

**AGENDA ITEM 6j**  
**Treasure Island Development Authority**  
**City and County of San Francisco**  
**Meeting of January 14, 2026**

**Subject:** Resolution Approving and Authorizing the Execution of an Eighth Amendment to Sublease and Property Management Agreement between the Treasure Island Development Authority and John Stewart Company, a California Corporation, to (i) Establish Fixed Management Fees, (ii) Remove and Add Properties to the Premises, (iii) Adjust the Common Area Maintenance Charges and Utility Fees, and (iv) Execute an Amended and Restated Sublease and Property Management Agreement Incorporating Amendments 1 through 8 and Modifying Language to Reflect Current Property Management Operations and Responsibilities.

**Contact:** Richard A. Rovetti, Deputy Director of Real Estate

**Phone:** 415-274-3365

**SUMMARY**

TIDA is modifying the Sublease and Property Management Agreement with the John Stewart Company to reflect current property management responsibilities and inventory, and changes in charges and fees.

**BACKGROUND**

On January 20, 1999, the Authority Board of Directors (“Authority Board”) approved a Sublease, Development, Marketing and Property Management Agreement (the “Original Agreement”) with the John Stewart Company (“JSCo”) for the market rate rental housing on TI/YBI. The Original Sublease was approved by the City’s Board of Supervisors on February 22, 1999, and became effective on March 17, 1999. The Authority Board and the Board of Supervisors approved five amendments to the Original Sublease between 2000 and 2009.

On June 11, 2014, the Treasure Island Development Authority (the “Authority”) Board of Directors approved the Sublease and Property Management Agreement (the “Agreement” – attached as EXHIBIT B) with John Stewart Company, a California Corporation (“JSCo”), for management of market rate rental housing on Treasure and Yerba Buena Islands (“TI/YBI”). The Agreement has been amended seven times pursuant to a First Amendment (the “First Amendment”) dated March 15, 2016, a Second Amendment (the “Second Amendment”) dated May 1, 2017, a Third Amendment (the “Third Amendment”) dated October 1, 2017, a Fourth Amendment (the “Fourth Amendment”) dated July 1, 2018, a Fifth Amendment (the “Fifth

Amendment”) dated May 1, 2019, a Sixth Amendment ( the “Sixth Amendment”) dated July 15, 2019, and a Seventh Amendment ( the “Seventh Amendment”) dated July 1, 2024.

JSCo has provided exemplary property management services to the Authority over the term of the Original Sublease, 1999-2014, and the current Agreement, 2014-present. JSCo has consistently demonstrated a strong institutional knowledge of the Island environment and issues and has played a critical role in partnering with the island’s other housing providers – Catholic Charities, HomeRise, Swords to Plowshares, and HealthRight360 – to create an inclusive community on Treasure Island.

As development activities have progressed, the focus of the property management function has shifted from prioritizing occupancy rates and revenues to the winding down and eventual termination of leasing activities. JSCo has provided critical support to ensure an efficient and orderly process for implementation of complex residential transitions and relocations in accordance with the THRR adopted by the Authority Board and the Board of Supervisors.

Over the past several years, JSCo’s portfolio on Treasure Island has significantly reduced and will continue to reduce from 472 to 269 units under management due to development activities resulting in the increase of offline units as tenants vacate or relocate to new replacement housing. The continued development of Treasure Island will increase the number of vacant legacy housing (“former Navy housing”) in anticipation of future demolition of these units to make way for redevelopment.

Under the existing Agreement, JSCo’s receives a Management Fee equivalent to 3% of Gross Revenues not to exceed \$400,000 annually. The Agreement further states that if, at any point, the number of Rentable Units is reduced to below 210, Authority and JSCo shall meet and confer regarding establishing a new Management Fee structure or amount that is equitable to both parties.

The maintenance of offline legacy housing has significantly impacted JSCo’s Management Fees from approximately \$370,000 in to 2022 to approximately \$285,000 in 2024. By 2028, it is anticipated that approximately 75 households will transition to new housing resulting in further reductions to JSCo’s portfolio and well under the 210-unit threshold. This reduction to the JSCo’s portfolio will render this percentage rent model unsustainable for JSCo.

Authority staff and JSCo have agreed to a new management structure whereby JSCo is compensated by a flat management fee, and have negotiated an Eighth Amendment to the professional services agreement effective January 1, 2026 to (i) establish fixed Management Fees payable to JSCo in the amount of \$270,000 per year or \$22,500 per month for the management of all occupied, vacant and offline units in the Villages portfolio on Treasure Island; (ii) remove 1108 Halyburton Court, 1149 Gateview Avenue, 1305 Gateview Avenue, 1309 Gateview Avenue, 1437 Chinook Court, and 1449 Croaker Court, Quarters 7, located at 70 Garden Way, Yerba Buena Island, and add 1206 Mariner Drive, 1220 Bayside Drive, 1244 Northpoint Drive, and 1251 Exposition Drive to the Premises; and (iii) revise the Common Area Maintenance Charges creating new rates for occupied units (\$322.00 per unit per month) and unoccupied units

(\$50.00 per unit per month) and increase the Utility Fees to \$600.00 per unit per month to compensate for SFPUC fee adjustments.

## **EIGHTH AMENDMENT TERMS AND CONDITIONS**

The salient terms and conditions of the proposed Amendment include the following:

**Effective Date:** February 1, 2026

**Subleased Premises:** As of the Effective Date, 1108 Halliburton Court, 1149 Gateview Avenue, 1305 Gateview Avenue, 1309 Gateview Avenue, 1437 Chinook Court, and 1449 Croaker Court, Quarters 7, located at 70 Garden Way, Yerba Buena Island, San Francisco, California, shall be removed from the Premises, and the following Treasure Island units shall be added to the Premises: 1206 Mariner Drive, 1220 Bayside Drive, 1244 Northpoint Drive, and 1251 Exposition Drive, Treasure Island, San Francisco, California.

**Management Fees:** Management Fees payable to JSCo shall be a fixed amount of \$270,000 per year or \$22,500 per month for the management of all occupied, vacant and offline units in the Villages portfolio on Treasure Island.

**Common Area  
Maintenance Charges  
(CAM):**

Commencing on the Effective Date, Common Area Maintenance Charges (CAM) shall be \$322.00 per unit per month for occupied units, and \$50.00 per unit per month for unoccupied units.

**Utilities:** Subtenant shall pay to the San Francisco Public Utilities Commission (SFPUC) Utility Fees in the amount of Six Hundred Dollars (\$600.00) per unit per month.

Upon reasonable notice to Subtenant by the Director, Subtenant shall pay increased Utility Rates consistent with rate adjustments by the SFPUC during the Term.

## **BUDGET IMPACT**

The Amendment shall have no impact to the Authority's budget for FY 2025-26.

## **RECOMMENDATION**

Project staff recommends that the Authority Board of Directors approve the proposed Eighth Amendment to Sublease and Property Management Agreement with the John Stewart Company, a California Corporation, to (i) establish fixed Management Fees, (ii) remove and add properties

to the Premises, (iii) adjust the Common Area Maintenance Charges and Utility Fees, and (iv) execute an Amended and Restated Sublease and Property Management Agreement incorporating Amendments 1 through 8 and modifying language to reflect current property management operations and responsibilities, and authorize the Treasure Island Director or his designee to execute said Amendment, and Amended and Restated Sublease and Property Management Agreement.

**EXHIBIT A** – Eighth Amendment to Sublease and Property Management Agreement between the Treasure Island Development Authority and John Stewart Company, a California Corporation

**EXHIBIT B** – June 11, 2014 Sublease and Property Management Agreement between the Treasure Island Development Authority and John Stewart Company, a California Corporation Prior to Subsequent Amendments

Prepared by: Richard A. Rovetti, Deputy Director of Real Estate  
For: Robert P. Beck, Treasure Island Director



**EIGHTH AMENDMENT TO  
SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT**

**Between**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**As Sublandlord**

**and**

**THE JOHN STEWART COMPANY**

**As Subtenant and Manager**

**February 1, 2026**

**THIS EIGHTH AMENDMENT TO SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT** (this “Eighth Amendment”), dated as of February 1, 2026, is by and between the Treasure Island Development Authority (the “Authority”) and the John Stewart Company, a California corporation (“Subtenant”). From time to time, the Authority and Subtenant together shall be referred to herein as the “Parties”.

### **RECITALS**

This Eighth Amendment is made with reference to the following facts and circumstances:

**A.** At its January 20, 1999 meeting the Authority Board of Directors (“Authority Board”) approved a Sublease, Development, Marketing and Property Management Agreement (the “Original Agreement”) with the John Stewart Company (“JSCo”) for the market rate rental housing on TI/YBI. The Original Sublease was approved by the City’s Board of Supervisors on February 22, 1999, and became effective on March 17, 1999. The Authority Board and the Board of Supervisors approved five amendments to the Original Sublease between 2000 and 2009.

**B.** On July 1, 2014, Subtenant and the Authority entered into a Sublease and Property Management Agreement (the “Agreement”) for management of 556 housing units (the “Initial Premises”). The Agreement was amended pursuant to a First Amendment (the “First Amendment”) dated March 15, 2016, a Second Amendment (the “Second Amendment”) dated May 1, 2017, a Third Amendment (the “Third Amendment”) dated October 1, 2017, a Fourth Amendment (the “Fourth Amendment”) dated July 1, 2018, a Fifth Amendment (the “Fifth Amendment”) dated May 1, 2019, a Sixth Amendment (the “Sixth Amendment”) dated July 15, 2019, and a Seventh Amendment (the “Seventh Amendment”) dated July 1, 2024.

**C.** JSCo has provided exemplary property management services to the Authority over the term of the Original Sublease, 1999-2014, and the current Agreement, 2014-present. JSCo has consistently demonstrated a strong institutional knowledge of the Island environment and issues and has played a critical role in partnering with the island’s other housing providers – Catholic Charities, HomeRise, Swords to Plowshares, and HealthRight360 – to create an inclusive community on Treasure Island.

**D.** As development activities have progressed, the focus of the property management function has shifted from prioritizing occupancy rates and revenues to the winding down and eventual termination of leasing activities. JSCo has provided critical support to ensure an efficient and orderly process for implementation of complex residential transitions and relocations in accordance with the THRR adopted by the Authority Board and the Board of Supervisors.

**E.** Subtenant and the Authority desire to amend the Agreement to (i) remove certain vacant buildings from the Premises and add certain buildings vacated by Catholic Charities to the Premises (together the "Adjusted Premises"); (ii) adjust the Common Area Maintenance Charges and Utility Fees; and (iii) establish a fixed Management Fees, on the terms and conditions set forth in this Eighth Amendment.

**F.** The Agreement, First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment, and this Eighth Amendment shall collectively be referred to as the "Agreement". All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Authority and Subtenant hereby amend the Agreement as follows:

## **AGREEMENT**

- 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein.
- 2. Effective Date.** The effective date of this Eighth Amendment shall be February 1, 2026 (the "Effective Date").
- 3. Premises.** As of the Effective Date, 1108 Halyburton Court, 1149 Gateview Avenue, 1305 Gateview Avenue, 1309 Gateview Avenue, 1437 Chinook Court, and 1449 Croaker Court, Quarters 7, located at 70 Garden Way, Yerba Buena Island, San Francisco, California, shall be removed from the Premises, and the following Treasure Island units shall be added to the Premises: 1206 Mariner Drive, 1220 Bayside Drive, 1244 Northpoint Drive, and 1251 Exposition Drive, Treasure Island, San Francisco, California, as more particularly shown on Exhibit B attached hereto and made a part hereof.

The Initial Premises and the Adjusted Premises are collectively referred to in this Sublease as the "Premises".

All references to "Premises" and "Exhibit B" in the Sublease shall mean the Adjusted Premises described herein and shown on the amended Exhibit B attached to this Eight Amendment.

Section 1.1 of the Agreement shall be replaced in its entirety with the following:

1.1 Premises. Subject to the terms, covenants and conditions of this Agreement, the Authority hereby subleases to Subtenant, and Subtenant hereby accepts from the Authority, the premises, as more particularly described in Exhibit B (The "**Premises**"), together with reasonable rights of ingress and egress to and from the Premises. As buildings are vacated, the Subtenant may request that a building be removed from the Premises which request will not unreasonably be refused unless the Authority anticipates that the building will be reoccupied under the terms of this Agreement. Such change to the Premises will be effective upon written acknowledgement by the Director without requiring an amendment to this Agreement.

4. **Common Area Maintenance Charges (CAM)**. Replace Section 10.3 in its entirety with the following:

"The Authority shall contract for security services for the housing area and for the maintenance of the grounds within the housing area and shall assess a Common Area Maintenance (CAM) Charge payable by the Subtenant. As of the Effective Date of this Agreement the Parties hereby acknowledge and agree that CAM Charge for occupied units shall be \$322.00 per month and for unoccupied units shall be \$50.00 per month."

5. **Utilities**. As of the Effective Date, the Utilities described in Sublease Section 5.2 shall be amended to read as follows:

"During the Term, Subtenant shall pay Utility Fees as established by resolution of the Authority Board and invoiced by the San Francisco Public Utilities Commission (SFPUC). As of the Effective Date of this Agreement the Utility Fees are proposed to be Six Hundred (\$600.00) per unit per month for the period from January 1, 2026 to June 30, 2026."

6. **Management Fees**. The first paragraph under Section 8.6 shall be replaced with the following:

"Management Fee. As of the Effective Date, the management fees payable to JSCo shall be a fixed amount of \$270,000 per year or \$22,500 per month for the management of all occupied, vacant and offline units in the Villages portfolio on Treasure Island as referenced under item 3 above and specifically in Exhibit B. If, at any point, the number of occupied units is reduced to the point that Gross Revenues are insufficient to fund the Management Fee, Base Rent, and Operating Expenses (including CAM Charges and Utility Fees) Sublandlord and Subtenant shall meet and



confer to evaluate Operating Costs, Base Rent and Management Fee structure and/or amounts to maintain the benefit of the bargain of the parties (i.e., Subtenant receives a rational and fair fee in light of reduced number of units and revenues and will not reasonably be expected to advance its own funds to pay required Operating Expenses), given the totality of the circumstances that then exist and that led to the reduction in the number of Rental Units. If Sublandlord and Subtenant are unable to agree upon a new Management Fee, then either party may initiate mediation, as follows:"

7. **Counterparts.** This Eighth Amendment may be executed in counterparts with the same force and effect as if the parties had executed one instrument, and each such counterpart shall constitute an original hereof.

8. **Force and Effect.** Except as specifically amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

**[Remainder of page intentionally left blank]**

**IN WITNESS WHEREOF**, Sublandlord and Subtenant have executed this Eighth Amendment to this Agreement at San Francisco, California, as of the date first above written.

**AUTHORITY:**

**TREASURE ISLAND DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Robert P. Beck  
Treasure Island Director

**SUBTENANT:**

**The John Stewart Company, Inc.**  
**a California corporation**

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

**APPROVED AS TO FORM:**

**DAVID CHIU, City Attorney**

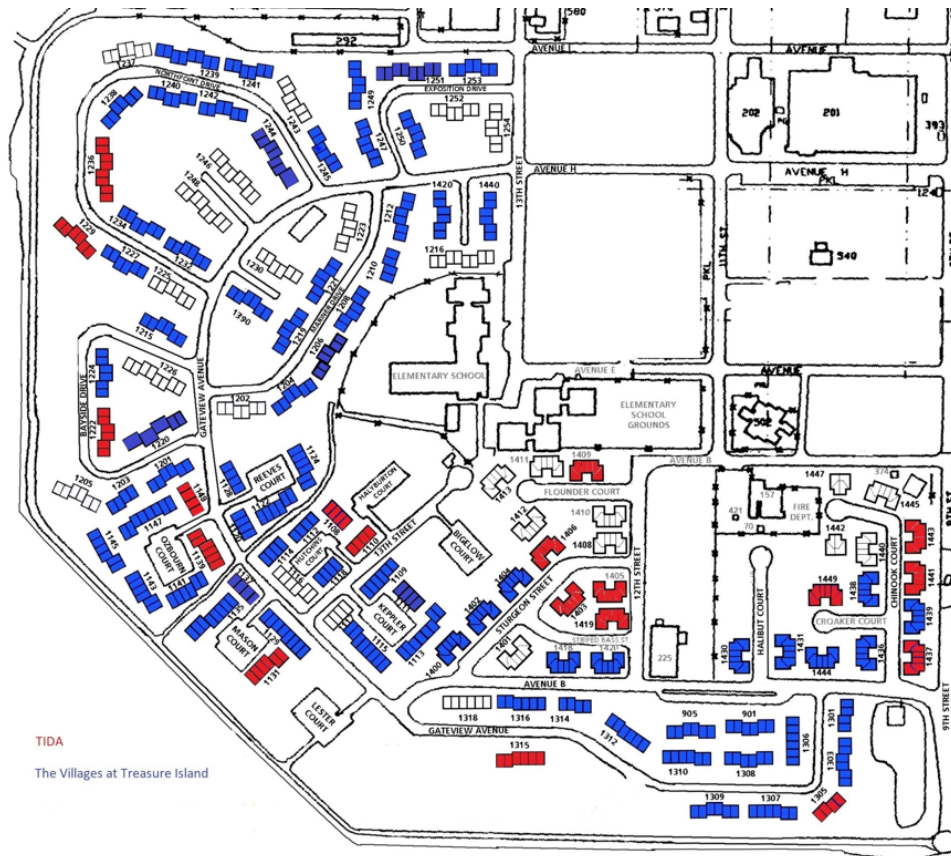
By: \_\_\_\_\_  
Deputy City Attorney

Amendment Prepared By: Richard A. Rovetti, Deputy Director of Real Estate \_\_\_\_\_  
(initial)

# SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT

## EXHIBIT B

Treasure Island Market-Rate Housing Map & Managed Buildings (7/1/2025)



1109 Keppler Ct; 1111 Keppler Ct; 1112 Hutchins Ct; 1113 Keppler Ct; 1114 Hutchins Ct; 1115 Keppler Ct; 1118 Hutchins Ct; 1120 Reeves Ct; 1122 Reeves Ct; 1124 Reeves Ct; 1128 Reeves Ct; 1129 Mason Ct; 1135 Mason Ct; 1137 Mason Ct; 1141 Ozbourn Ct; 1143 Ozbourn Ct; 1145 Ozbourn Ct; 1147 Ozbourn Ct; 1201 Bayside Dr; 1203 Bayside Dr; 1204 Mariner Dr 1206 Mariner Dr; 1208 Mariner Dr; 1210 Mariner Dr; 1212 Mariner Dr; 1215 Bayside Dr; 1219 Mariner Dr; 1220 Bayside Dr; 1221 Mariner Dr; 1224 Bayside Dr 1227 Northpoint Dr; 1232 Northpoint Dr; 1234 Northpoint Dr; 1238 Northpoint Dr; 1239 Northpoint Dr; 1240 Northpoint Dr; 1241 Northpoint Dr; 1242 Northpoint Dr; 1244 Northpoint Dr; 1245 Northpoint Dr; 1247 Exposition Dr; 1249 Exposition Dr; 1250 Exposition Dr; 1251 Exposition Dr; 1253 Exposition Dr; 1301 Gateview Ave; 1303 Gateview Ave; 1306 Gateview Ave; 1307 Gateview Ave; 1308 Gateview Ave; 1309 Gateview Ave; 1310 Gateview Ave; 1312 Gateview Ave; 1314 Gateview Ave; 1316 Gateview Ave; 1390 Gateview Ct; 1400 Sturgeon St; 1402 Sturgeon St; 1404 Sturgeon St; 1418 Striped Bass St; 1420 Gateview Ct; 1420 Striped Bass St; 1430 Halibut Ct; 1431 Halibut Ct; 1436 Chinook Ct; 1438 Chinook Ct; 1439 Chinook Ct; 1440 Gateview Ct; 1444 Croaker Ct; 901 Avenue B; and 905 Avenue B

**SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT**

Between

THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
as Sublandlord

and

THE JOHN STEWART COMPANY, A CALIFORNIA CORPORATION  
as Subtenant and Manager

For up to 556 Housing Units at Former Naval Station Treasure Island  
San Francisco, California

July 1, 2014

## TREASURE ISLAND AGREEMENT

1.	PREMISES .....	2
	1.1. Premises .....	2
	1.2. As is Condition of Premises.....	2
2.	COMPLIANCE WITH MASTER LEASE .....	3
	2.1. The Authority's Compliance with Master Lease .....	3
	2.2. Subtenant's Compliance with Master Lease .....	4
	2.3. Automatic Termination .....	4
	2.4. Purchase of Premises by Authority .....	4
3.	TERM .....	4
	3.1. Term of Agreement.....	4
	3.2. Extension Options .....	4
4	WORK TO BE COMPLETED BY SUBTENANT.. ..	5
	4.1. Scope of the Work .....	5
	4.2. Cost of the Work .....	5
	4.3. Election Not to Proceed with Renovations .....	5
	4.4. Construction of Other Alterations .....	5
	4.5. Ownership of Alterations .....	6
	4.6. Subtenant's Personal Property .....	6
5.	USE .....	6
	5.1. Subtenant's Permitted Use .....	6
	5.2. No Unlawful Uses, Nuisances or Waste .....	6
	5.3. Signs .....	6
	5.4. Zoning .....	7
	5.5. Covenant of Quiet Enjoyment; Ingress and Egress .....	7
6.	SUBTENANT'S MARKETING RESPONSIBILITIES .....	7
	6.1. Marketing.....	7
	7. SUBTENANT'S LEASING AND RELOCATION RESPONSIBILITIES .....	7
	7.1. Leasing .....	7
	7.2. Application Process and Screening.....	7
	7.3. Rental Agreements .....	7
	7.4. Rental Rates .....	8
	7.5. Grievance Procedures .....	8
	7.6. Relocation of Tenants .....	8
8.	MANAGEMENT, MAINTENANCE AND REPAIR RESPONSIBILITIES .....	8
	8.1. General Maintenance and Repair Obligations .....	8
	8.2. Routine Maintenance and Repair .....	9
	8.3. Unanticipated and Emergency Maintenance and Repairs .....	9
	8.4. Security .....	10
	8.5. Subtenant's Responsibility for Utility Facilities .....	10
	8.6. Management Fee .....	10
	8.7. Base Repair and Maintenance .....	11
9.	EMPLOYEES AND INDEPENDENT CONTRACTORS .....	11
	9.1. On-Site Office .....	11
	9.2. Personnel. ....	11
10.	AUTHORITY'S SERVICE OBLIGATIONS .....	12
	10.1. Utilities .....	12
	10.2. Street Services .....	12
	10.3. Police and Fire .....	12
	10.4. Other Portions of the Base Leased to the Authority .....	13
	10.5. Force Majeure .....	13
11.	ACCOUNTS .....	13
	11.1. General Operating Account .....	13

11.2. Security Deposit Account .....	13
11.3. Replacement Reserve Account .....	13
11.4. Criteria for Project Accounts .....	14
12. PAYMENT OF OPERATING EXPENSES .....	14
12.1. Payment Of Operating Expenses .....	14
12.2. Annual Operating Budget .....	14
12.3. Bids, Discounts, Rebates, and Commissions .....	15
12 .4. No Authority Liability .....	15
13. DISBURSEMENTS .....	15
13.1. Allocation of Gross Revenues .....	15
14. BOOKS, RECORDS AND REPORTS .....	16
14.1. Books and Records .....	16
14.2. Monthly Reports .....	16
14.3. Subtenant's Annual Audit.. .....	16
14.4. Periodic Audits and Inspections of Records .....	16
14.5. Transfer of Records and Accounts .....	16
15. RENT .....	17
15.1. Base Rent .....	17
15.2. Adjustments in Base Rent .....	17
15.3. Percentage Rent .....	17
15 .4. In-Kind Rent .....	17
15.5. Method of Payment of Rent .....	18
15.6. Late Charge .....	18
15.7. Default Interest. ....	18
15.8. No Right to Repair and Deduct.....	18
16. TAXES, ASSESSMENTS AND OTHER EXPENSES .....	19
16.1. Taxes and Assessments, Licenses, Permit Fees and Liens .....	19
16.2. Evidence of Payment .....	19
17. LIENS AND ENCUMBRANCES .....	20
17.1. Mechanics Liens .....	20
17.2. Encumbrances by Subtenant .....	20
18. COMPLIANCE WITH LAWS .....	20
18.1. Compliance with Laws .....	20
18.2. Regulatory Approvals .....	21
18.3. Compliance with Authority's Risk Management Requirements .....	21
19. DAMAGE OR DESTRUCTION .....	21
19.1. Damage or Destruction to the Premises Covered by Required Insurance .....	21
19.2. Damage or Destruction to the Premises Not Covered by Required Insurance .....	22
19.3. Rental Abatement.....	22
19.4. Waiver .....	22
20. ASSIGNMENT AND SUBLETTING .....	22
20.1. Restriction on Assignment and Subletting .....	22
21. DEFAULT .....	23
21.1. Events Of Subtenant Default .....	23
21.2. Authority Default .....	23
22. REMEDIES .....	23
22.1. Authority' s Remedies for Subtenant's Defaults .....	23
22.2. Subtenant's Remedies for Authority Default.. .....	24
23. RELEASE AND WAIVER OF CLAIMS .....	24
23.1. Release and Waiver of Claims .....	24
23.2. Covenant by the Authority Not to Sue .....	25
24. INDEMNIFICATION .....	25
24.1. Subtenant's Indemnity .....	25
24.2. Authority's Indemnity .....	26

24.3. Master Landlord's Section 330 Environmental Indemnity .....	26
25. INSURANCE .....	26
25.1. Subtenant's Insurance .....	26
25.2. General Requirements .....	27
25.3. No Limitation on Indemnities .....	28
25.4. Subtenant's Personal Property .....	28
25.5. Waiver of Subrogation .....	28
26. ACCESS BY Authority .....	28
26.1. Access to Premises by Authority .....	28
26.2. Access to Premises by Master Landlord .....	29
27. SURRENDER .....	29
27.1. Surrender of the Premises .....	29
28. HAZARDOUS MATERIALS .....	29
28.1. No Hazardous Materials .....	29
28.2. No Releases .....	30
28.3. Subtenant's Environmental Indemnity .....	30
28.4. No Hazardous Materials .....	30
28.5. No Releases .....	31
28.6. Authority's Environmental Indemnity .....	31
28.7. Acknowledgment of Receipt offers and FOSL Reports .....	31
29. RELOCATION COSTS .....	31
30. CONVENIENCE STORE AND OTHER SERVICES .....	31
30.1. Good Faith Efforts .....	31
31. TRANSPORTATION SERVICES .....	31
31.1. Bus Service .....	31
31.2. Public Transit Information .....	31
32. WORKFORCE HIRING GOALS .....	31
32.1. Subtenant's Workforce Hiring Goals .....	32
32.2. Workforce Hiring Goals .....	32
32.3. Hiring Plan .....	33
32.4. Reports .....	33
32.5. Matters Subject to Enforcement Procedure .....	33
32.6. Implementation of Enforcement Procedure .....	33
32.7. Enforcement Procedure .....	33
32.8. Relationship to Other Employment Agreements .....	35
32.9. Local Hire.....	36
33. GENERAL PROVISIONS .....	36
33.1. Notices .....	36
33.2. No Implied Waiver .....	37
33.3. Amendments .....	37
33.4. Due Authorization and Execution .....	37
33.5. Joint and Several Obligations .....	38
33.6. Interpretation of Agreement. ....	38
33.7. Successors and Assigns .....	38
33.8. Brokers .....	38
33.9. Severability .....	38
33.10. Governing Law .....	38
33.11. Entire Agreement .....	38
33.12. Attorneys Fees .....	39
33.13. Time of Essence .....	39
33.14. Cumulative Remedies .....	39
33.15. Survival of Indemnities .....	39
33.16. Relationship of Parties .....	39
33.17. Non-Liability of Parties officials, employees .....	39

33.18. Counterparts .....	39
34. SPECIAL PROVISIONS .....	39
34.1. Non-Discrimination in Contracts and Benefits Ordinance .....	39
34.2. MacBride Principles -Northern Ireland .....	40
34.3. Tropical Hardwood and Virgin Redwood Ban .....	40
34.4. Conflicts of Interest.....	41
34.5. Prohibition of Tobacco Advertising .....	41
34.6 Prohibition on Alcohol Advertising.....	41
34.7 Holding Over.....	41
34.8 Prevailing Wages.....	42
34.9 Pesticide Prohibition.....	42
34.10 Sunshine Ordinance.....	42
34.11 Drug Free Workplace.....	43
34.12 Requiring Health Benefits for Covered Employees.....	43
34.13 Notification of Limitations on Contributions.....	44
34.14 Preservative-Treated Wood containing Arsenic.....	44
34.15 Resource Efficient City Buildings and Pilot Projects.....	44
34.16 Food Service Waste Reduction.....	45
34.17 Estoppel Certificates.....	45

#### LIST OF EXHIBITS:

EXHIBIT A -MASTER LEASE  
 EXHIBIT B -DESCRIPTION OF PREMISES, MAP AND LIST OF RENTABLE UNITS  
 EXHIBIT C –TRANSITION HOUSING RULES AND REGULATIONS  
 EXHIBIT D-1 -COVER PAGE OF SEISMIC REPORT  
 EXHIBIT D-2 -COVER PAGE OF STRUCTURAL REPORT  
 EXHIBIT E -NOTICE OF COMMENCEMENT DATE  
 EXHIBIT F -CAPITAL BUDGET AND 1ST YEAR OPERATING BUDGET  
 EXHIBIT G - FORM OF RENTAL AGREEMENT  
 EXHIBIT H -APPROVED RENTAL RATES  
 EXHIBIT I –UTILITIES  
 EXHIBIT J –MANAGEMENT PLAN  
 EXHIBIT K -APPROVED HAZARDOUS MATERIALS



## TREASURE ISLAND SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT

THIS SUBLEASE AND PROPERTY MANAGEMENT AGREEMENT (the "**Agreement**"), dated July 1, 2014, is by and between the Treasure Island Development Authority, a California nonprofit public benefit corporation (the "**Authority**" or "**Sublandlord**") and the John Stewart Company, a California Corporation ("**Subtenant**"). From time to time, the Authority and Subtenant together shall be referred to herein as the "**Parties**".

This Agreement is made with reference to the following facts and circumstances:

A. Former Naval Station Treasure Island (the "**Base**" or "**Property**") was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510 and its subsequent amendments, and is currently owned by the United States of America, acting by and through the Department of Navy ("**Master Landlord**" or "**Navy**"). The United States Department of Defense designated the City and County of San Francisco ("**City**") as the Local Redevelopment Authority ("**LRA**") responsible for the conversion of the Base under the federal disposition process.

B. In 1997, the Base closed and the Authority was created by the City to replace the City as the LRA and to serve as a single entity responsible for the reuse and development of the Base.

C. Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "**Act**"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base, and (ii) with respect to those portions of the Base which are former tide or submerged lands, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property.

D. In 1998, the San Francisco Board of Supervisors ("**BOS**") approved the designation of the Authority as a redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated February 6, 1998. In 2012, by resolution No. 11-12, the BOS rescinded the designation of the Authority as a redevelopment agency under California Community Redevelopment Law, but such rescission did not affect the Authority's status as the LRA for Treasure Island or the tidelands trust trustee for the portions of Treasure Island subject to the tidelands trust, or any of the other powers or authority of the Authority. In 1999, the Navy and the Authority entered into a master lease dated March 17, 1999, with the associated estoppel certificate addressed to Subtenant (the "**Master Lease**"), as amended, a copy of which is attached hereto as Exhibit A. This Agreement shall be subject and subordinate to the Master Lease, as it may be amended from time to time. The Authority intends to negotiate a new master lease with the Navy. Upon completion, the Authority shall replace the Master Lease attached as Exhibit A with the new master lease and make any conforming changes to the section cross references in this Agreement.

E. The Authority began subleasing at market rates a portion of the former military housing now known as the Villages at Treasure Island through a lease with the John Stewart Company (the "**Original Villages Lease**"), and directly leasing space at the Base to a variety of commercial tenants. Upon the Effective Date of this Agreement, the Original Villages Lease will terminate.

F. There are approximately 1,000 units of housing on the Base, 904 on Treasure Island and 96 on Yerba Buena Island (the "**Base-Wide Housing Units**"). Approximately 578 of

the Base-Wide Housing Units, as shown on Exhibits B (the "**Rentable Units**") are currently leased to residential sub-tenants of Subtenant ("**residential tenants**"), and will be managed and maintained under the terms and conditions of this Agreement in order to generate revenues for the operation and improvement of the Base.

G. Pursuant to the Federal Base Closure Community Redevelopment and Homeless Assistance Act of 1994, the Treasure Island Homeless Development Initiative ("**TIHDI**") and the City negotiated a Base Closure Homeless Assistance Agreement, as amended (the "**TIHDI Agreement**") and a revenue sharing and consent agreement (the "**TIHDI Sharing Agreement**"), under which TIHDI has the right to lease certain residential units at the Base (the "**TIHDI Units**") to assist homeless and formerly homeless individuals and families and to share in the collection of certain revenues at the Base in furtherance of its mission. Copies of these agreements are held by the Authority and have been delivered to Subtenant. Subtenant will be required to work in concert with TIHDI, as set forth in this Agreement.

H. In 2003, after a competitive bid process, the Authority Board selected Treasure Island Community Development, LLC ("**TICD**") as the proposed master developer of the Base. In 2011, the Authority and TICD entered into a Disposition and Development Agreement ("**TICD DDA**") and other transaction documents relating to the reuse and development of the Base (the "**Project**"). During the term of this Agreement, TICD and the Authority intend to implement the Project. Part of that implementation will require the relocation of residential tenants in accordance with the Transition Housing Rules and Regulations, as amended (the "**THRRs**"), attached hereto as Exhibit C.

I. On March 7, 2014, the Authority issued a Request for Proposals ("**RFP**"), soliciting interest from qualified entities to provide the services under this Agreement. Subtenant was selected, and following a duly noticed public hearing, this Agreement was approved by the Authority Board of Directors by Authority Board Resolution No. \_\_\_\_\_ and subsequently by the City's Board of Supervisors by Board of Supervisors Resolution No. \_\_\_\_\_

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the Authority and Subtenant hereby agree as follows:

## **1. PREMISES**

1.1. Premises. Subject to the terms, covenants and conditions of this Agreement, the Authority hereby subleases to Subtenant, and Subtenant hereby accepts from the Authority, the premises, as more particularly described in Exhibit B (the "**Premises**"), together with reasonable rights of ingress and egress to and from the Premises. The Navy has issued a Finding of Suitability to Lease ("**FOSL**") all of the Premises, and TIHDI has consented to Subtenant's use of any TIHDI Units that are a part of the Premises as set forth in the TIHDI Sharing Agreement.

### 1.2. As Is Condition of Premises.

(a) Subtenant Investigation. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through Subtenant's agents, affiliates, subsidiaries, licensees, contractors, subcontractors, and each of the persons acting by, through or under each of them, and their respective, legal representatives, successors and assigns ("**Subtenant's Agents**") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant has determined, based on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges that it has received, reviewed and understands of the Seismic Report and the Structural Report referenced in below and the Joint Inspection Report referenced in Section 6 of the Master Lease.

