

**LEASE AGREEMENT**

**by and between**

**CUPERTINO PUBLIC FACILITIES CORPORATION,  
as Lessor**

**and**

**CITY OF CUPERTINO,  
as Lessee**

**Dated as of October 1, 2020**

**Relating to**

**\$ \_\_\_\_\_**

**CITY OF CUPERTINO  
2020A CERTIFICATES OF PARTICIPATION**

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## LEASE AGREEMENT

THIS LEASE AGREEMENT, is dated as of October 1, 2020, and entered into by and between the CUPERTINO PUBLIC FACILITIES CORPORATION, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California, as lessor (the "Corporation"), and the CITY OF CUPERTINO, a municipal corporation and a general law city duly organized and existing under and by virtue of the Constitution and laws of said State, as lessee (the "City");

### WITNESSETH:

WHEREAS, the City may enter into leases and agreements relating to real property and buildings to be used by the City; and

WHEREAS, the Corporation is authorized pursuant to the laws of the State of California and its formation documents to provide financial assistance to the City by acquiring, constructing and financing various public facilities, land and equipment and the leasing of facilities, land and equipment for the use, benefit and enjoyment of the public; and

WHEREAS, the City and the Corporation have heretofore entered into a Lease Agreement, dated as of May 1, 2012 (the "2012 Lease Agreement"), pursuant to which the Corporation agreed to lease to the City certain real property and improvements located thereon; and

WHEREAS, the City has previously executed and delivered its \$43,940,000 Certificates of Participation (2012 Refinancing Project) (the "Refunded Certificates"), which Refunded Certificates evidenced fractional interests in lease payments to be made under and pursuant to the terms the 2012 Lease Agreement; and

WHEREAS, in order to prepay the 2012 Lease Agreement and to defease and refinance the Refunded Certificates, the City and the Corporation are entering into this Lease Agreement (this "Lease") and authorizing and directing the execution and delivery of the \$\_\_\_\_\_ City of Cupertino 2020A Certificates of Participation (the "Certificates") evidencing fractional interests in Lease Payments (as defined in the Trust Agreement) to be made by the City under this Lease, executed and delivered pursuant to a Trust Agreement (the "Trust Agreement"), dated as of the date hereof, by and among the City, the Corporation, and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, the City has entered into a Site Lease of even date herewith (the "Site Lease") with the Corporation under which the City has agreed to lease the real property described in Exhibit B hereto, including any improvements thereon (the "Leased Premises"), to the Corporation, and which Site Lease provides that the title to the Leased Premises shall vest in the City at the expiration of the Site Lease (as provided in Section 8 thereof), and contains other terms and conditions as the governing board of the City deems to be in the best interest of the City; and

WHEREAS, in consideration of the Lease Payments to be paid by the City to the Corporation hereunder, the Corporation will lease to the City the Leased Premises on the terms and conditions set forth herein; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of the Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into the Lease.

NOW, THEREFORE, in consideration of the Leased Premises and of the mutual agreements and covenants contained herein and for other good and valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND EXHIBITS

**Section 1.1 Definitions and Rules of Construction.** Unless the context otherwise requires, the capitalized terms used herein shall, for all purposes of this Lease, have the meanings specified in the Trust Agreement, together with any amendments thereof or supplements thereto permitted to be made thereunder; and the additional terms defined in this Section shall, for all purposes of this Lease, have the meanings herein specified. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa. The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Lease, refer to this Lease as a whole.

“Environmental Regulations” shall mean all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*) (together with the regulations promulgated thereunder, “CERCLA”), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*) (together with the regulations promulgated thereunder, “RCRA”), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, *et seq.*) (together with the regulations promulgated thereunder, “Title III”), the Clean Water Act, as amended (33 U.S.C. Section 1321 *et seq.*) (together with the regulations promulgated thereunder, “CWA”), the Clean Air Act, as amended (42 U.S.C. Section 7401, *et seq.*) (together with the regulations promulgated thereunder, “CAA”) and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 *et seq.*) (together with the regulations promulgated thereunder, “TSCA”), and any state or local similar laws and regulations and any so-called local, state or federal “superfund” or “superlien” law.

