendments, modifications, supplements, addenda and general conditions thereto (collectively, the "Agreements"), heretofore or hereafter entered into by any Contractor (as defined below);

(2) All written reports, studies, investigations, analyses, plans and specifications, shop drawings, working drawings, amendments, modifications, changes, supplements, general conditions, other documents, and addenda thereto (collectively, the "Plans and Specifications") heretofore or hereafter prepared by any Contractor (as defined below); and

(3) All land use approvals, building permits, and other governmental approvals of any nature obtained for the Development (collectively, the "Governmental Approvals").

This Assignment of Agreements, Plans and Specifications, and Approvals (the "Assignment") is made pursuant to the terms of that certain Lease Disposition and Development Agreement dated as of _____, 2020 (the "LDDA"), by and between the City and Developer. Capitalized terms used but not defined in this Assignment shall have the meanings set forth in the LDDA. The Property subject to the LDDA is described in Exhibit A attached to this Assignment.

For purposes of this Assignment, the term "Contractor" means any architect, construction contractor, engineer, consultant or other person or entity entering into Agreements with the Developer and/or preparing Plans and Specifications for the Developer with respect to the Development.

The Developer hereby irrevocably appoints the City as its attorney-in-fact (which agency is coupled with an interest) to, upon the occurrence of a Default under and as defined in the LDDA, demand, receive, and enforce any and all of the Developer's rights with respect to the Plans and Specifications, Agreements and Governmental Approvals, and perform any and all acts in the name of the Developer or in the name of the City with the same force and effect as if performed by the Developer in the absence of this Assignment.

The City shall not have any obligation under any of the Agreements unless and until the City expressly agrees in writing to be bound by such Agreement(s) following a Default. Upon the occurrence of a Default, the City may use any of the Agreements assumed by the City and

any of the Plans and Specifications and Governmental Approvals for any purpose for which the Developer could have used them for development of the Development. Upon the occurrence of a Default, the Developer shall cooperate with the City to implement this Assignment and shall immediately deposit with the City all the Agreements, Plans and Specifications, and Governmental Approvals.

The Developer represents and warrants to the City that no previous assignment(s) of its rights or interest in or to the Plans and Specifications, Agreements, and/or Governmental Approvals has or have been made, and the Developer agrees not to assign, sell, pledge, transfer, mortgage, or hypothecate its rights or interest therein (without prior written approval of the City Manager) so long as the City Loan is outstanding.

This Assignment is made to secure payment and performance by the Developer of all its obligations under the LDDA and the City Documents.

This Assignment shall terminate upon the issuance of the Certificate of Completion by the City in accordance with the Ground Lease.

This Assignment shall be governed by the laws of the State of California, and the Developer agrees that the Superior Court of the County of Alameda shall be the site and have jurisdiction for the filing and maintenance of any action arising hereunder and further agrees that the prevailing Party in any such action shall be entitled, in addition to any other recovery, to reasonable attorneys' fees and costs.

This Assignment shall be binding upon and inure to the benefit of the heirs, legal representatives, assigns, and successors-in-interest of the Developer, and the City; provided, however, this shall not be construed and is not intended to waive the restrictions on assignment, sale, transfer, mortgage, pledge, hypothecation or encumbrance by the Developer contained in the LDDA or the Ground Lease.

Exhibit A, the Architect's Consent, the Landscape Architect's Consent, and the Engineer's Consent are attached hereto and incorporated herein by reference.

Executed by the Developer on _____, 202__.

DEVELOPER:

4060 HOLLIS LLC, a California limited liability company

By: _____

Name: _____

Its: _____

EXHIBIT A

PROPERTY DESCRIPTION

All that certain real property situated in the County of Alameda, State of California, described as follows:

ARCHITECT'S CONSENT

The undersigned architect ("Architect") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Architect's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Architect except as disclosed to the City arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Architect's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Architect agrees that if, at any time, the City elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Architect written notice of such election; then so long as the Architect has received, receives or continues to receive the compensations called for under the Agreements, the City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Architect will continue to perform its obligations under the Agreements for the benefit and account of the City in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The City may assign its rights pursuant to this paragraph to another entity in its discretion.

Architect further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Architect in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City, Architect will give written notice to the City at the address shown below of such breach. The City shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City to cure said Default or to undertake completion of construction of the Improvements.

Except as set forth in the Assignment, Architect warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the LDDA, as applicable.

Executed by the Architect on _____, 202__.

Address of City:

City of Emeryville
1333 Park Avenue
Emeryville, CA
Attn: City Manager

Address of Architect:

Architect:

By: _____

Name: _____

Its: _____

ENGINEER'S CONSENT

The undersigned engineer ("Engineer") hereby consents to the foregoing Assignment of Agreements, Plans and Specifications, and Approvals ("Assignment"), of which this Engineer's Consent ("Consent") is a part, and acknowledges that there presently exists no unpaid claims presently due to the Engineer except as disclosed to the City arising out of the preparation and delivery of the Plans and Specification to the Developer and/or the performance of the Engineer's obligations under the Agreements, as the term "Agreements" is defined in the Assignment.

Engineer agrees that if, at any time, the City elects to undertake or cause the completion of construction of the Development on any of the Site, in accordance with the Plans and Specifications, and gives Engineer written notice of such election; then so long as the Engineer has received, receives or continues to receive the compensations called for under the Agreements, the City may, at its option, use and rely on the Plans and Specifications for the purposes for which they were prepared, and Engineer will continue to perform its obligations under the Agreements for the benefit and account of the City in the same manner as if performed for the benefit or account of the Developer in the absence of this Assignment. The City may assign its rights pursuant to this paragraph to another development entity in its discretion.

Engineer further agrees that, in the event of a breach by the Developer of the Agreements, or any agreement entered into with Engineer in connection with the Plans and Specifications, so long as the Developer's interest in the Agreements and Plans and Specifications is assigned to the City, Engineer will give written notice to the City at the address shown below of such breach. The City shall have thirty (30) days from the receipt of such written notice of Default to remedy or cure said Default; provided, however, nothing herein shall require the City to cure said Default or to undertake completion of construction of the Improvements.

Except as set forth in the Assignment, Engineer warrants and represents that it/he/she has no knowledge of any prior assignment(s) of any interest in either the Plans and Specifications and/or the Agreements. Except as otherwise defined herein, the terms used herein shall have the meanings given them in the Assignment or the LDDA, as applicable.

Executed by the Engineer on _____, 202__.

Address of City:

City of Emeryville
1333 Park Avenue
Emeryville, CA
Attn: City Manager

Address of Engineer:

By: _____

Name: _____

Its: _____