(b) As Is; Disclaimer of Representations. Without limiting any of the Authority's obligations herein, Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, including the use, occupancy, management, operation and possession of the Premises ("**Laws**"). Subtenant acknowledges and agrees that the Premises, as renovated, must comply with the Federal Government's FEMA-178 seismic life safety standard as the same exist as of the date hereof Subtenant acknowledges and agrees that, except as expressly provided herein, neither the Authority nor any of the Authority's agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns ("**Authority's Agents**") have made, and, without limiting any of its obligations hereunder, the Authority hereby disclaims, any representations or warranties, express or implied, concerning (i) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report or the Structural Report, (ii) the quality, nature or adequacy of any utilities serving the Premises, (iii) the safety of the Premises, whether for the use of Subtenant, Subtenant's Agents, or any clients, customers, vendors, invitees, guests, or licensees of Subtenant, including residential tenants ("**Subtenant's Invitees**"), or (iv) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) Seismic Report and Structural Report. Subtenant expressly acknowledges for itself and Subtenant's Agents that it has received and read, and has had an adequate opportunity to review with expert consultants of its own choosing, the following: (i) that certain report dated August 1995, entitled "Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions. "prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco (the "**Seismic Report**"), a copy of the cover page of which is attached hereto as Exhibit D-1; and (ii) that certain Treasure Island Study, Seismic Evaluation of the 1440 Series Housing prepared by SOH and Associates, dated May 20, 1996, a copy of the cover page of which is attached hereto as Exhibit D-2 (the "**Structural Report**").

## **2. COMPLIANCE WITH MASTER LEASE**

2.1. The Authority's Compliance with Master Lease. The Authority shall not do or permit to be done anything or fail to perform any obligation that would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. The Authority shall not amend or modify the Master Lease in any material respect without Subtenant's prior written consent.

(b) The Authority intends to negotiate a new master lease with the Navy. Upon completion, the Authority shall replace the Master Lease attached as Exhibit A with the new master lease and make any conforming changes to the section cross references in this Agreement.

(c) The Authority shall keep Subtenant reasonably informed of any proposed material changes to the Master Lease during negotiations with the Navy and shall provide a copy of the final master lease before execution. If the new master lease contains revisions that materially negatively impact Subtenant, including a change that will likely impact Subtenant's ability to

receive the Management Fee set forth in this Agreement, Subtenant shall notify the Authority of same and the parties shall meet and confer in good faith for a period of not less than 30 days to determine how to proceed in light of the proposed revisions to the Navy master lease. If the parties are not able to agree on how to proceed and the new master lease includes provisions that materially negatively impact Subtenant (as compared to the existing Master Lease), then the parties shall refer the matter to nonbinding mediation as set forth in Section 8.6. If the parties are not able to reach agreement following mediation (or if the agreement is not approved by the Authority's Board of Directors or Subtenant's Board of Directors), and the Authority is unwilling to make revisions reasonably requested by Subtenant to reflect Subtenant's reasonable concerns regarding the negative impacts of the master lease revisions on Subtenant, then Subtenant shall have the right to terminate this Agreement, without penalty, upon one hundred eighty (180) days written notice to the Authority.

2.2. Subtenant's Compliance with Master Lease. Subtenant shall not do anything, permit anything to be done by its Agents or Invitees or fail to perform any obligation that would constitute a violation or a breach of any of the terms, conditions or provisions of Sections 4, 6.3, 8.1, 9, 11, 12.2, 12.6, 13 (other than 13.9 and 13.12), or 18.1 through 18.1.5 of the Master Lease.

2.3. Automatic Termination. If the Master Lease terminates for any reason whatsoever, this Agreement shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Agreement, except for liabilities and obligations which expressly survive termination of this Agreement and except as provided in Sections 21 and 22. As set forth in the Master Lease, the Navy has the right to remove some or all of the Premises, including Rental Units, from the Master Lease. Accordingly, for purposes of this Section, the Master Lease shall be treated as terminated for the period, and with respect to the Rentable Units, that the Navy requires to be terminated or evacuated pursuant to Section 15 of the Master Lease.

2.4. Purchase of Premises by Authority. If the Authority acquires all, or any portion of, the Premises from the Master Landlord, this Agreement shall automatically become a direct lease of such portion of the Premises from the Authority to the Subtenant on the same terms and conditions as set forth herein. The Authority shall use good faith efforts to enforce, for the benefit of Subtenant, to the extent of Subtenant's interest in the Premises under this Agreement, all representations, warranties, indemnities and similar rights given by the Master Landlord to the Authority in connection with such acquisition.

### 3. TERM

3.1. Term of Agreement. The Premises are subleased for a term (the "**Term**") commencing on the date (the "**Commencement Date**") which is the latest of the dates on which (a) the Parties hereto and the Master Landlord have duly executed and delivered this Agreement, (b) the effective date of an Authority Board resolution approving this Agreement, in its sole discretion, and (c) the effective date of a City Board of Supervisors resolution approving this Agreement, in its sole discretion. The Term shall expire on the date that is seven (7) years after the Commencement Date (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of this Agreement. The Authority shall deliver to Subtenant a notice substantially in the form of Exhibit E to confirm the actual Commencement Date and the Expiration Date, but the Authority's failure to do so shall not affect the commencement or expiration of the Term.

3.2. Extension Option. The Authority grants to Subtenant an option to extend the Term as to the entire Premises only (the "**Extension Option**") for an additional three (3) years (the "**Extension Term**") commencing on the Expiration Date. Subtenant may exercise the Extension Option at any time by written notice to the Authority delivered not later than one hundred eighty (180) days before the Expiration Date. If an event of default by Subtenant is

outstanding hereunder either at the time of Subtenant's exercise of the Extension Option or at any time before the first day of the Extension Term (or if any event shall have occurred which with the giving of notice or the passage of time or both would constitute such a default), then the Authority may elect by notice to Subtenant to reject Subtenant's exercise of the Extension Option, whereupon the previously delivered exercise notice shall be null and void. If Subtenant elects to exercise the Extension Option, then the lease for the Extension Term shall cover the entire Premises and shall be upon all of the terms, covenants and conditions of this Agreement, and all references to the Term shall then include the Extension Term.

#### **4. WORK TO BE COMPLETED BY SUBTENANT**

4.1. Scope of the Work. The existing Rentable Units are shown in Exhibit B. The Authority shall have the right to add additional rentable units to the Premises at any time, and upon such addition, the Parties shall update Exhibit B to include the added units. Upon any such addition and upon any vacancy of a Rentable Unit, Subtenant shall promptly perform the standard work required to prepare the Rentable Unit for occupancy, and cause the Rentable Unit to be in a condition consistent with the other Rentable Units in the Premises (the "**Work**"). The standard work shall be generally approved by the Authority's Director of Island Operations (the "**Director**") from time to time, and shall be consistent with the Capital Budget (as defined in Section 4.2). Subtenant shall perform the Work in a good and workmanlike fashion and in accordance with applicable Laws. The Rentable Units shall at all times remain the property of the Authority during the Term and, as any improvements or renovations are completed, title to such improvements and renovations shall automatically vest in the Authority and be leased to Subtenant under this Agreement.

4.2. Cost of the Work. The estimated cost of the Work during each calendar year of the Term shall be shown in a budget prepared by Subtenant and approved by the Director (the "**Capital Budget**"). The Capital Budget for the first year of the Term is attached hereto as Exhibit F. Subtenant and the Director shall meet and confer to review the Capital Budget and the anticipated monthly renovation costs from time to time, and Subtenant shall inform the Director if it determines that the Capital Budget or the standard renovation cost must be increased to perform any Work. Subtenant must first obtain the written approval of the Director before performing any renovation that exceeds the standard renovation amounts approved by the Director, and before performing any Work during a calendar year that exceeds the amount set forth in Capital Budget for that year. Subtenant shall notify Director promptly upon any determination that the total cost of the Work paid to date together with the cost of Work reasonably anticipated to be incurred for the remainder of the year will exceed the total Capital Budget for that year.

4.3. Election Not to Proceed with Renovations. If Subtenant cannot perform any Work with respect to some or all of the Rentable Units or Buildings because the cost of the Work exceeds funds available under the Capital Budget, then Subtenant shall provide the Authority with written notice of such fact, which notice shall identify the Work that will not be performed and the estimated cost of such Work. In no event will Subtenant be required to perform Work for which funds are not available in the Capital Budget.

4.4. Construction of Other Alterations. Other than the Work, Subtenant may not and shall not be obligated to, construct, install, make or permit to be made any alterations, installations or additions ("**Alterations**") in, to or about the Premises, without the Director's prior written consent in each instance. Notwithstanding the foregoing, Alterations do not include and no such consent shall be required for maintenance and repair activities that are (i) required or contemplated hereunder, (ii) do not affect any structural portions of the Premises and (iii) are

within any cost limitations otherwise provided herein or in any Annual Operating Budget (as defined in Section 12.2). All Alterations shall be done in accordance with plans and specifications reasonably approved in advance by the Director in writing, by duly licensed and bonded contractors or mechanics approved by the Director, in a good and professional manner, in compliance with all applicable Laws (including the payment of prevailing wages), and subject to all other conditions that the Authority may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Base, or any portion thereof, or the Authority's or Master Landlord's access thereto. Before the start of any Alterations, Subtenant shall procure all required permits and approvals and shall, upon request, promptly deliver copies of such documents to the Director. No material change from the plans and specifications approved by the Director may be made without the Director's prior consent. The Authority and the Authority's Agents shall have the right to inspect the work and construction at all times, provided such inspection and site visits shall not unreasonably disturb or interfere with the work or the residential tenants.

4.5. Ownership of Alterations. Except for Subtenant's Personal Property (as defined in Section 4.7), or as may be specifically provided to the contrary in this Agreement, all appurtenances, fixtures, improvements, equipment, additions, and other properly attached or affixed to or installed in the Premises at the Commencement Date or during the Term, including, without limitation, the Work and any other Alterations, shall be and remain the Authority's or the Master Landlord's property, as the case may be. Subtenant may not remove any such property at any time during or after the Term, unless replaced with property of at least comparable quality and utility, without the Director's prior written consent.

4.6. Subtenant's Personal Property. All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant, that have not been paid for by the Authority through the use of Gross Revenues or otherwise, and that can be removed without structural or other material damage to the Premises (all of which are herein called "**Subtenant's Personal Property**") shall be and remain the property of Subtenant and may be removed by Subtenant subject to the provisions of Section 27. All property acquired with Gross Revenues, including any vehicles, will be transferred to the Authority upon the termination or expiration of this Agreement, and Subtenant agrees to provide a bill of sale or other evidence of the transfer of ownership upon request. The provisions of this Section shall survive the expiration or termination of this Agreement.

## 5. USE

5.1. Subtenant's Permitted Use. Subtenant shall use the Premises to operate, maintain, repair, and manage the Premises for residential housing in accordance with this Agreement, and for no other purposes.

5.2. No Unlawful Uses, Nuisances or Waste. Subtenant shall not use any portion of the Premises in any unlawful, illegal, offensive, noisy or hazardous manner (together, "**Nuisances and Hazards**") and shall use commercially reasonable efforts to prevent Subtenant's Invitees from committing any Nuisances and Hazards. Subtenant shall eliminate any Nuisances and Hazards relating to its activities and shall use commercially reasonable efforts to eliminate any Nuisances and Hazards related to the activities of Subtenant's Invitees.

5.3. Signs. Subtenant agrees that it will not erect or maintain, or knowingly permit to be erected or maintained, any signs, notices or graphics upon or about the Premises that are visible in or from any common areas of the Premises or from the exterior of the Rentable Units, without the Director's prior written consent.

5.4. Zoning. The Authority represents and warrants that, to the best of its knowledge, there currently exist no zoning or other Laws that would materially adversely affect Subtenant's use of the Premises as contemplated under this Agreement.

5.5 Covenant of Quiet Enjoyment; Ingress and Egress. Subject to the requirements of the Master Lease and the Navy's ongoing remediation, the Authority covenants and agrees that it shall not directly or indirectly interfere with or deprive Subtenant or Subtenant's Agents or Invitees of (i) their quiet enjoyment of the Premises for the uses permitted under this Agreement or (ii) reasonable ingress and egress to and from the Premises.

## **6. SUBTENANT'S MARKETING RESPONSIBILITIES**

6.1. Marketing. Subtenant shall market the Rentable Units in accordance with industry custom and the Management Plan, and as otherwise directed by the Authority.

## **7. SUBTENANT'S LEASING AND RELOCATION RESPONSIBILITIES**

7.1. Leasing. After Subtenant has completed the Work with respect to any given Rentable Units, Subtenant shall use commercially reasonable efforts to promptly enter into Rental Agreements (as defined in Section 7.3) with qualified residential tenants for such Rentable Units in accordance with the Marketing Plan. The Director may instruct Subtenant to keep Rentable Units vacant at any time so as to provide for available Rental Units to implement tenant relocations under the THRRs or to cooperate with the Navy's remediation program.

7.2. Application Process and Screening. Subtenant shall screen prospective residential tenants applications by applying customary credit and tenancy standards, all in accordance with the Marketing Plan. As set forth in Section 34.1, Subtenant shall not discriminate in the leasing of Rentable Units on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes. In addition, in the operation of the Project and the rental of any Rentable Units, the Subtenant shall not discriminate against prospective residential tenants using Section 8 certificates or vouchers or other tenant-based rental assistance, or other sources of income. Subject to the terms of Section 6.2, Subtenant shall also insure that Resident Tenant selection is carried out objectively and in accordance with industry standards.

7.3. Rental Agreements. Subtenant shall enter into rental agreements with all residential tenants in substantially the form of the rental agreement attached hereto as Exhibit G, as the same may be amended from time to time with the approval of the Director (the "**Rental Agreements**").

(a) All Rental Agreements shall be on a month-to-month tenancy, and subject to termination without cost or liability upon any termination of the Master Lease. All new rental agreements shall include a waiver of relocation rights and, where applicable, an acknowledgment of a tenant's post-DDA status per the THRRs. The Rental Agreements shall also include a waiver of any claims against Subtenant, the City and the Authority for any failure in the delivery of utility services.

(b) Subtenant shall be responsible for enforcing and shall take commercially reasonable actions to enforce the terms and conditions of all Rental Agreements, including, without limitation, (i) the collection of all such rents when due, (ii) the preparation and delivery to residential tenants of any appropriate late payment, default or other notices, (iii) the

conducting of exit interviews and walk-throughs, and (iv) the prompt collection and timely disbursement of all security deposits. Without violating any privacy or other applicable Laws, Subtenant shall use commercially reasonable efforts to insure that all residential tenants comply with the terms and conditions of their respective Rental Agreements.

(c) Subject to Section 6.3, Subtenant shall receive complaints and use commercially reasonable efforts to resolve any complaints, disputes or disagreements by and between Subtenant and one or more residential tenants. Subtenant may retain counsel, collection agencies, and other such persons and firms as Subtenant shall deem appropriate (with the costs there of being included as an Operating Expense, subject to the overall Annual Operating Budget limitations) to enforce by legal action the rights and remedies of the Subtenant against any residential tenant in default in the performance of any of its obligations under a Rental Agreement, including, without limitation, taking action to terminate or evict any residential tenant where sufficient cause for such termination or eviction exists under the terms of such residential tenant's Rental Agreement.

7.4. Rental Rates. The rental rates for all Rentable Units have been set by the Authority at the rates described on the Rental Rate Schedule attached hereto as Exhibit H (the "**Approved Rates**"). The Approved Rates shall increase each year in amount determined by the Authority, with such permitted increases being assessed under the Rental Agreements. The rental rates may not be changed from the Approved Rates without the prior written consent of the Authority, except upon any vacancy, the Director and Subtenant may agree in writing to increase or decrease the rental rate of any Rentable Unit by no more than fifteen percent (15%) of the rental rate for such Rentable Unit provided for in the Approved Rates.

7.5. Grievance Procedures. Subtenant shall notify applicants of their eligibility status and advise any rejected or ineligible applicant of their right to appeal by providing them with a copy of the Grievance and Appeal Procedure that is a part of the Marketing Plan.

7.6. Relocation of Tenants. Subtenant shall perform all work, in cooperation with the Authority, required to relocate residential tenants in accordance with the THRRs. All such relocations shall be done in close coordination with the Authority, and all costs incurred by Subtenant in connection with such relocations shall be approved Operating Expenses.

## **8. MANAGEMENT, MAINTENANCE AND REPAIR RESPONSIBILITIES**

8.1. General Maintenance and Repair Obligations. Except as specifically provided herein, and to the extent consistent with the spending limitations imposed by any Annual Operating Budget, Subtenant assumes full and sole responsibility for the condition, operation, repair, maintenance and management of the Premises and shall keep the Premises in a good condition and in a manner otherwise reasonably acceptable to the Authority. Subject to Section 8.3 and the spending limitations set forth in any Annual Operating Budget, Subtenant shall make all routine repairs and replacements, interior and exterior, foreseen and unforeseen, that are necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair for safe and sanitary residential housing. Notwithstanding anything to the contrary contained herein, (a) Subtenant shall have no responsibility for maintaining, repairing or in any way managing any streets, curbs, or sidewalks included within and around the Premises (other than any incidental cleaning of sidewalks needed as a result of Subtenant's responsibility for the adjacent grass areas), except as may be mutually agreed to between the Subtenant and the Authority, (b) Subtenant shall have no responsibility for maintaining, pruning or clearing any trees or brush subject to Fire Department mandated tree trimming and brush clearance on Yerba Buena Island, and (c) upon the request of the Authority, and subject to the prior approval of the Director and Subtenant following a determination of the cost, Subtenant shall perform maintenance and repair on Treasure Island and Yerba Buena Island



inside or outside the Premises that would otherwise be the obligation of the Authority (the “**Added Work**”). For any Added Work performed by Subtenant, the Authority shall pay to Subtenant the actual cost incurred by Subtenant for the Added Work, together with a negotiated management fee, agreed to by the Parties in writing, to cover Subtenant’s administrative expenses and insurance (which management fee will be paid in the same manner that the Management Fee is paid under Section 13.1(d)).