“Interest Component” means the portion of each Lease Payment designated in Exhibit A hereto as the Interest Component.

“Leased Premises” means the site described in Exhibit B hereto and any improvements thereon being leased to the City by the Corporation hereunder.

“Permitted Encumbrances” means, as of any particular time: (i) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Section 7.6 hereof, permit to remain unpaid; (ii) the Assignment Agreement; (iii) this Lease; (iv) the Site Lease; (v) any contested right or claim of any mechanic, laborer, materialman, supplier or vendor filed or perfected in the manner prescribed by law to the extent permitted under Section 7.7(b) hereof; (vi) [that certain Lease Agreement for Cupertino Branch Library dated as of April 11, 1996, between the City and the Santa Clara County Library Joint Powers Authority, as it

may be amended from time to time, encumbering the Cupertino Library facility; (vii) that certain Lease Agreement dated as of \_\_\_\_\_, between the City and Jee Sung Lee (Coffee Society), encumbering a portion of the Cupertino Library facility]; (viii) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, liens or restrictions which exist of record as of the Delivery Date, which the City hereby certifies will not materially impair the use of the Leased Premises by the City; and (ix) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions, liens or restrictions established following the date of recordation of a memorandum of this Lease and to which the Corporation, the City and the Trustee consent in writing.

“Principal Component” means the portion of the Lease Payments designated in Exhibit A hereto as the Principal Component.

**Section 1.2 Exhibits.** The following Exhibits are attached to, and by reference made a part of, this Lease:

Exhibit A: Schedule of Lease Payments.

Exhibit B: Legal Description of the Leased Premises.

## ARTICLE II

### REPRESENTATIONS, COVENANTS AND WARRANTIES

**Section 2.1 Representations, Covenants and Warranties of the City.** The City represents, covenants and warrants to the Corporation as follows:

(a) Due Organization and Existence. The City is a municipal corporation and a general law city duly organized and existing under the Constitution and laws of the State.

(b) Authorization; Enforceability. The Constitution and laws of the State authorize the City to enter into this Lease, the Site Lease, the Trust Agreement, the Escrow Agreement and the Continuing Disclosure Certificate, and to enter into the transactions contemplated by and to carry out its obligations under all of the aforesaid leases and agreements; the City has duly authorized the execution and delivery of all of the aforesaid leases and agreements. This Lease, the Site Lease, the Trust Agreement, the Escrow Agreement and the Continuing Disclosure Certificate constitute the legal, valid and binding obligations of the City, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Default; No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Site Lease, the Trust Agreement, the Escrow Agreement or the Continuing Disclosure Certificate, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City, or upon the Leased Premises except for Permitted Encumbrances and the pledges contained in the Trust Agreement.

(d) Execution and Delivery. The City has duly authorized and executed this Lease in accordance with the Constitution and laws of the State.

(e) Indemnification of Corporation. The City covenants, to the extent permitted by law, to defend, indemnify and hold harmless the Corporation and its directors, officers, employees and assigns (collectively, the “Indemnified Party”) against any and all losses, claims, damages or liabilities, joint or several, including fees and expenses incurred in connection therewith, to which such Indemnified Party may become subject under any statute or at law or in equity or otherwise in connection with the transactions contemplated by this Lease, and shall reimburse any such Indemnified Party for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of the transactions contemplated by this Lease. In particular, without limitation, the City shall and hereby agrees, to the extent permitted by law, to indemnify and save the Indemnified Party harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (i) the use, maintenance, condition or management of, or from any work or thing done on the Leased Premises by the City, (ii) any breach or default on the part of the City in the performance of any of its obligations under this Lease, (iii) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Premises or (iv) any act of negligence of any assignee or sublessee of the City with respect to the Leased Premises. No indemnification is made under this Section or elsewhere in this Lease for claims, losses or damages, including legal fees and expenses arising out of the willful misconduct or negligence under this Lease by the Corporation, its directors, officers, agents, employees, successors or assigns.

(f) General Tax and Arbitrage Covenant. The City hereby covenants that, notwithstanding any other provision of this Lease, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the Interest Component evidenced by the Certificates under Section 103 of the Code. The City shall not, directly or indirectly, use or permit the use of proceeds of the Certificates or the Project, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the Interest Component evidenced by the Certificates.