8.2. Routine Maintenance and Repair. Without limiting the generality, but subject to the limitations of Section 8.1 and to the extent consistent with spending limitations imposed by any Annual Operating Budget, Subtenant's maintenance and repair responsibilities shall include without limitation cleaning, painting, plumbing, carpentry, grounds care and such other routine maintenance and repairs as may be reasonably necessary to meet the maintenance standards described in Section 8.1. In performing these functions, Subtenant shall:

(a) Receive and investigate all requests for maintenance and repair from residential tenants and cause such routine repairs to be promptly and professionally completed when appropriate and warranted in accordance with the standards set forth in this Agreement.

(b) Annually develop and implement a preventive maintenance schedule taking into account the remaining anticipated life of the Rental Units. The preventive maintenance schedule shall be presented to the Authority for its reasonable approval together with each year's Annual Operating Budget.

(c) Contract with qualified independent contractors, paying prevailing wages, for the maintenance and repair of items that is not performed by regular maintenance employees. Subtenant shall consult with the Director on which work items may be performed by Subtenant’s maintenance employees and which work items should be performed by third party contractors.

(d) Inform all residential tenants of the procedures to obtain maintenance and repair services during and after normal office hours, and in cases of an emergency.

(e) Maintain a log book containing reports of all service requests and maintenance repairs provided, copies of which shall be subject to periodic inspection by the Authority.

(f) Purchase all materials, equipment, tools, and appliances, supplies and services necessary to ensure proper maintenance and repair of the Premises.

(g) Maintain all landscaping, grounds and common areas for the Premises.

(h) Provide pest control services within the Premises as needed and use commercially reasonable efforts to keep the Premises reasonably free of pests at all times.

(i) Contract for rubbish collection with an entity permitted by the City or the Authority and use commercially reasonable efforts to (i) ensure that the Premises are reasonably free from rubbish, debris and refuse at all times, and (ii) encourage maximum waste diversion consistent with City policies.

8.3. Unanticipated and Emergency Maintenance and Repairs. Subtenant shall perform all repairs that are necessary to avoid the suspension of necessary services to the Premises (other than utility services described in Section 10.1), or as otherwise needed to comply with the general maintenance and repair obligations described above, even though such repairs that are not included in an Annual Operating Budget, but only to the extent the costs of such repairs can be paid (and are paid) from funds in the Replacement Reserve Account and Subtenant receives the Director’s prior consent as described in Section 11.3. Notwithstanding the foregoing, except

as provided in the next sentence, Subtenant shall make all repairs that are immediately necessary for the preservation or protection of the Premises or the safety of residential tenants or other persons in or on the Premises ("**Emergency Repairs**"), without the Authority's prior approval and without limitation as to cost and regardless of whether there are adequate funds available in the Replacement Reserve Account for such repairs; provided, however, that in each such instance Subtenant shall, before causing any such Emergency Repairs to be made, use commercially reasonable efforts to notify the Director of the emergency situation and obtain the Director's approval of such Emergency Repairs. Subtenant has no obligation to make or cause to be made any such repairs during the final year of the Term in excess of the greater of \$100,000 and the amount in the Replacement Reserve. Subtenant's reasonable costs of any such Emergency Repairs shall automatically be reimbursed from the Replacement Reserve Account, to the extent of the amounts therein, and any excess shall be deemed an approved Operating Expense under Section 12.1. If Subtenant must advance funds under the preceding sentences, then Authority shall reimburse Subtenant therefore if and to the extent there are sufficient Gross Revenues through the remaining Term to do so.

8.4. Security. Subject to the spending limitations contained in any Annual Operating Budget, Subtenant shall provide private, on-site, licensed, qualified security personnel to the Premises that are reasonably satisfactory to Authority as budgeted in each Annual Operating Budget. Without limiting the Authority's rights under this Agreement, the Authority agrees that it will not sue Subtenant for any action taken or failed to be taken by such security personnel, except to the extent caused by the negligence or willful misconduct of Subtenant.

8.5. Subtenant's Responsibility for Utility Facilities. Subtenant's responsibility for the repair and maintenance of water, electric, gas and sewer utility facilities relating to the Premises are limited to those as set forth in Section 2(a) of Exhibit I.

8.6. Management Fee. For performance of its management, maintenance and repair obligations under this Agreement, provided that no Subtenant Default has occurred and is continuing, Subtenant shall be entitled to receive from available Gross Revenues (in the order of priority described in Section 13, a management fee (the "**Management Fee**"), payable on the tenth (10th) day of each month, equal to three percent (3%) of Gross Revenues, up to a maximum of Four Hundred Thousand Dollars (\$400,000) per year, which maximum shall be revised annually on the anniversary of the Commencement Date to reflect increases in the Index described in Section 15.2. If, at any point, the number of Rentable Units is reduced to below Two Hundred Ten (210), Sublandlord and Subtenant shall meet and confer regarding establishing a new Management Fee structure or amount that is intended to maintain the benefit of the bargain of the parties (i.e., Subtenant receives a rational and fair fee in light of reduced number of units and revenues and will not reasonably be expected to advance its own funds to pay required Operating Expenses), given the totality of the circumstances that then exist and that led to the reduction in the number of Rental Units. If Sublandlord and Subtenant are unable to agree upon a new Management Fee, then either party may initiate mediation, as follows:

(a) Either or both of the parties may request the initiation of mediation by delivering a written request for mediation ("Mediation Request") to the other party. The Mediation Request must (1) include a brief summary of the issue and the proposed new Management Fee, and (2) list at least two neutral mediators who are acceptable to the requesting party for mediation. Within five business days after the requesting party's delivery of a Mediation Request, the responding party must deliver a response to the Mediation Request ("Mediation Response"), which must (a) include a responding proposal for a new Management Fee and any other issues deemed relevant by the responding party, and (b) state whether any of the neutral mediators listed in the Mediation Request are acceptable and, if none are, then the Mediation Response must list at least 2 additional neutral mediators who are acceptable to the responding party. Within ten calendar days after delivery of the Mediation Response, the parties will attempt in

good faith to agree upon a neutral mediator to preside over the mediation. If the parties are not able to agree upon a neutral mediator within ten calendar days after delivery of the Mediation Response, the parties must apply to AAA or JAMS for selection of a neutral mediator. The mediator must be a person knowledgeable in real estate professional services and management, and must have no current involvement with either party, unless agreed to by the parties with full disclosure. The parties will share equally in the cost of any mediation.

(b) In consultation with the parties, the mediator will fix the date, time, and place of the mediation session. The mediation may be held at any convenient location agreeable to the parties and the mediator in San Francisco. Mediation must be completed within 30 days following selection of the mediator. Both parties must attend the mediation session. The mediator will work with both parties to present a fair Management Fee that maintains the benefit of the bargain in light of the reduced number of units. The recommendation of the mediator shall not be binding on the parties. Any communication between a party and the mediator must be in writing or held during the mediation session, and shall include the other party.

(c) If the parties reach agreement on the proposed new Management Fee structure or amount, then they shall each seek necessary approvals for an amendment to this Agreement to reflect the new Management Fee structure or amount. For the Authority, any such amendment shall be approved by the Authority's Board of Directors and shall not require approval of the City's Board of Supervisors or Mayor.

(f) If the parties are not able to reach agreement following mediation (or if the agreement is not approved by the Authority's Board of Directors or Subtenant's Board of Directors), then Subtenant shall have the right to terminate this Agreement, without penalty, upon one hundred eighty (180) days written notice to the Authority.

8.7. Base Repair and Maintenance. The Authority covenants to use good faith efforts to enforce the repair, maintenance and similar provisions of its sublease with TIHDI and to maintain the exterior of all other residential units and associated grounds on the Base, which the Navy leases to the Authority but are not Premises hereunder, to generally the same level as Subtenant is required to repair and maintain the Premises.

## **9. EMPLOYEES AND INDEPENDENT CONTRACTORS**

9.1. On-Site Office. In performing its obligations under this Agreement, Subtenant shall establish and maintain at all times during the Term a management office (and separate property maintenance, storage and service space) at the Premises responsible for overseeing all of Subtenant's management, maintenance, leasing, and other operational obligations under this Agreement. The management office shall be located in Suite 161 at Building One on Treasure Island, and the property maintenance, storage and service space shall be located at Building 264 on Treasure Island and Subtenant shall pay rent for such spaces at the monthly rates set forth in the Authority's Subleasing Policy. The Authority shall have the right to relocate the management office, with not less than 30 days prior written notice, to alternative space in Building One that is reasonably comparable in size and quality, at no cost to Subtenant.

9.2. Personnel. In performing its obligations under this Agreement, Subtenant shall, consistent with the spending limitations contained in each Annual Budget, hire, employ and/or assign experienced, qualified residential real estate marketing, leasing, maintenance, repair, management and any other persons necessary or advisable for the proper operation of the Project, as determined by Subtenant in its reasonable discretion. Any such persons shall be employees or contractors of the Subtenant, and not the Authority or the City. Subtenant shall direct and supervise all employees, contractors or agents in the performance of their duties under this Agreement. Subtenant shall use due care in the selection of personnel it hires or employs to

perform Subtenant's management responsibilities under this Agreement. The number of employees, their job descriptions and salaries, shall be determined by Subtenant in its sole discretion based on the provisions of the management plan attached as Exhibit J (the "**Management Plan**") and consistent with any spending limitations imposed by any Annual Operating Budget. All such personnel shall be hired, supervised, and discharged by Subtenant and Subtenant shall pay all wages and other benefits properly payable to any employees hired in connection with the Project, maintain adequate payroll records, remit to the proper authorities all required income and social security withholding taxes, unemployment insurance and workers compensation payments, and such other amounts with respect other wages or benefits of employees of Subtenant working on or with the Project as may be required by Laws or this Agreement.

## **10. AUTHORITY'S SERVICE OBLIGATIONS**

### **10.1. Utilities.**

(a) Standard Utilities and Services. The Authority shall use good faith efforts to provide or cause to be provided to the Premises the gas, electricity, water, and sewage services and facilities described in Exhibit I (the "**Standard Utilities and Services**"), consistent with the Authority's obligations under the Caretaker Agreement with the Navy for so long as it remains in effect and subject to Subtenant's obligations under Section 8.5. Subtenant acknowledges that the utility systems on the Base are old, and that continuous service cannot be guaranteed. As such, the Authority shall have no liability under this Agreement for the failure of any utility service. All amounts due and owing for the Standard Utilities and Services shall be paid by Subtenant from Gross Revenues as an approved Operating Expense at the rates set forth in Exhibit I, as the same may be updated from time to time by the Authority (the "**Utility Fees**"). For any increase in Utility Fees, the Authority shall determine whether such increase will be passed through to residential tenants in the form of an increase in rent or as a separate utility charge, or paid out of available funds in the Operating Budget.

(b) Other Services. The Authority shall use good faith efforts to provide standard telephone, trash, disposal and cable services to the Premises. Any Subtenant costs for such services will be deemed approved Operating Expenses.

(c) Correction. Upon the loss of any service under this Section 10.1, the Authority shall use good faith efforts to promptly commence action to restore such services within 60 hours of notice of such failure. But failure to provide any such service shall not be an Authority default under this Agreement. Any claims by residential tenants at the Premises relating to failures of utility services, if successful, will be paid as an approved Operating Expense.

**10.2 Street Services.** The Authority shall be responsible for street, sidewalk and street lighting maintenance and repair to all current and future sidewalks (other than any incidental cleaning of sidewalks needed as a result of Subtenant's responsibility of the adjacent grass areas), curbs, streets and roads included within the Premises, including any required handicap accessibility, provided nothing in this Agreement shall obligate the Authority to comply with specific State or local codes or standards.

**10.3 Police and Fire.** The Authority shall provide to the Base a 24-hour security presence at an entry check point to the Premises on Treasure Island (whose actions shall be limited to those permitted by Law), and reasonable (taking into account the location and intended use of the Premises) police and fire services (the "**Public Protection Services**"). Subtenant agrees that it will not sue the Authority for any action taken or failed to be taken in connection with such Public Protection Services. The Authority shall be responsible for all maintaining,

pruning and clearing of any trees or brush on Yerba Buena Island required by Fire Department mandated tree trimming and brush clearance rules.

10.4 Other Portion of the Base Lease to the Authority. The Authority or its subtenants (but not Subtenant) shall be solely responsible for and shall take reasonable actions to secure and make safe those portions of the Base not comprising the Premises which are leased to the Authority by the Master Landlord, and shall make reasonable efforts to mitigate any attractive nuisances thereon.

10.5 Force Majeure. The time for the Authority's performance of its obligations under this Section 10 shall be extended by one day for each during which the Authority or its Agents are unable to perform such obligation due to any Force Majeure Event.

## 11. ACCOUNTS

11.1. General Operating Account. Subtenant shall credit to a separate general operating account (the "**General Operating Account**") all revenues from whatever source received from the operation of the Premises, including (i) all rent received from residential tenants, including late fees and interest charges, if any, (ii) the gross amounts of all deposits forfeited by residential tenants, (iii) all charges or collections made by Subtenant from residential tenants for the rendering of any service in connection with Premises, (iv) any and all ancillary or collateral fees collected from residential tenants or other third Parties related to Subtenant's use of the Premises (together, "**Gross Revenues**"), other than the security deposit payments to be deposited into the Security Deposit Account described in Section 11.2 .

11.2. Security Deposit Account. Subtenant shall deposit all security deposits collected in accordance with the Residential Agreements in a separate Security Deposit Account established for the benefit of the Authority, Subtenant and residential tenants. Funds deposited in the Security Deposit Account may only be disbursed to pay the costs permitted under the Rental Agreements, including any unpaid rent, damage, or unreasonable wear and tear caused by a residential tenant, or to reimburse the General Operating Account for payment of these costs, or to return to the residential tenant upon vacancy the portion of the security deposit to which it is entitled. In collecting, handling, and disbursing these funds, Subtenant shall comply with the requirements of applicable Law, including California Civil Code Section 1950.5 and Business and Professions Code Section 10145.

11.3. Replacement Reserve Account. Subtenant shall maintain a replacement reserve account (the "**Replacement Reserve Account**"). Subtenant shall deposit into the Replacement Reserve Account on a monthly basis from available Gross Revenues in the order of priority set forth in Section 13 an amount equal to \$20 per Rentable Unit up to a maximum contribution of One Thousand Dollars (\$1,000) per Rentable Unit or such alternative amount as determined by the Director from time to time following consultation with Subtenant. As funds are disbursed from the Replacement Reserve Account, Subtenant shall replenish the Replacement Reserve Account at the rate set forth above. Subtenant shall make disbursements from the Replacement Reserve Account to perform permitted repairs and maintenance to the Rentable Units and to perform any Emergency Repairs as set forth in this Agreement. Disbursements from the Replacement Reserve Account in excess of Twenty Five Thousand Dollars (\$25,000) per calendar quarter shall require the prior written approval of the Director, which approval shall not be unreasonably withheld or delayed. The process by which Subtenant shall request and Director shall approve or disapprove disbursements from the Replacement Reserve Account shall be consistent with the HUD guidelines for repairs and replacement. Upon the termination of this Agreement, all funds remaining in the Replacement Reserve Account shall be paid to the Authority.

11.4 Criteria for Project Accounts. The General Operating Account, the Replacement Reserve Account and the Security Deposit Account shall be held in federally insured accounts reasonably acceptable to the Director.

## 12. PAYMENT OF OPERATING EXPENSES

12.1. Payment of Operating Expenses. Subtenant shall pay all Operating Expenses for the Premises, including Base Rent, from available Gross Revenues, or, if Gross Revenues are not available, up to a maximum at any one time of Five Hundred Thousand Dollars (\$500,000) from its own funds, in the order of priority set forth in Section 13. To the extent included in an Annual Operating Budget approved by the Authority, "**Operating Expenses**" shall mean all direct, reasonable and customary operating and maintenance expenses incurred in the operation, leasing, marketing and maintenance of the Premises as required hereunder, including (i) reasonable salaries or other compensation due and payable to employees or agents of Subtenant described in any Management Plan, (ii) expenses for the repair and maintenance of the Premises, including common areas and or common facilities included in the Premises, (iii) reasonable and customary fees and expenses of legal and accounting professionals incurred by Subtenant in connection with the operation and maintenance of the Premises, including any evictions and relocations of residential tenants, and (iv) any other costs included in an Annual Operating Budget approved by the Authority. Notwithstanding the foregoing, "Operating Expenses" shall also include the following expenses even if such expenses are not included in an Annual Operating Budget approved by the Authority: (a) expenses incurred by Subtenant or the Authority as a result of environmental contamination of the Premises that are not paid by the Navy under the Section 330 Indemnity (as defined in Section 24.3), except to the extent such expenses are caused by the negligence or willful misconduct of Subtenant or the Authority, or their Agents, respectively, (b) all common area maintenance charges assessed by the Authority Agreement (the "**CAM Charges**"), (c) the Utility Fees, (d) all Taxes due and owing under Section 16, (e) payroll and withholding taxes and social security payments due and payable in connection with employees described in any Management Plan, (f) the costs of the insurance required under Section 25, except with respect the insurance described in Sections 25. 1(c) and (e) which must be approved in the Annual Operating Budget be included, (g) the costs of complying with Laws and regulatory requirements as provided below, (h) the actual costs of the liabilities or costs described herein as approved Operating Expenses including those expenses so described in Sections 6.3, 8.3, 8.6, 10.1, 12.1, 14.3, 17.1, 18.1(a), 18.2, 22. 1(d), and 24.3, and (i) Base Rent, as reduced by any off-set permitted under this Agreement. Additionally, with respect to cost and expense items that are incurred less frequently than monthly (e.g., property taxes and insurance), each month's Operating Expenses and Budget shall include one-twelfth (1/12) of the annual amounts expected to be expended on such items and Operating Expenses shall be adjusted to reflect the amount actually paid at the end of each year, or when otherwise directed by the Director.