The City shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Lease Payments evidenced by Certificates to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, shall not make any use of the proceeds of the Certificates or the Project, or any portion thereof, or any other funds of the City, that would cause the Lease Payments evidenced by Certificates to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any Certificates are outstanding, the City, with respect to such proceeds and the Project, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Code, to the extent such requirements are, at the time, applicable and in effect.

The City shall not, directly or indirectly, use or permit the use of any proceeds of any Certificates or of the Project, or other funds of the City, or take or omit to take any action, that would cause the Lease Payments evidenced by Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City shall comply with all requirements of Section 148 of



the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Lease Payments evidenced by Certificates.

The City shall not make any use of the proceeds of the Certificates or any other funds of the City, or take or omit to take any other action, that would cause the Lease Payments evidenced by Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(g) Essentiality of the Leased Premises. The City hereby represents that the Leased Premises is essential for the City’s performance of its governmental functions.

(h) Zoning Environmental and Safety Ordinance Compliance. The City hereby represents that the Leased Premises complies in all respects with applicable zoning, environmental and safety ordinances.

(i) Title Insurance. The City hereby represents that the Leased Premises is the same property which is the subject of the ALTA title insurance policy issued by First American Title Insurance Company pursuant to Section 5.5 hereof.

**Section 2.2 Representations, Covenants and Warranties of the Corporation.** The Corporation represents, covenants and warrants to the City as follows:

(a) Due Organization and Existence. The Corporation is a nonprofit public benefit corporation duly organized, existing and in good standing under and by virtue of the laws of the State.

(b) Authorization; Enforceability. The Corporation has the power to enter into this Lease, the Assignment Agreement, the Site Lease and the Trust Agreement; is possessed of full power to own and hold real and personal property, and to lease and sell the same; and has duly authorized the execution and delivery of all of the aforesaid leases and agreements. This Lease, the Assignment Agreement, the Site Lease and the Trust Agreement constitute the legal, valid and binding obligations of the Corporation, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Conflicts or Defaults; No Liens or Encumbrances. Neither the execution and delivery of this Lease, the Assignment Agreement, the Site Lease or the Trust Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of the Articles of Incorporation of the Corporation or any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Corporation, or upon the Leased Premises except for Permitted Encumbrances and the pledges contained in the Trust Agreement.

(d) Execution and Delivery. The Corporation has duly authorized and executed this Lease in accordance with the laws of the State.

(e) Maintenance of Existence. To the extent permitted by law, the Corporation agrees that during the term hereof it will maintain its existence as a nonprofit public benefit corporation, will not combine or consolidate with or merge into any other entity or permit one or more other entities to consolidate with or merge into it.

(f) General Tax and Arbitrage Covenant. To the extent that the Corporation may control the Project or the proceeds of the Certificates, the Corporation covenants that, notwithstanding any other provision of this Lease, it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income for federal income tax purposes of the Interest Component evidenced by the Certificates under Section 103 of the Code. To the extent that the Corporation may control the Project or the proceeds of the Certificates, the Corporation shall not, directly or indirectly, use or permit the use of proceeds of the Certificates or the Project, or any portion thereof, by any person other than a governmental unit (as such term is used in Section 141 of the Code), in such manner or to such extent as would result in the loss of exclusion from gross income for federal income tax purposes of the Interest Component evidenced by the Certificates.

To the extent that the Corporation may control the Project or the proceeds of the Certificates, the Corporation shall not take any action, or fail to take any action, if any such action or failure to take action would cause the Lease Payments evidenced by Certificates to be “private activity bonds” within the meaning of Section 141 of the Code, and in furtherance thereof, to the extent that the Corporation may control the Project or the proceeds of the Certificates, the Corporation shall not make any use of the proceeds of the Certificates or the Project, or any portion thereof, or any other funds of the City, that would cause the Lease Payments evidenced by Certificates to be “private activity bonds” within the meaning of Section 141 of the Code. To that end, so long as any Certificates are outstanding, the Corporation, with respect to such proceeds, the Project, to the extent of its control thereof, will comply with applicable requirements of the Code and all regulations of the United States Department of the Treasury issued thereunder and under Section 103 of the Code, to the extent such requirements are, at the time, applicable and in effect.