(a) If, at any point, Subtenant must incur Operating Expenses in excess of One Hundred Thousand Dollars (\$100,000) from its own funds, Subtenant and Authority shall meet and confer regarding potential actions to prevent Subtenant from needing to incur additional out-of-pocket expenses.

12.2. Annual Operating Budget. Subtenant shall prepare and submit an annual operating budget to the Authority for its approval by the first day of the eleventh full month of the Term or such other date as agreed to by the Director, and by the same date of each subsequent calendar year during the Term, covering the following 12-month period (upon approval, the "**Annual Operating Budget**"). The Annual Operating Budget shall set forth, on an annual and monthly basis, anticipated Gross Revenues, a detailed estimate of anticipated Operating Expenses, and a pro forma budget showing distributions in the order of priority shown

in Section 13. The Annual Operating Budget for the first year and any partial initial month of this Agreement is attached hereto as Exhibit F. Each subsequent Annual Operating Budget shall be in substantially the same form as the Annual Operating Budget approved for the prior year. Subtenant shall not, without the Director's prior written consent (and when given shall be deemed an amendment to the Operating Budget), incur costs in any calendar month that exceed the Operating Expense budget for such month by more than five percent (5%) (treating amounts paid less frequently than monthly, as accruing evenly over the appropriate period), or for any year, that exceed the Operating Expense budget for such year by more than five percent (5%).

12.3. Bids, Discounts, Rebates, and Commissions. Subtenant shall use commercially reasonable efforts to obtain contracts, materials, supplies, and services on the most advantageous terms available to Subtenant and shall, whenever practicable, solicit three (3) bids for each major item or service required. Subtenant shall secure and credit to the General Operating Accounts all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions related to this Agreement.

12.4. No Authority Liability. Under no circumstance shall the Authority be liable for the payment of any Operating Expenses.

### **13. DISBURSEMENTS**

13.1. Allocation of Gross Revenues. Subtenant shall, by the twentieth (20th) day of each month, disburse Gross Revenues not previously disbursed (calculated as of the last day of the prior month and, to the extent amounts are not or cannot be disbursed until the calculations for such month have been made hereunder, but are disbursed after such calculation is made, such disbursement shall be treated as made at the end of such month), in the manner and in the following order of priority:

(a) Base Rent. Gross Revenues shall first be disbursed to pay the Authority all Base Rent due and owing as provided in Sections 15.1 and 15.2 or used to reimburse Subtenant for advances made to pay such Base Rent during the current month.

(b) Operating Expenses. Then, to the extent available, Gross Revenues shall be disbursed, from time to time, to pay all Operating Expenses or to reimburse Subtenant for advances made to pay Operating Expenses incurred, together with interest on such advances at the Prime Rate as published in the Wall Street Journal as of the date of such advance, as provided in Section 12.

(c) Funding of Replacement Reserve Account. Then, to the extent available, remaining Gross Revenues in the amount required by Section 11.3 shall be deposited into the Replacement Reserve Account.

(d) Management Fee. Then, to the extent available and if a Subtenant Default has not occurred and is not continuing, remaining Gross Revenues shall be disbursed to pay Subtenant the Management Fee described in Section 8.6.

(f) Percentage Rent. Then, all Gross Revenues remaining after the payment of the expenses and the other fees and items described in Sections (a)-(d) above ("**Net Revenues**") shall be paid as follows: ninety-five percent (95%) shall be paid to the Authority as Percentage Rent, and the remaining five percent (5%) shall be retained by the Subtenant.

Notwithstanding anything to the contrary set forth above, during the last year of the Term, if and to the extent Subtenant has incurred any Operating Expenses which have not yet been reimbursed to Subtenant from Gross Revenues, then such reimbursements shall be made to

Subtenant from available Gross Revenues until reimbursed in full before any payment of Base Rent to Sublandlord.

#### **14. BOOKS, RECORDS AND REPORTS**

14.1. Books and Records. Subtenant shall establish and maintain books, records and systems of account reflecting all business operations of Subtenant under this Agreement, including, but not limited to, resident and project files, general ledgers, invoices, canceled checks, payroll records, and contracts (the "**Books and Records**").

14.2. Monthly Reports. Promptly after the close of each month but no later than 20 days after such date, Subtenant shall deliver to the Authority a monthly report on a form acceptable to Authority. Such report shall be certified as true and correct in all material respects by Subtenant and shall include: (i) a statement of Gross Revenues for the preceding month, specifically and separately identifying the sources of such revenue, (ii) an itemized statement of actual Operating Expenses, (iii) a statement of Net Revenues, (iv) a list of all Residential Leases that have been entered into during the preceding calendar month, including the building number of each of the Rentable Units rented, the classifications of the residential tenants and the applicable rental rate, and (v) such other information as the Authority may reasonably require.

14.3. Subtenant's Annual Audit. Annually during the Term of this Agreement, within sixty (60) days of the end of the Authority's fiscal year, Subtenant shall arrange for an audit of the Books and Records by an independent certified public accountant approved by the Director. Subtenant shall pay all costs and expenses associated with the annual audit, the reasonable costs of which shall be deemed Operating Expenses. Such audit shall cover the previous 12-month period. Subtenant acknowledges that a primary purpose of such audit shall be to enable Subtenant and the Authority to clearly and accurately determine the nature and amount of Gross Revenues, Operating Expenses and Net Revenues and to verify the amount of Percentage Rent due and payable to Authority and to otherwise determine the accuracy of the Books and Records. Subtenant shall deliver an original, signed copy of each such annual audit to the Director by the earlier of (a) thirty (30) days after the completion of such audit or (b) if possible using commercially reasonable efforts, 120 days after the end of the 12-month period covered by such audit.

14.4. Periodic Audits and Inspections of Records. After providing Subtenant with 48 hours prior written notice and only during regular business hours, and subject to any privacy or other limitations imposed by applicable Laws, the Authority, its representatives or an independent auditor may audit, examine and make excerpts, copies and transcripts from the Books and Records and all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Authority may perform such audit at any time and from time to time during the Term or for a period of five (5) years thereafter. If the Authority's audit shows that there is a deficiency in the payment of any Rent or other amounts to be credited to the Authority, the deficiency shall become immediately due and payable to the Authority. The costs of any periodic audit shall be paid by the Authority unless the audit shows that Subtenant understated Rent or other amounts due by more than five percent (5%) for the entire period being audited, in which case Subtenant shall pay all of the Authority's reasonable costs of the audit.

14.5. Transfer of Records and Accounts. Within five (5) working days after the termination or expiration of this Agreement, (i) all resident and project files, general ledgers, invoices, payroll records and contracts related to this Agreement, and all other Books and Records reasonably requested by the Authority, subject to any privacy or other limitation imposed by applicable Laws, shall be deemed to be the property of the Authority and shall be



delivered to the Authority, and (ii) all cash, bank accounts, and trust accounts that are property of the Authority must be accounted for in writing and turned over to the Authority.

## **15. RENT**

15.1. Base Rent. Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to the Authority, base rent in the amount of Six Hundred Thirty Two Thousand Eight Hundred and Six Dollars (\$632,806) per year, subject to the adjustment set forth in Section 15.2 and offsets and adjustments as expressly provided in this Sublease (the "**Base Rent**"). Base Rent shall be payable in twelve (12) equal consecutive monthly payments on the first day of the Term (for any partial first-month and the first full month) and on or before the first business day of each month thereafter. Notwithstanding the foregoing, Subtenant shall have no obligation to pay the Authority Base Rent if and for so long as Master Landlord, the City or the Authority, after the receipt of written notice thereof and the expiration of the cure periods described in Section 21.2, materially hinders or prevents Subtenant from performing its obligations under this Agreement, except to the extent such hindrance or obstruction is caused by Subtenant.

15.2. Adjustments in Base Rent. On the first anniversary of the Commencement Date, and each anniversary thereafter (each, an "**Adjustment Date**"), the Base Rent payable hereunder shall be adjusted as follows (each adjustment a "**CPI Adjustment**"):

(a) The Consumer Price Index Urban Wage Earners and Clerical Workers (base years 1982-1984 = 100) for San Francisco-Oakland-San Jose area published by the United States Department of Labor, Bureau of Labor Statistics ("**Index**") published most immediately preceding the Adjustment Date ("**Adjustment Index**"), shall be compared with the Index published most immediately preceding the prior Lease Year ("**Prior Index**").

(b) If the Adjustment Index has increased over the Prior Index, the Base Rent payable on and after the Adjustment Date shall be set by multiplying the then Base Rent by a fraction, the numerator of which is the Adjustment Index and the denominator of which is the Prior Index. In no event shall the monthly Base Rent on or after the Adjustment Date be less than the monthly Base Rent in effect immediately before the Adjustment Date.

(c) If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

15.3 Percentage Rent. In addition to Base Rent, Subtenant shall pay to the Authority as percentage rent the amounts set forth in Sections 13.1(f) (collectively, the "**Percentage Rent**", and together with Base Rent and other dues due under this Agreement, "**Rent**"). Percentage Rent shall be due and payable to the Authority from available Gross Revenues in arrears (based on the amount of Percentage Rent due for the immediately preceding month) on the twentieth (20th) day of each month.

15.4 In-Kind Rent. Upon the Director's request, Subtenant may also pay to the Authority "In-Kind Rent" in the form of the renovations of and improvements to the Premises, to the extent such renovations or improvements are not paid from Gross Revenues. Any In-Kind Rent shall be deemed paid by Subtenant when Subtenant performs the work to the Director's satisfaction and provides appropriate evidence of the cost of such work, consistent with pre-

approved estimated amounts. Upon the Director's approval of the work and the cost amount, Subtenant shall receive a credit against Base Rent otherwise due and owing under this Agreement in the amount approved by the Director. All renovations and improvements made to the Premises as payment of In-Kind Rent shall immediately become the property of the Master Landlord, subject to the leasehold interest of the Authority, as set forth in the Master Lease, and shall also immediately, without further action on the part of either the Authority or the Subtenant, become part of the Premises.

15.5 Method of Payment of Rent. All Rent payable by Subtenant to the Authority shall be paid without prior demand and without any deduction, setoff or counterclaim whatsoever, except as specially provided in Section 15.8(a) and, except for In-Kind Rent, shall be paid in cash or by good cashier's or certified check to the Authority at the primary address for Authority specified in Section 33.1 or such other place as the Authority may designate in writing. If the Commencement Date occurs on a day other than the first day of a calendar month, or the Expiration Date occurs on a day other than the last day of a calendar month, then the Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

15.6. Late Charge. If Subtenant fails to pay any Rent due and owing the Authority within ten (10) days after the due date, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by the Authority and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that the Authority will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult to determine. The late payment charge constitutes liquidated damages to compensate the Authority for its damages resulting from such failure and Subtenant shall promptly pay such amount to the Authority together with the unpaid amount.

15.7. Default Interest. If Subtenant fails to pay any Rent due and owing the Authority within ten (10) days after the due date, such unpaid amount shall also bear interest from the due date until paid at the rate of nine percent (9%) per year (the "**Default Rate**"). However, interest shall not be payable on late charges nor on any amounts if and to the extent such payment would cause the total interest to be in excess of that which is lawful to charge. Payment of interest shall not excuse or cure any default by Subtenant.

15.8. No Right to Repair and Deduct. Except as specifically provided in Section 15.8(a), Subtenant expressly waives the benefit of any existing or future Law that would otherwise permit Subtenant to terminate this Agreement because of the Authority's failure to keep the Premises or any Parties thereof in good order, condition or repair. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Agreement.

(a) Permitted Offsets against Base Rent. Notwithstanding the foregoing, Subtenant may offset the following sums against its obligation to pay Base Rent:

(i) Any increase in the amount of the CAM Charge payable by Subtenant after the Effective Date of this Agreement. The Parties hereby acknowledge and agree that for the purposes of this Sublease, the Parties will treat the rates used by the Authority to calculate the CAM Charge as \$50.37 per unit per month. The Parties hereby acknowledge that CAM Charge payable hereunder shall be subject to annual adjustment to increase CAM Charge by three percent (3%).

(ii) Except to the extent paid by Authority pursuant to Section 22.2(c), after the expiration of any applicable notice and cure periods (except in the event of an emergency as determined by Subtenant where prior notice by Subtenant is impractical), the reasonable costs of providing the services the Authority is obligated to provide under Sections 10.1, 10.2 or 10.3; provided, however, nothing herein shall imply any duty of Subtenant to do any act that the Authority is obligated to perform under any provision of this Agreement, and Subtenant's performance of such obligations of the Authority shall not constitute a waiver of any of Subtenant's rights or remedies under Section 22.2.

(iii) If Subtenant is required by any third Parties with jurisdiction to (x) reduce the rental rates payable by the residential tenants from those set forth in any Rental Rate Schedule approved by the Authority and Subtenant (other than as provided in Section 7.4) for non-economic reasons or (y) provide rent preferences other than those set forth in the Marketing Plan, then the economic effect of such reductions and preferences, if any, shall be borne by the Authority by reducing Base Rent by the amount of such economic effect.

(iv) All costs directly related to a material breach by the Authority of its obligations under Section 18.2(b).

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

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

(a) Payment Responsibility. During the Term, Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, exercises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises (collectively, "**Taxes**"). Subtenant shall make all such payments directly to the charging authority when due and payable and prior to delinquency. However, with respect to real property or possessory interest Taxes levied on or assessed against the Premises for which the Authority receives the tax bill directly from the taxing authority, Subtenant shall reimburse the Authority for payment of such sums promptly upon written demand accompanied by (i) a copy of the relevant bill or tax statement and (ii) evidence of payment in full of such Taxes by the Authority. The amount of all such Taxes paid by the Subtenant shall automatically be deemed an approved Operating Expense.

(b) Taxability of Possessory Interest. Without limiting the foregoing, Subtenant recognizes and agrees that this Agreement may create a possessory interest subject to property taxation.

(c) No Tax Liens. Subtenant shall not allow or suffer a lien for any Taxes to be imposed upon the Premises or upon any equipment or other property of Subtenant located thereon and shall discharge the same prior to delinquency; provided however that Subtenant shall have the right to contest any such taxes so long as Subtenant posts with the taxing authority any bond or other security required thereby.

(d) Reporting Information. Subtenant agrees to provide such information as Authority may reasonably request to enable the Authority to comply with any possessory interest tax reporting requirements applicable to this Agreement.

16.2 Evidence of Payment. Subtenant shall, upon the Authority's request, furnish to the Authority official receipts or other evidence of the payment of Taxes.

## 17. LIENS AND ENCUMBRANCES

17.1. Mechanics Liens. Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. If Subtenant does not, within twenty (20) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, the Authority shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by the Authority and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable by Subtenant to the Authority upon demand. To the extent such expenses would otherwise constitute payment for the Work or Operating Expenses, such expenses (but not, for example, the Authority's attorneys' fees related to the release of any such mechanic's lien) shall be included as cost of the Work or Operating Expenses. The Authority shall have the right at all times to post and keep posted on the Premises any notices that the Authority reasonably deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens.

17.2 Encumbrances by Subtenant. Subtenant shall not, without the prior written consent of the Authority, create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset (an "**Encumbrance**") as security in any manner against the Premises or Authority's or Subtenant's interest under this Agreement. If the Authority consents to any such Encumbrance, it shall, in connection therewith, enter into an agreement with the holder of such Encumbrance that includes customary and reasonable subordination, non-disturbance and attornment provisions and customary and reasonable mortgagee protection provisions.

## 18. COMPLIANCE WITH LAWS

18.1. Compliance with Laws. In performing its obligations under this Agreement and in its use of the Premises, Subtenant shall at all times use and maintain the Premises in compliance with all applicable Laws, including any applicable prevailing wage laws and disability access laws; provided, however, Subtenant is not responsible (a) for the streets, roads, sidewalks and curbs contained in and around the Premises complying with any law or (b) for any tree trimming or brush clearance within the Premises contained on Yerba Buena Island mandated by the Fire Department. Without limiting the Authority's obligations under this Agreement, or its responsibility for failure to satisfy those obligations, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant the right to seek redress against the Authority for failing to comply with Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel the Authority to make repairs or improvements to comply with any Law. Nothing herein is intended to limit the Authority's responsibility for the consequences of its failure to comply with Laws or its obligations under this Agreement.

(a) Approved Expense. The costs of Subtenant's compliance with Section 18.1 shall be deemed an approved Operating Expense (except as expressly provided to the contrary in this Agreement).

(b) No Special Laws. Other than compliance with the FEMA-178 seismic standard as required in this Agreement (which the Parties acknowledge and agree is different than the seismic safety Laws applied by the City in the City), the Authority shall not directly or indirectly require Subtenant to comply with any Laws not otherwise applicable to comparable projects in the City. If the City imposes any Laws on the Project not otherwise applicable to comparable

projects in the City, the incremental costs of complying with such Laws shall be either an Operating Expense or an off-set against Base Rent.