To the extent that the Corporation may control the Project or the proceeds of the Certificates, the Corporation shall not, directly or indirectly, use or permit the use of any proceeds of any Certificates, or of the Project, or other funds of the City, or take or omit to take any action, that would cause the Lease Payments evidenced by Certificates to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the Corporation shall comply with all requirements of Section 148 of the Code and all regulations of the United States Department of the Treasury issued thereunder to the extent such requirements are, at the time, in effect and applicable to the Lease Payments evidenced by Certificates.

To the extent that the Corporation may control the proceeds of the Certificates, the Corporation shall not make any use of the proceeds of the Certificates or any other funds of the Corporation, or take or omit to take any other action, that would cause the Lease Payments evidenced by Certificates to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

## ARTICLE III

### APPLICATION OF PROCEEDS

**Section 3.1 Deposit of Certificate Proceeds.** On the Delivery Date for the Certificates and on the Delivery Date for any Additional Certificates, the Corporation agrees to pay or cause to be paid to the Trustee the proceeds of the sale of the Certificates and Additional Certificates, which moneys, in the case of the Certificates, shall be deposited with the Trustee as provided in Section 3.01 of the Trust Agreement, or in the case of Additional Certificates as provided in any Supplemental Trust Agreement which relates to such Additional Certificates.

**Section 3.2 Defeasance of Refunded Certificates.** The Corporation's lease payment for the Leased Premises in the amount of the net proceeds of the Certificates, as provided in the Site Lease, shall be deposited in the Escrow Fund as provided in the Trust Agreement, which moneys shall be disbursed for purpose of defeasing the Refunded Certificates in accordance with the Trust Agreement. The City shall deliver the amount required to defease the Refunded Certificates on the Delivery Date to the Trustee.

**Section 3.3 Further Assurances and Corrective Instruments.** The Corporation and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Premises hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

## ARTICLE IV

### AGREEMENT TO LEASE; TERM OF LEASE; LEASE PAYMENTS

**Section 4.1 Lease.** The Corporation hereby leases the Leased Premises to the City, and the City hereby leases the Leased Premises from the Corporation, upon the terms and conditions set forth herein. This Lease shall not operate as a merger of the City's leasehold estate in the Leased Premises pursuant to this Lease and its fee estate in the Leased Premises and shall not cause the extinguishment of the leasehold interest granted to the Corporation under the Site Lease.

**Section 4.2 Term.** The Term of this Lease shall commence on the date of execution and delivery of the Certificates and shall end on June 1, 2030, unless extended pursuant to Section 4.3 hereof, or unless terminated prior thereto upon the earliest of any of the following events:

(a) Default and Termination. A default by the City and the Corporation's election to terminate this Lease under Section 9.2(b) hereof;

(b) Payment of All Lease Payments. The payment by the City of all Lease Payments required under Section 4.4 hereof and any Additional Payments required under Section 4.11 hereof; or

(c) Prepayment. The deposit of funds or Government Obligations with the Trustee in amounts sufficient to pay all Lease Payments as the same shall become due, as provided in Section 10.1 hereof and in Section 14.01 of the Trust Agreement.

**Section 4.3 Extension of Lease Term.** The Term of this Lease may be extended in connection with the execution and delivery of any Additional Certificates. If on the final maturity date of the Certificates or any Additional Certificates all Interest Components and Principal Components represented thereby shall not be fully paid by the City as a result of a default in the payment of Lease Payments, or because the Lease Payments hereunder shall have been abated at any time as permitted by the terms hereof, then the Term shall be extended until all Certificates and Additional Certificates shall be fully paid, except that the Term shall in no event be extended beyond the tenth (10th) anniversary of the final scheduled maturity of any Certificate or Additional Certificate.