(c) Streets and Trees. The Authority shall be responsible for (a) compliance with Laws regarding the maintenance and repair of streets, roads, sidewalks and curbs contained in and around the Premises and (b) maintaining, pruning and clearing of any trees and brush on Yerba Buena Island required by the Fire Department mandated tree trimming and brush clearance rules.

#### 18.2. Regulatory Approvals.

(a) Responsible Party. Subtenant understands and agrees that Subtenant's use of the Premises and construction of the Work and any other Alterations may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. To the extent such approvals or permits are required, Subtenant shall be solely responsible for obtaining any and all such regulatory approvals. Subtenant shall not seek any regulatory approval not contemplated in this Agreement without first obtaining the written consent of Authority. Subtenant shall bear all costs (which costs shall be deemed approved Operating Expenses) associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and, except as expressly set forth herein, shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be timely and promptly paid by Subtenant and shall be deemed Operating Expenses except to the extent such fines arise from Subtenant's negligence or willful misconduct. In any event, the Authority shall have no liability, monetary or otherwise, for any such fines or penalties.

(b) The Authority's Efforts. The Authority shall cooperate with Subtenant in Subtenant's efforts to obtain all required regulatory approvals and to expedite any required City approvals, including the issuance of all required certificates authorizing occupancy of Rentable Units. Notwithstanding the foregoing, Subtenant acknowledges and agrees that the Authority is entering into this Agreement in its capacity as a holder of leasehold and proprietary interests in the Premises and not as a regulatory agency with police powers. Nothing in this Agreement shall limit in any way Subtenant's obligation to obtain any required approvals from City departments, boards or commissions having jurisdiction over the Premises. This Section does not modify or limit Subtenant's obligation to comply with Section 18.1.

18.3. Compliance with Authority's Risk Management Requirements. Subtenant shall not take any action, and shall use commercially reasonable efforts to prevent residents from doing anything, that would create any unusual fire risk in or around the Premises. Subtenant shall use commercially reasonable efforts to protect the Authority from any potential premises liability with respect to any Work or Alteration performed by or for Subtenant. Subtenant shall comply with any and all requirements of any policies of insurance for the Premises.

### 19. **DAMAGE OR DESTRUCTION**

19.1. Damage or Destruction to the Premises Covered by Required Insurance. In the case of damage to or destruction of all or any portion of the Premises or damage to, destruction of (or other limitation on the use of) the roads or the bridge providing ingress and egress to the Premises that materially adversely affects the intended use of such Premises ("**Damage**") that is covered by the insurance required under Section 25 (the "**Required Insurance**"), except as provided in the next sentence, this Agreement shall continue and Subtenant shall use the proceeds of any such Required Insurance to, with reasonable promptness and diligence, restore, repair, replace or rebuild those portions of the Premises so damaged (the "**Damaged Premises**")

to comparable condition, quality and class as the Damaged Premises were in immediately before such casualty ("**Repair**"). Notwithstanding the foregoing, if (i) the Damage to the Premises or certain Rentable Units occurs during the last 2 years of the Term, (ii) certain of the Rentable Units have been Damaged to an extent such that such Rentable Units would need to be demolished and rebuilt, (iii) the Damage cannot reasonably be repaired within 12 months, or (iv) applicable Laws, such as the public trust for commerce, navigation and fisheries, prohibit the Repair, Subtenant may elect (by providing the Authority with written notice thereof within 30 days of the Damage) not to Repair such Damage, in which event this Agreement shall terminate with respect to such portion of the Damaged Premises or such Rentable Units and all applicable insurance proceeds shall be distributed as set forth in Section 19.1(a). In addition, the Authority may determine that any Damage shall not be Repaired for any reason, in which case the insurance proceeds shall also be distributed as set forth in Section 19.1(a).

(a) Insurance Distribution. If Subtenant is not required to Repair all or a portion of such Damaged Premises or the Authority determines not to authorize such Repair as set forth above, the proceeds of any Required Insurance allocable to such Damaged Premises shall be disbursed as follows: first, to Subtenant in an aggregate amount equal to any earned but undisbursed Management Fees and Marketing and Leasing Fees due to Subtenant, and then the remainder to the Authority.

19.2. Damage or Destruction to the Premises Not Covered by Required Insurance. In the case of Damage that is not covered by the Required Insurance, or to the extent that the costs to Repair the Damage would exceed the available insurance proceeds, Subtenant shall, to the extent funds are available in the Replacement Reserve Account, and subject to the Director's consent as provided in Section 11.3, use such funds to Repair any Damage. Notwithstanding the foregoing, nothing herein shall obligate Subtenant to expend any funds other than funds available in the Replacement Reserve Account or insurance proceeds to Repair Damage.

19.3. Rental Abatement. In the event of Damage, Subtenant's obligation to pay Base Rent to the Authority shall be proportionately reduced by an amount equal to the result obtained by multiplying the total amount of Base Rent then due and owing by a fraction, the denominator of which shall be the total number of Rentable Units and the numerator of which shall be the number of Rentable Units affected by the Damage (the "**Abatement**"); provided, however, the proceeds of any rental interruption insurance shall be treated as Gross Revenues hereunder. The Abatement shall continue until Subtenant completes the Repair (or the Damage of Access to the Premises is otherwise repaired). If Subtenant is not required to repair such Damage under Section 19.1 or 19.2 and this Agreement terminates with respect to such portion of the Premises or such affected Rentable Units, the Abatement shall continue for the remainder of the Term.

19.4. Waiver. The Parties understand and agree that the foregoing provisions of this Section 19 are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and the Authority and Subtenant each hereby waives and releases any right to terminate this Agreement in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **20. ASSIGNMENT AND SUBLETTING**

20.1 Restriction on Assignment and Subletting. The services to be performed by the Subtenant under this Agreement are personal in character. Accordingly, except as provided in Section 17.2, Subtenant shall not assign this Agreement nor any duties or obligations hereunder, either voluntarily or by operation of law, or sublet any portion of the Premises (other than the Rental Agreements), unless the Authority first approves such assignment or subletting by written

instrument, which approval may be given or withheld in the Authority's sole and absolute discretion. Any purported assignment or sublet in violation of these restrictions shall be void.

## **21. DEFAULT**

21.1 Events of Subtenant Default. Any of the following shall constitute an event of default by Subtenant under this Agreement ("**Subtenant Defaults**"):

(a) Rent and Payment Responsibilities. Any failure to pay Rent, the CAM Charges, the Utilities Charges, Taxes, or any other sums due and payable by Subtenant, where such failure continues for a period often (10) days following receipt by Subtenant of written notice from the Authority.

(b) Covenants Conditions and Representations. Any failure of Subtenant to perform or comply with any other covenant, condition or representation of Subtenant made under this Agreement, provided that Subtenant shall have a period of thirty (30) days from the date of receipt by Subtenant of written notice from the Authority specifying such failure within which to cure such failure or, if such failure is not reasonably capable of cure within such 30-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant takes action to cure such default within such period and thereafter diligently prosecutes the same to completion.

(c) Assignment; Insurance. Any attempt by Subtenant to assign any material rights or obligations under this Agreement without the Authority's consent as provided herein, or any failure by Subtenant to maintain any insurance required hereunder, which failure is not cured by Subtenant within seven (7) days of Subtenant's receipt of written notice of such failure.

(d) Bankruptcy. The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted (provided that with respect to any receiver appointed or any involuntary proceeding commenced against Subtenant, a Subtenant Default shall not be deemed to have occurred unless Subtenant has failed to have such receiver discharged or such proceeding dismissed within seventy-five (75) days.

21.2. Authority Default. Any failure of the Authority to perform or comply with any covenant, condition or representation of the Authority made under this Agreement shall be deemed a default by the Authority (an "**Authority Default**"), provided that the Authority shall have a period of thirty (30) days from the date of receipt of written notice from Subtenant of such failure within which to cure such Authority Default, or, if such Authority Default is not reasonably capable of cure within such 30-day period, the Authority shall have a reasonable period to complete such cure if the Authority takes action to cure such Authority Default within such period and thereafter diligently prosecutes the same to completion.

## **22. REMEDIES**

22.1 Authority's Remedies for Subtenant's Defaults. Upon the occurrence and continuing of a Subtenant Default, the Authority shall have the following rights and remedies in addition to all other rights and remedies available to Authority at law or in equity:

(a) Terminate Agreement and Recover Damages. The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the

Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. The Authority's efforts to mitigate the damages caused by a Subtenant Default shall not waive any right that the Authority may have to recover unmitigated damages upon termination.

(b) Appointment of Receiver. The right, upon application by the Authority, to have a receiver appointed for Subtenant to take possession of the Premises and to apply any rentals collected from the Premises to the Rent owing by Subtenant hereunder and to exercise all other rights and remedies granted to Authority pursuant to this Agreement.

(c) Forfeiture. The right to cancel Subtenant's right to lease any portion of the Premises.

(d) Authority's Right to Cure Subtenant's Defaults. The Authority may (after the expiration of all applicable cure periods, except in the event of an emergency as reasonably determined by the Authority where prior notice by the Authority is impractical), remedy a Subtenant Default for Subtenant's account and at Subtenant's sole expense. Subtenant shall pay to the Authority, promptly upon demand, all sums reasonably expended by the Authority, or other reasonable costs, damages, expenses or liabilities incurred by the Authority, including reasonable attorneys' fees, in remedying or attempting to remedy such Subtenant Default. To the extent the sums reasonably expended by the Authority under this Section are for costs of the Work or for Operating Expenses (but not, for example, the Authority's reasonable attorney's fees), such amounts paid by Subtenant to the Authority shall be deemed approved costs of the Work or Operating Expenses, as applicable. Subtenant's obligations under this Section shall survive the expiration or termination of this Agreement. Nothing herein shall imply any duty of the Authority to do any act that Subtenant is obligated to perform under this Agreement, and the Authority's cure or attempted cure of a Subtenant Default shall not constitute a waiver of such Subtenant Default or any rights or remedies of the Authority on account of such Subtenant Default.

22.2 Subtenant's Remedies for Authority Default. Upon the occurrence and continuing of an Authority Default, Subtenant shall have the right to termination this agreement or sue for specific performance. In addition, Subtenant may remedy such Authority Default for Authority's account and at Authority's sole expense, but only to the extent of funds then available in the General Operating Account and the Replacement Reserve Account. In no event shall the Authority be responsible for any costs above the amount in such accounts on the date that the Authority Default is determined (i.e., the date that any applicable cure period has expired). Nothing herein shall imply any duty of the Subtenant to do any act that Authority is obligated to perform under this Agreement, and the Subtenant's cure or attempted cure of a default shall not constitute a waiver of such Authority Default or any rights or remedies of the Subtenant on account of such Authority Default. In no event shall the Authority be liable for any damages relating to an Authority Default.

## **23. RELEASE AND WAIVER OF CLAIMS**

23.1 Release and Waiver of Claims. Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Authority shall not be responsible for or liable to Subtenant for, and, to the fullest extent permitted by law, Subtenant hereby waives all rights against the Authority and releases it from any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs (collectively, "**Losses**"), whether direct or indirect, known or unknown, foreseen and unforeseen, arising from or related to (i) the suitability of the Premises for Subtenant's intended



use or (ii) the physical or environmental condition of the Premises and any related Alterations or improvements, including, without limitation, any and all Losses arising from or related to an earthquake or subsidence.

(a) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Authority any claim, action or proceeding based upon any Losses of any nature whatsoever encompassed by the waivers and releases set forth in this Section. In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(b) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(c) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Authority for liabilities encompassed by the waivers and releases set forth in this Section. The Authority would not be willing to enter into this Agreement in the absence of the waivers and releases in this Section, and Subtenant expressly assumes the risk with respect thereto.

(d) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims encompassed by the waivers and releases set forth in this Section. Subtenant realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any expiration or termination of this Agreement.

(e) Without limiting its rights under Section 27, Subtenant acknowledges that it will not be a displaced person at the time this Agreement is terminated or expires by its own terms, and, without limiting the foregoing, Subtenant fully releases, waives and discharges forever any and all claims against, and covenants not to sue, the Authority or its Agents for claims for relocation benefits or assistance from the Authority under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.).

23.2 Covenant by the Authority Not to Sue. The Authority shall not directly or indirectly bring an action or proceeding, whether in a court of law or otherwise, against Subtenant with regard to the environmental conditions existing at the Base except to the extent that such condition is caused by a violation of Law by Subtenant or by Subtenant introducing Hazardous Material (as defined herein) to the Base.

## **24. INDEMNIFICATION**

24.1 Subtenant's Indemnity. Subtenant, on behalf of itself and Subtenant's Agents, shall indemnify, protect, reimburse, defend and hold harmless forever ("**Indemnify**" or "**Indemnity**" as the context requires) the Authority and the Authority's Agents from and against

any and all Losses caused by acts or omissions of Subtenant or Subtenant's Agents or Invitees with respect to the Premises, or relating to the rehabilitation, use or occupancy of the Premises, including, without limitation, any accident, injury or death to any of Subtenant's Agent's or Invitees occurring on or about the Premises, except to the extent that (i) such Indemnity is void or otherwise unenforceable under any applicable Laws, (ii) such Losses are caused by the Authority, or (iii) such Losses are included within the Section 330 Indemnity.

The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the Authority's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it is obligated to defend the Authority from any claim which falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is properly tendered to Subtenant by the Authority. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

24.2 Authority's Indemnity. Subject to the provisions of Section 22.2, the Authority, on behalf of itself and the Authority's Agents, shall Indemnify Subtenant and Subtenant's Agents from and against any and all Losses caused by the sole negligence or willful misconduct of the Authority or the Authority's Agents except to the extent that (i) such Indemnity is void or otherwise unenforceable under any applicable Laws, or (ii) such Losses are included within the Section 330 Indemnity.

The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Subtenant's costs of investigating any Loss. The Authority specifically acknowledges and agrees that it is obligated to defend Subtenant from any claim which falls within this Indemnity even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is properly tendered to the Authority by Subtenant. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Agreement.

24.3 Master Landlord's Section 330 Environmental Indemnity. The Parties hereby acknowledge and agree that pursuant to Section 330 of Public Law 102-484, as amended, Master Landlord shall hold harmless, defend and indemnify (the "**Section 330 Indemnity**") the Authority and Subtenant from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum product, or petroleum derivative from or on the Premises as a result of Department of Defense activities at the Base, as set forth in the Master Lease. If Subtenant or the Authority incurs costs or other expenses due to Master Landlord's failure to satisfy its obligations under the Section 330 Indemnity, such costs or expenses shall automatically be deemed an Operating Expense and any subsequent recovery from the Master Landlord as a result of such failure shall be a Gross Revenue.

## 25. INSURANCE

25.1 Subtenant's Insurance. Subtenant shall procure and maintain throughout the Term for the mutual benefit of the Authority and Subtenant, and pay the cost thereof (as an approved Operating Expense, subject to the limits set forth in Section 12.1 and, if the limit is exceeded but not approved, such insurance need not be obtained by Subtenant), the following insurance:

(a) Professional Liability Insurance. Professional Liability insurance with limits not less than \$1,000,000 each claim and aggregate, including coverage for negligent acts, errors or

omissions arising out of professional services performed under this Agreement for architectural, engineering and geotechnical services, with any deductible not to exceed \$25,000 each claim.

(b) Property Insurance. Property insurance on an ISO "special form" (excluding earthquake and flood) with any exposures for reconstruction loss of rents up to 12 months included in the aggregate limit. The loss of rents coverage shall have a deductible of no more than \$5,000 per occurrence. The deductible will be no greater than \$50,000 per occurrence for property related losses only. Any vacancy clause will be waived or extended to no less than 180 days. The limit of coverage will be full replacement cost or a stop loss limit that covers at least 35% of the total insurable value of all covered Rentable Units.

(c) Environmental Pollution Insurance. Environmental Impairment Liability Insurance, with limits not less than \$5,000,000 each occurrence, including coverage for pollution or contamination, with any deductible not to exceed \$50,000 each occurrence.

(d) Commercial General Liability Insurance. Commercial General Liability Insurance shall be written on an occurrence and on a site-specific basis with coverage equal to or better than the ISO form CG-OOI. Primary limits shall be \$2,000,000 Combined Single Limit (CSL) per occurrence and \$5,000,000 aggregate. A deductible, per claim, of no greater than \$10,000 will be acceptable. Coverage should include within the policy limits: Personal Injury, Independent Contractors, Contractual liability, Products and Completed operations and a Severability of interests' clause. (Explosion, collapse and underground coverage shall not be excluded.) An excess policy increasing the total limit to \$10,000,000 will be required. Said excess policy may be an umbrella or a following form excess contract.

(e) Workers Compensation Insurance. Worker's compensation insurance with statutory limits as required by California law, and Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(f) Automobile Liability Insurance. Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses or causes to be used automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under ISO F01111 Number CA-00-01.

(g) Watercraft and Aircraft Insurance. Should Subtenant operate or cause to be operated any aircraft or watercraft in performance of its activities under this Agreement, insurance for such operations, in amount, form and with insurers reasonably satisfactory to the Authority, shall be obtained, paid for, and maintained by Subtenant throughout such operations.

(h) Employee Fidelity Bonds. Fidelity bond insurance coverage for on-site employees with a \$1,000,000 limit and \$1,000 deductible.

25.2. General Requirements. All insurance provided for under this Agreement shall be effected under valid enforceable policies issued by insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California.

(a) Should any of the required insurance be provided under a claims made form, Subtenant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of five (5) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the Term give rise to claims made during the one year period after expiration or termination of this Agreement, such claims shall be covered by such claims made policies.

(b) All insurance policies shall be endorsed to provide the following:

(i) The Authority and the City shall be named as an additional named insured and loss payee on liability and property coverages as its interest may appear, if necessary. Subtenant shall be first named insured.

(ii) Any other insurance carried by the Authority, which may be applicable, shall be deemed excess insurance and Subtenant's insurance shall be deemed primary for all purposes. Subtenant's policies shall also provide for severability of interest provisions.

(iii) Thirty-day written notice of cancellation, non-renewal or material change in coverage shall be given to the Authority. Ten-day notice will be acceptable for notice of non-payment.

(iv) Upon request, Subtenant shall deliver to the Authority certificates, binders, or other satisfactory evidence of the insurance coverages required under this Agreement.

(c) On or before the Commencement Date, Subtenant shall deliver to Authority certificates of insurance and additional insured policy endorsements in form and with insurers satisfactory to Authority, evidencing the coverages required hereunder, and Subtenant shall provide Authority with certificates thereafter at least ten (10) days before the expiration dates of expiring policies. In the event Subtenant shall fail to procure such insurance, or deliver such certificates, Authority may, at its option, after providing five (5) days' prior written notice of the Authority's intention to do so, procure the same for the account of Subtenant and the cost thereof shall be paid to Authority within five (5) days after delivery to Subtenant of an invoice for such cost.

25.3. No Limitation on Indemnities. Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease either the Authority's or Subtenant's indemnification obligations herein or any of the Authority's or Subtenant's other obligations or liabilities under this Agreement.

25.4. Subtenant's Personal Property. Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

25.5. Waiver of Subrogation. Notwithstanding anything to the contrary contained herein, the Authority and Subtenant (each a "**Waiving Party**") each hereby waives any right of recovery against the other party for any loss or damage sustained by such other party with respect to the Premises, whether or not such loss is caused by the fault or negligence of such other party, to the extent such loss or damage is covered by insurance which is required to be purchased by the Waiving Party under this Agreement or is actually covered by insurance obtained by a Waiving Party. Each Waiving Party agrees to cause its insurers to issue appropriate waiver of subrogation rights endorsements to all policies relating to the Premises; provided, the failure to obtain any such endorsement shall not affect the above waiver.

## **26. ACCESS BY AUTHORITY**

### **26.1. Access to Premises by Authority.**

(a) General Access. Without unreasonably interfering with the use and quiet enjoyment of the Premises by residential tenants, the Authority reserves for itself and the Authority's Agents, the right to enter the Premises and any portion thereof at all reasonable times for any purpose.

(b) Emergency Access. In the event of any emergency, as reasonably determined by the Authority, the Authority may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises so long as such alteration or removal is reasonably related to and necessary for remedying or properly responding to such emergency. The Authority shall have the right to use any and all means the Authority reasonably considers appropriate to gain access to any portion of the Premises in an emergency. In such case, to the maximum extent permitted by law, the Authority shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from all or part of the Premises.

(c) No Liability. The Authority shall not be liable in any manner, and Subtenant hereby waives any claims, for any Losses arising out of the Authority's entry onto the Premises, except for damage resulting from the negligence or willful misconduct of the Authority or the Authority's Agents, to the extent not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

26.2 Access to Premises by Master Landlord. Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **27. SURRENDER**

27.1. Surrender of the Premises. Upon the expiration or earlier termination of this Agreement, Subtenant shall peaceably quit and surrender to the Authority the Premises together with the Work and Alterations in as good order and condition, subject to normal wear and tear and the provisions of Section 19 regarding casualty and taking into account the occupancy of the Rentable Unit, when surrendered. Normal wear and tear shall not include any damage or deterioration that would have been prevented had Subtenant properly performed its obligations under this Agreement. The Premises shall be surrendered free and clear of all liens and encumbrances arising out of Subtenant's acts other than liens and encumbrances approved by the Authority and rights of residential tenants in Rentable Units occupied at the end of the Term, if any. Immediately before the expiration or termination of this Agreement, Subtenant shall remove all of Subtenant's Personal Property as provided in this Agreement and repair any damage resulting from such removal. Subtenant's obligations under this Section shall survive the expiration or termination of this Agreement. Any items of Subtenant's Personal Property remaining in the Premises after the expiration or termination of this Agreement may, at the Authority's option, be deemed abandoned and disposed of in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law. The Authority agrees to assume all Rental Agreements at the end of the Term, entered into by Subtenant in conformity with this Agreement. In no event is Subtenant required to evict a residential tenant who has executed a Rental Agreement in conformity with this Agreement at the end of the Term.

## **28. HAZARDOUS MATERIALS**

28.1 No Hazardous Materials. Except as shown on Exhibit K or in a Work Plan or the Management Plan approved by the Authority, Subtenant covenants and agrees that Subtenant shall not, and shall take commercially reasonable efforts to ensure that Subtenant's Invitees do not, cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises in violation of Environmental Laws (as defined herein) without the prior written approval of the Authority. The Authority may from time to time reasonably request Subtenant to provide adequate information for the Authority to determine whether any Hazardous Material permitted hereunder is being

handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises ("**Environmental Laws**"), and Subtenant shall promptly provide all such information reasonably requested. The Authority and the Authority's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). As used herein "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also commonly known as CERCLA), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code, any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code, and any asbestos and asbestos containing materials and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

**28.2 No Releases.** Subtenant shall not, and Subtenant shall use commercially reasonable efforts to ensure that Subtenant's Invitees do not, cause any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("**Release**") of Hazardous Material in, on, under or about the Premises. Subtenant shall immediately notify the Authority if and when Subtenant has actual knowledge that there has been a Release of Hazardous Material in, on or about the Premises and shall afford the Authority a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**28.3 Subtenant's Environmental Indemnity.** Without limiting Subtenant's general Indemnity contained in Section 24.1, if Subtenant fails to perform any of its obligations contained in Section 28.1 or 28.2, Subtenant shall Indemnify the Authority and the Authority's Agents from and against any and all Losses arising under or related to such failure, including, without limitation Losses related to (i) enforcement, investigation, remediation or other governmental regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, (ii) claims by any third party against the Authority or the Authority's Agents relating to damage, contribution, cost recovery compensation, loss or injury, (iii) investigation and remediation costs, fines, natural resource damages, the loss or restriction of the use or any amenity of the Premises or the Base and reasonable attorneys' fees and consultants' fees and costs, and (iv) all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, and expressly excluding any Losses to the extent covered by the Section 330 Indemnity or caused by the Authority, its Agents or Invitees. All costs paid by Subtenant under this provision as a result of acts or omissions by Subtenant's Invitees shall be deemed an approved Operating Expense unless caused by Subtenant's gross negligence or willful misconduct.

**28.4 No Hazardous Materials.** The Authority covenants and agrees that the Authority and the Authority's Agents shall not, and shall take reasonable efforts to ensure that Authority's Invitees do not, cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises in violation of Environmental Laws.

28.5 No Releases. The Authority and Authority's Agents shall not, and Authority shall use reasonable efforts to ensure that the Authority's Invitees do not, cause any Hazardous Material Release in, on, under or about the Premises. The Authority shall immediately notify the Subtenant if and when Authority has actual knowledge that there has been a Release of Hazardous Material on or about the Premises and shall afford the Subtenant a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

28.6 Authority's Environmental Indemnity. Without limiting the Authority's general Indemnity contained in Section 24.2, if the Authority fails to perform any of its obligations contained in Section 28.4 or 28.5, the Authority shall Indemnify the Subtenant and the Subtenant's Agents from and against any and all Losses arising under or related to such failure, including, without limitation Losses related to (i) enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, (ii) claims by any third party against the Subtenant or the Subtenant's Agents relating to damage, contribution, cost recovery compensation, loss or injury, (iii) investigation and remediation costs, fines, natural resource damages, the loss or restriction of the use or any amenity of the Premises and reasonable attorneys' fees and consultants' fees and costs, and (iv) all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Base to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, and expressly excluding any Losses to the extent covered by the Section 330 Indemnity or caused by the Subtenant, its Agents or Invitees.

28.7 Acknowledgment of Receipt of EBS and FOSL Reports. Subtenant and the Authority, respectively, hereby acknowledge for itself and its respective Agents that, before the execution of this Agreement, it has received and reviewed the Environmental Baseline Survey and the FOSLs described in the Master Lease.

## **29. RELOCATION COSTS**

Without limiting the Authority's Indemnity under Section 24.2, the Authority shall be responsible for and shall Indemnify Subtenant and its Agents for any and all relocation costs payable to residential tenants arising under federal and state relocation assistance laws, including, but not limited to, California Government Code Section 7260 et seq.

## **30. CONVENIENCE STORE AND OTHER SERVICES**

30.1. Good Faith Efforts. The Authority shall use good faith efforts to work with TIHDI and Subtenant to maintain existing commercial services on the Base, including a child-care center, cafe, and convenience store.

## **31. TRANSPORTATION SERVICES**

31.1 Bus Service. The Authority shall use good faith efforts to have the City maintain at least the current level of municipal transportation bus service to and from the Base.

31.2 Public Transit Information. Subtenant shall make good faith efforts to establish and maintain during the Term a program to encourage maximum use of mass or public transportation by Subtenant's Agents and Invitees, including residential tenants.

## **32. WORKFORCE HIRING GOALS**

In performing its rights and responsibilities under this Agreement, Subtenant shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

32.1 Subtenant's Workforce Hiring Goals. Subtenant, in connection with the Work, shall use good faith efforts to meet the work force hiring goals set forth in Section 32.2 (the "**Workforce Goals**"). For purposes of this Section 32, Subtenant's good faith efforts ("**Good Faith Efforts**") shall mean the following:

- (a) Upon request, submitting a written plan describing how Subtenant intends to meet the Workforce Goals;
- (b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks before advertising for applicants elsewhere to the extent practical, considering the nature of the job involved;
- (c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker if referred before the opening being otherwise filled;
- (d) Communicating with TIHDI about job openings by facsimile at the same time such job opening is communicated to any other agency or broker and providing information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;
- (e) Consulting with the TIHDI Job Broker once a month, as necessary, about how to meet Subtenant's Workforce Goals; and
- (f) Meeting and conferring with the TIHDI Job Broker monthly, if necessary, to discuss and attempt to resolve any problems with Subtenant meeting its Workforce Goals.
- (g) Upon request, working with the City's First Source Hiring Administration on new job opportunities and otherwise complying with the City's First Source Hiring Program as set forth in Administrative Code Chapter 83.

32.2 Workforce Hiring Goals.

- (a) Construction Workforce. Without obligation (other than as expressly set forth herein), Subtenant shall give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.
- (b) Subcontracting. Without obligation, Subtenant will consider subcontracting certain tasks to be performed by Subtenant under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Subtenant's Good Faith Efforts to meet the Work Force Goals.
- (c) Nonconstruction Workforce. Without obligation, except as provided in this Section 32, the Subtenant shall use Good Faith Efforts to hire for nonconstruction work,
  - (i) twenty-five percent (25%) of its nonconstruction workforce from homeless or economically disadvantaged persons, at the time of hiring, and
  - (ii) fifty percent (50%) from San Francisco residents.



32.3. Hiring Plan. Upon request, Subtenant shall submit a hiring plan to the Authority to describe how Subtenant intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures, a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

32.4. Reports. Upon the Authority's request, Subtenant shall prepare reports regarding the composition of Subtenant's work force reasonably satisfactory to the Authority.

32.5. Matters Subject to Enforcement Procedure. In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 32.7.

32.6. Implementation of Enforcement Procedure. The Enforcement Procedure, as provided in Section 32.7, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Subtenant's Good Faith Efforts. The Enforcement Procedure shall be implemented by the City department responsible for administering the City's workforce programs (the "**Workforce Office**"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("**Subcontracts**") shall incorporate the provisions of this Section 32 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Subtenant or its subcontractors. Subtenant shall require, by contract, that each subcontractor participate in Enforcement Procedure proceedings in which it may be identified, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Workforce Office.

32.7 Enforcement Procedure.

(a) Initiation and Process. If the Authority reasonably determines that Subtenant has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure, the Authority shall send a written Notice of Noncompliance to Subtenant describing the basis for its determination and suggesting a means to cure any deficiencies. If Subtenant does not, in the reasonable discretion of the Authority, cure the deficiency within thirty (30) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Before the filing and service of a request to the Workforce Office (a "**Request**"), the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Subtenant or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request and sending a copy to each involved entity including the Authority. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Subtenant of the Request or any notice provided for by this Section 32 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Subtenant shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("**Temporary Relief**"). The Workforce Office shall determine whether the facts reasonably support the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the Parties or ordered by the Workforce Office upon a showing of good cause; provided, that if the complaining party seeks Temporary Relief, the hearing on the motion shall be heard not later than ten (10) following the Request. The Workforce Office shall set the date, time and place for the Enforcement Procedure hearings. In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

(b) Workforce Office's Decision. The Workforce Office shall render a decision within 20 days of the date that the hearing; provided that where a temporary restraining order is sought, the Workforce Office shall render a decision not later than 24 hours after the hearing on the motion. The Workforce Office shall send the decision by certified or registered mail to the Authority, the Subtenant and the subcontractor, if any.

(i) The Workforce Office may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Subtenant, the Subtenant 'shall provide proof of service on the party as required by this Section. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy under Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 32, the Workforce Office shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the Parties.

(iii) The inquiry of the Workforce Office shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Workforce Office issued hereunder shall be final and binding upon the Authority, Subtenant, and subcontractors. The losing party shall pay the Workforce Office's fees and related costs of the Enforcement Procedure. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Workforce Office finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Workforce Office 'may impose only the remedies and sanctions set forth below and only against a non-compliant party:

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the failure to make Good Faith Efforts, and/or to require Subtenant and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Subtenant from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency.

(ii) Require the Subtenant or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances satisfactory to the Authority and the Subtenant of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Subtenant or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portions thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Subtenant or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$5,000 or 10 percent of the total monetary consideration contemplated by the contract at issue, whichever is less, for such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Subtenant or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Subtenant or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Subtenant or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Good Faith Efforts are made prospectively.

(d) Delays Due to Enforcement. If Subtenant does not timely perform its obligations under this Agreement with the Authority because of a Workforce Office's order against a party other than the Subtenant, or against the Subtenant so long as Subtenant has made reasonable efforts to comply with the Hiring Plan, such order shall be deemed a Force Majeure Event, and all times shall be extended as provided in this Agreement for Force Majeure Events; provided Subtenant makes good faith efforts to minimize any delays.

(e) Release. The Subtenant and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 32.

(f) California Law Applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Proceedings.

32.8 Relationship to Other Employment Agreements. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Subtenant will take primary responsibility for integrating the requirements of Subtenant's Workforce Goals with any such collective bargaining agreements. As necessary, Subtenant will attempt to negotiate equivalent first source hiring obligations with relevant unions.

32.9 Local Hire. Subtenant agrees to use good faith efforts to hire residents of the City and County of San Francisco at all levels of Subtenant's personnel needs and to contract with local businesses for Subtenant's purchase of supplies, materials, equipment or services.

### **33 GENERAL PROVISIONS**

33.1 Notices. Except as otherwise expressly provided in this Agreement, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, with postage prepaid as follows:

Notice Address of Authority:       Treasure Island Development Authority  
One Avenue of Palms, Suite 241  
San Francisco, CA  
Attn: Director  
Fax No.: 415-274-0299

with a copy to:                   Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: RE/Finance  
Fax No.: (415) 554-4755

Notice Address of Subtenant:       The John Stewart Company  
Attn: Jack D. Gardner, President and CEO  
1388 Sutter Street, 11<sup>th</sup> Floor  
San Francisco, CA 94109  
Fax No.: (415) 614-9175

With a Copy to:                   Orrick, Herrington & Sutcliffe, LLP  
Attn: Justin Cooper, Esq.  
The Orrick Building  
405 Howard Street  
San Francisco, CA  
Fax No.: (415) 773-5759

Notice Address of Master Landlord: United States Navy  
BRAC Program Management Office West  
ATTN: Treasure Island Real Estate  
1455 Frazee Road, Suite 900  
San Diego, CA 92108

Any Party hereunder may designate a new address for notice hereunder by notice given to the other in accordance with the provisions of this Section at least five (5) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days

after the date when it is mailed if sent by first class or certified mail, one day after the date it is made if sent by overnight courier, or upon the date personal delivery is made. For convenience of the Parties, copies of notices may also be given by telefacsimile; however, neither party may give official or binding notice by facsimile. Subtenant shall promptly provide City with copies of any and all notices received regarding any alleged violation of laws or insurance requirements or any alleged unsafe condition or practice.

33.2 No Implied Waiver. No failure by the Authority to insist upon the strict performance of any obligation of Subtenant under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises before the expiration of the Term by any Agent of the Authority, shall constitute a waiver of such breach or of the Authority's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Agreement. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of the Authority given in any instance under the terms of this Agreement shall not relieve Subtenant of any obligation to secure the consent of the Authority in any other or future instance under this Agreement. The provisions of this Section 33.2 shall be mutual to the extent applicable.

33.3 Approvals and Consents. Unless otherwise expressly provided in this Agreement, whenever approval, consent or satisfaction is required of the Authority or Subtenant under this Agreement, it shall not be unreasonably withheld, conditioned or delayed. The reasons for any disapproval of consent hereunder shall be stated in reasonable detail in writing. Approval by a Party of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. Whenever approval or consent of the Authority is required under this Agreement, such approval shall mean the approval of the Director. If the Director determines that action or approval is required by the Authority's Commission, the Director shall submit such matter to the Authority's Commission at the next regularly-scheduled meeting for which an agenda has not yet been finalized and for which the Authority can prepare and submit a staff report in keeping with the Authority's standard practices.

33.3 Amendments. The terms of this Agreement may not be changed, waived, or terminated except by a written instrument signed by the Parties.

33.4 Due Authorization and Execution. The person signing for the Authority represents and warrants that the Authority is a non-profit, public benefit corporation, and an instrumentality of the State of California and the City and County of San Francisco, and that he or she has the right and authority to execute this Agreement. If Subtenant signs as a corporation, a partnership, a limited liability company, or similar entity, Subtenant hereby covenants and warrants that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has the full right and authority to enter into this Agreement, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon the Authority's request, Subtenant shall provide Authority with evidence reasonably satisfactory to the Authority confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant and the Authority each represents and warrants to the other that it has full power to make the waivers and releases, indemnities and the

disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into an Agreement containing those provisions and their legal effect.

33.5 Joint and Several Obligations. The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant or one entity that makes up Subtenant, the obligations and liabilities under this Agreement imposed on Subtenant shall be joint and several.

33.6 Interpretation of Agreement. The recitals and the captions preceding the articles and sections of this Agreement and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting. Provisions in this Agreement relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Agreement, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

33.7 Successors and Assigns. Subject to the provisions of Section 20, the terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of the Authority and Subtenant and, except as otherwise provided herein, their representatives and successors and assigns.

33.8 Brokers. Neither party has had any contact nor dealings regarding the leasing of the Premises or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Agreement contemplated herein. If any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the expiration or termination of this Agreement.

33.9 Severability. If any provision of this Agreement or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by Law.

33.10 Governing Law. This Agreement shall be construed and enforced in accordance with the Laws of the State of California.

33.11 Entire Agreement. This Agreement, including the exhibits, contain the entire agreement between the Parties and supersede all prior or written or oral negotiations, discussions, understandings and agreements. The execution of this Agreement by the Authority shall be deemed to constitute approval of each exhibit hereto. The Parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial, administrative or other legal

proceeding involving this Agreement. Subtenant and the Authority hereby acknowledge that neither the other nor the other's Agents have made any representations or warranties with respect to the Premises or this Agreement except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by either Subtenant or the Authority by implication or otherwise unless expressly set forth herein.

33.12 Attorneys' Fees. If either the Authority or Subtenant fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all reasonable costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including court costs and reasonable attorneys' fees. For purposes of this Agreement, reasonable fees of attorneys of the Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Authority.

33.13 Time of Essence. Time is of the essence with respect to all provisions of this Agreement in which a definite time for performance is specified.

33.14 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Agreement shall be cumulative, except as may otherwise be provided herein.

33.15 Survival of Indemnities. Termination of this Agreement shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Agreement, nor shall it affect any provision of this Agreement that expressly states it shall survive termination hereof.

33.16 Relationship of Parties. The Authority is not, and none of the provisions in this Agreement shall be deemed to render the Authority, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, including residential tenants and TIHDI, unless otherwise expressly provided.

33.17 Non-Liability of Parties' Officials and Employees. No elective or appointive board, commission, member, officer or employee of either of the Parties or their Agents shall be personally liable in the event of any default, breach or for any amount which may become due, or for any obligation under this Agreement.

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

## **34. SPECIAL PROVISIONS**

### **34.1. Non-Discrimination in Contracts and Benefits Ordinance.**

(a) Covenant Not to Discriminate. In the performance of this Agreement, Subtenant agrees not to discriminate against any employee, any City employee working with Subtenant, or applicant for employment with Subtenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender

identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subleases and Other Subcontracts. Subtenant shall include in all subleases and other subcontracts (not including the Rental Agreements) relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

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

34.3 Tropical Hardwood and Virgin Redwood Ban. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San



San Francisco Environment Code, Subtenant shall not provide any items to the Work or Alterations, or otherwise in the performance of this Agreement, which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. If Subtenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Tenant may be liable for liquidated damages as set forth in Chapter 8.

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

34.5 Prohibition of Tobacco Advertising. Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of Authority, including the Premises. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

34.6 Prohibition on Alcohol Advertising. Subtenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises, except in areas that are operated as a restaurant, a concert or sports venue, or places where the sale, production or consumption of alcohol is permitted. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (a) communicate the health hazards of alcoholic beverages, (b) encourage people not to drink alcohol or to stop drinking alcohol, or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

34.7 Holding Over. If Subtenant retains possession of any portion of the Premises after the expiration or the earlier termination of this Agreement, then unless the Authority expressly agrees to the holdover in writing, Subtenant shall pay the Authority, on a month-to-month basis Base Rent equal to one hundred and fifty percent (150%) of the latest Base Rent payable by Subtenant hereunder prior to such expiration, together with an amount estimated by the Authority for any additional charges payable under this Agreement, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Any failure by Subtenant to surrender, discontinue using, or, if required by the Authority, any failure to remove any property or equipment following written demand for the same by the Authority, shall constitute continuing possession for purposes hereof. Subtenant acknowledges that the foregoing provisions shall not serve as permission for the Subtenant to hold over, nor serve to extend the term of this Agreement beyond the end of the term hereof. Any holding over without the Authority's consent shall constitute a default by Subtenant and entitle the Authority to exercise any or all of its remedies as provided herein, notwithstanding that the Authority may elect to accept one or more payments of Rent, and whether or not such amounts are at the holdover rate specified above or the rate in effect at the end of the Term of this Agreement. Any holding over after the expiration of the Term with the express consent of the Authority shall be construed to automatically extend the Term of this

Agreement on a month-to-month basis at a Base Rent equal to the latest Base Rent payable by Subtenant hereunder prior to such expiration, together with an amount estimated by the Authority for any additional monthly charges payable under this Agreement, and shall otherwise be on the terms and conditions herein specified so far as applicable (except for those pertaining to the Term and any Extension Options). Subtenant's obligations under this Section shall survive the expiration or termination of this Agreement.

34.8 Prevailing Wages. Subtenant agrees that any person performing labor in the erection, construction, renovation, alteration, improvement, demolition, excavation, installation or repair (not including maintenance) of any building, structure, improvement, infrastructure, road, park, utility or similar facility on the Premises, provided by or through Subtenant under this Agreement, shall be paid not less than the highest prevailing rate of wages, and shall be subject to hours and days of labor requirements that are established under San Francisco Administrative Code Section 6.22(E) and 6.22(F). Subtenant shall require that all contracts and subcontracts for such work contain the requirements of San Francisco Administrative Code Sections 6.22(E), subsections (4) – (8), and 6.22(F), and shall reference the Authority's rights as set forth in this Section, including but not limited to the Authority's (and Subtenant's) right to withhold funds and impose penalties against any contractor or subcontractor that fails to pay prevailing wages as required in this Section. Subtenant shall also require any contractor to electronically submit, for itself and for all subcontractors, certified payroll reports and statements of compliance in the manner specified by the Authority for all persons performing labor as set forth above. Subtenant shall have all rights and remedies, including the right to withhold payments or assess penalties, against any contractor and subcontractor as set forth in Section 6.22(E) (8) for failure to pay prevailing wages as set forth in this Section. In addition, Sublandlord and Subtenant shall jointly collaborate on any such remedial action to ensure compliance with this Section, including the assessment of penalties and, when warranted, the termination of any contractor or subcontractor.

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

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

34.11 Drug Free Workplace. Subtenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City and Authority premises. Subtenant agrees that any violation of this prohibition by Subtenant, its Agents or assigns shall be deemed a material breach of this Agreement.

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

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

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

(c) Subtenant's failure to comply with the HCAO shall constitute a material breach of this Agreement. the Authority shall notify Subtenant if such a breach has occurred. If, within thirty (30) days after receiving the Authority's written notice of a breach of this Agreement for violating the HCAO, Subtenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Subtenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Authority shall have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the Authority.

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

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

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

(g) Subtenant shall keep itself informed of the current requirements of the HCAO.

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

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

(j) the Authority may conduct random audits of Subtenant to ascertain its compliance with HCAO. Subtenant agrees to cooperate with the Authority when it conducts such audits.

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

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

34.15 Resource Efficient City Buildings and Pilot Projects. Subtenant acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Subtenant hereby agrees that it shall comply with all applicable provisions of such code sections.

34.16 Food Service Waste Reduction. Subtenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Sublease as though fully set forth. This provision is a material term of this Sublease. By entering into this Sublease, Subtenant agrees that if it breaches this provision, Sublandlord will suffer actual damages that will be impractical or extremely difficult to determine; further, Subtenant agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that Sublandlord will incur based on the violation, established in light of the circumstances existing at the time this Sublease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by Sublandlord because of Subtenant's failure to comply with this provision.

34.17 Estoppel Certificates. At any time and from time to time, within ten (10) days after Sublandlord's request, Subtenant will execute, acknowledge and deliver to Sublandlord a statement certifying the following matters: (a) the Commencement Date and Expiration Date of this Sublease; (b) that this Sublease is unmodified and in full force and effect (or if there have been modifications, that this Sublease is in full force and effect as modified and the date and nature of such modifications); (c) the dates to which the Rent has been paid; (d) that there are no Events of Default under this Sublease (or if there are any Events of Default, the nature of such Event of Default); and (e) any other matters reasonably requested by Sublandlord. Sublandlord and Subtenant intend that any such statement delivered pursuant to this paragraph may be relied upon by any assignee of Sublandlord's interest in the Master Lease or this Sublease, any mortgagee or any purchaser or prospective purchaser of the building or land on which the Premises are located. Subtenant irrevocably appoints Sublandlord, as Subtenant's agent, to execute and deliver in the name of Sublandlord any such instrument if Subtenant fails to do so, which failure shall also be an Event of Default under this Sublease.

[Remainder of page left intentionally blank]

Authority and Subtenant have executed this Agreement as of the date first written above.

DATED:

SUBTENANT:

THE JOHN STEWART COMPANY, a California Corporation

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

AUTHORITY:

THE TREASURE ISLAND DEVELOPMENT, a California nonprofit public benefit corporation

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

Approved as to Form:

DENNIS J. HERRERA, City Attorney

\_\_\_\_\_  
Charles Sullivan, Deputy City Attorney

1 [JOHN STEWART COMPANY – EIGHTH AMENDMENT AND AMENDED AND RSTATED  
2 SUBLEASE and PROPERTY MANAGEMENT AGREEMENT]

3 **Resolution Approving and Authorizing the Execution of an Eighth Amendment to**  
4 **Sublease and Property Management Agreement between the Treasure Island**  
5 **Development Authority and John Stewart Company, a California Corporation, to (i)**  
6 **Establish Fixed Management Fees, (ii) Remove and Add Properties to the Premises, (iii)**  
7 **Adjust the Common Area Maintenance Charges and Utility Fees, and (iv) Execute an**  
8 **Amended and Restated Sublease and Property Management Agreement Incorporating**  
9 **Amendments 1 through 8 and Modifying Language to Reflect Current Property**  
10 **Management Operations and Responsibilities.**

11 WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island  
12 and Yerba Buena Island (together, the "Base"), which is currently owned by the United States  
13 of America ("the Federal Government"); and,

14 WHEREAS, The Base was selected for closure and disposition by the Base  
15 Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its  
16 subsequent amendments; and,

17 WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97,  
18 authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit  
19 corporation known as the Treasure Island Development Authority (the "Authority") to act as a  
20 single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and  
21 conversion of the Base for the public interest, convenience, welfare and common benefit of  
22 the inhabitants of the City and County of San Francisco; and,

23 WHEREAS, Under the Treasure Island Conversion Act of 1997 (the "Act"), which  
24 amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to  
25

1 Chapter 1333 of the Statutes of 1968, the California Legislature (i) designated the Authority as  
2 a redevelopment agency under California redevelopment law with authority over the Base  
3 upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the  
4 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
5 administer the public trust for commerce, navigation and fisheries as to such property; and,

6 WHEREAS, On February 6, 1998, the Board of Supervisors adopted Resolution No.  
7 43-98 approving the designation of the Authority as a redevelopment agency for Treasure  
8 Island and Yerba Buena Island; and,

9 WHEREAS, On January 24, 2012, the Board of Supervisors rescinded designation of  
10 the Authority as the redevelopment agency for Treasure Island under California Community  
11 Redevelopment Law in Resolution No. 11-12; although such rescission does not affect  
12 Authority's status as the Local Reuse Authority for Treasure Island or the Tidelands Trust  
13 trustee for the portions of Treasure Island subject to the Tidelands Trust, or any other powers  
14 or authority of the Authority; and

15 WHEREAS, On June 11, 2014, the Authority Board of Directors approved the Sublease  
16 and Property Management Agreement (the "Agreement") with John Stewart Company, a  
17 California Corporation ("JSCo"), for management of the market rate rental housing on  
18 Treasure and Yerba Buena Islands ("TI/YBI"); and

19 WHEREAS, The Agreement has been amended seven times pursuant to a First  
20 Amendment (the "First Amendment") dated March 15, 2016, a Second Amendment (the  
21 "Second Amendment") dated May 1, 2017, a Third Amendment (the "Third Amendment")  
22 dated October 1, 2017, a Fourth Amendment (the "Fourth Amendment") dated July 1, 2018, a  
23 Fifth Amendment (the "Fifth Amendment") dated May 1, 2019, a Sixth Amendment ( the "Sixth  
24 Amendment") dated May 1, 2019, a Sixth Amendment ( the "Sixth  
25 Amendment") dated May 1, 2019, a Sixth Amendment ( the "Sixth



Amendment”) dated July 15, 2019, and a Seventh Amendment ( the “Seventh Amendment”) dated July 1, 2024; and

WHEREAS, JSCo has provided exemplary property management services to the Authority over the term of the Original Sublease, 1999-2014, and the current Agreement, 2014-present, and has consistently demonstrated a strong institutional knowledge of the Island environment and issues and has played a critical role in partnering with the island’s other housing providers – Catholic Charities, HomeRise, Swords to Plowshares, and HealthRight360 – to create an inclusive community on Treasure Island; and

WHEREAS, Over the past several years, JSCo’s portfolio on Treasure island has significantly reduced and will continue to reduce from 472 to 269 units under management due to development activities resulting in the increase of offline units as tenants vacate or relocate to new replacement housing. The continued development of Treasure Island will increase the number of vacant legacy housing (“former Navy housing”) in anticipation of future demolition of these units to make way for redevelopment; and

WHEREAS, Under the existing Agreement, JSCO’s receives a Management Fee equivalent to 3% of Gross Revenues not to exceed \$400,000 annually, and the Agreement further states that if, at any point, the number of Rentable Units is reduced to below 210, Authority and JSCo shall meet and confer regarding establishing a new Management Fee structure or amount that is equitable to both parties; and,

WHEREAS, The maintenance of offline legacy housing has significantly impacted JSCo’s Management Fees from approximately \$370,000 in to 2022 to approximately \$285,000 in 2024, and by 2028, it is anticipated that approximately 75 households will transition to new housing resulting in further reductions to JSCo’s portfolio and well under the 210-unit threshold which renders this percentage rent model unsustainable for JSCo; and

1           WHEREAS, Project Staff and JSCo have agreed to a new management structure  
2     whereby JSCo is compensated by a flat management fee, and have negotiated an Eighth  
3     Amendment to the professional services agreement effective January 1, 2026 to (i) establish  
4     fixed Management Fees payable to JSCo in the amount of \$270,000 per year or \$22,500 per  
5     month for the management of all occupied, vacant and offline units in the Villages portfolio on  
6     Treasure Island; (ii) remove 1108 Halyburton Court, 1149 Gateview Avenue, 1305 Gateview  
7     Avenue, 1309 Gateview Avenue, 1437 Chinook Court, and 1449 Croaker Court, Quarters 7,  
8     located at 70 Garden Way, Yerba Buena Island, and add 1206 Mariner Drive, 1220 Bayside  
9     Drive, 1244 Northpoint Drive, and 1251 Exposition Drive to the Premises; and (iii) revise the  
10    Common Area Maintenance Charges creating new rates for occupied units (\$322.00 per unit  
11    per month) and unoccupied units (\$50.00 per unit per month) and increase the Utility Fees to  
12    \$600.00 per unit per month to compensate for SFPUC fee adjustments; now, therefore be it

13           RESOLVED, That the Board of Directors hereby approves the proposed Eighth  
14    Amendment to the professional services agreement with John Stewart Company, a California  
15    Corporation to (i) establish fixed Management Fees, (ii) remove and add properties to the  
16    Premises, (iii) adjust the Common Area Maintenance Charges and Utility Fees, and (iv)  
17    execute an Amended and Restated Sublease and Property Management Agreement  
18    incorporating Amendments 1 through 8 and modifying language to reflect current property  
19    management operations and responsibilities, and authorizes the Treasure Island Director or  
20    his designee to execute said Amendment in substantially the form attached hereto as Exhibit  
21    A and said Amended and Restated Sublease and Property Management Agreement; and be it

22           FURTHER RESOLVED, That the Board of Directors hereby authorizes the Treasure  
23    Island Director or his designee to enter into any additions, amendments or other modifications  
24    to the Agreement that the Treasure Island Director or his designee determines in consultation  
25

1 with the City Attorney are in the best interests of the Authority, that do not materially increase  
2 the obligations or liabilities of the Authority, that do not materially reduce the rights of the  
3 Authority, and are necessary or advisable to complete the preparation and approval of the  
4 Agreement, such determination to be conclusively evidenced by the execution and delivery by  
5 the Treasure Island Director or his designee of the documents and any amendments thereto.

6  
7  
8  
9 **CERTIFICATE OF SECRETARY**

10 **I hereby certify that I am the duly elected Secretary of the Treasure Island**  
11 **Development Authority, a California nonprofit public benefit corporation, and that the**  
12 **above Resolution was duly adopted and approved by the Board of Directors of the**  
13 **Authority at a properly noticed meeting on January 14, 2026.**

14  
15  
16  
17 

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**Mark Dunlop, Secretary**