**Section 4.4 Lease Payments.**

(a) Time and Amount. Subject to the provisions of Section 4.10 (regarding abatement in event of loss of use of any portion of the Leased Premises) and Article X (regarding prepayment of Lease Payments), the City agrees to pay to the Corporation, its successors and assigns, as annual rental for the use and possession of the Leased Premises, the Lease Payments (denominated into components of principal and interest, the Interest Component of such Lease Payment being paid semiannually) in the amounts specified in Exhibit A, to be due and payable in arrears on each Lease Payment Date, which are sufficient in both time and amount to pay when due the annual principal and interest represented by the Certificates. In the event that any Additional Certificates are executed and delivered pursuant to the Trust Agreement, the City and the Trustee shall execute an amendment to Exhibit A to state the Lease Payments due hereunder as a result of the execution and delivery of such Additional Certificates.

The obligation of the City to pay Lease Payments shall commence on the Delivery Date for the Certificates.

In the event the City does not pay a Lease Payment due on the respective Lease Payment Date, the Trustee shall provide prompt written notice to the City of such failure to pay; provided, however, that failure to give such notice shall not excuse any event of default under Section 9.1 hereof.

(b) Credits. Any amount held in the Lease Payment Fund on any Lease Payment Date (other than capitalized interest, which shall be credited in accordance with Section 5.03 of the Trust Agreement, and other than amounts resulting from the prepayment of the Lease Payments in part but not in whole pursuant to Section 10.2 hereof and other amounts required for payment of principal with respect to any Certificates or Additional Certificates that have matured or been called for payment and have not been presented for payment or interest) shall be credited towards the applicable Lease Payment then due and payable. The City need not transfer additional cash to the Trustee on any Lease Payment Date if the amounts then held in the Lease Payment Fund (other than those amounts excluded under the prior sentence) are at least equal to the Lease Payment then required to be paid.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the Lease Payments required in this Section, the Lease Payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, to the extent permitted by law, from the date such amount was originally payable at the rate equal to the original interest rate payable with respect to each Certificate or Additional Certificate, as applicable, represented by such delinquent Lease Payment.

**Section 4.5 No Withholding.** Notwithstanding any dispute between the Corporation and the City, including a dispute as to the failure of any portion of the Leased Premises in use by or possession of the City to perform the task for which it is leased, the City shall make all Lease Payments and Additional Payments when due and shall not withhold any Lease Payments pending the final resolution of such dispute.

**Section 4.6 Fair Rental Value.** The Lease Payments and Additional Payments shall be paid by the City in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Leased Premises during each such period for which said Lease Payments are to be paid. The parties hereto have agreed and determined that such total rental represents the fair rental value of the Leased Premises. In making such determination, consideration has been given to the fair market value and replacement cost of the Leased Premises, other obligations of the parties under this Lease (including but not limited to costs of maintenance, taxes and insurance), the uses and purposes which may be served by the Leased Premises and the benefits therefrom which will accrue to the City and the general public, and the transfer of the Corporation's leasehold interest in the Leased Premises at the end of the Term.

**Section 4.7 Budget and Appropriation.** The City covenants to take such action as may be necessary to include in its annual budget all Lease Payments and Additional Payments (to the extent the amounts of such Additional Payments are known to the City at the time its annual budget is proposed), due hereunder in the Fiscal Year covered by its annual budget, and to make the necessary annual appropriations therefor, and to maintain such items to the extent unpaid for that Fiscal Year in its budget throughout such Fiscal Year. To the extent the amount of such payments becomes known after the adoption of the annual budget, such amounts shall be included and maintained in such budget as amended. During the Term, the City will furnish annually to the Trustee a certificate of the City Representative stating that all Lease Payments and Additional Payments due hereunder for the applicable Fiscal Year have been included in its annual budget on or before August 1 of each Fiscal Year. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the ministerial duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

The obligation of the City to pay Lease Payments and Additional Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City, or the State, or any political subdivision thereof, in contravention of any applicable constitutional or statutory limitation or requirements concerning the creation of indebtedness by the City, the State, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the City beyond the Fiscal Year for which the City has appropriated funds to pay Lease Payments and Additional Payments hereunder or an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation.

**Section 4.8 Assignment of Lease Payments.** Certain of the Corporation's rights under this Lease, including the right to receive and enforce payment of the Lease Payments (including Prepayments) and Additional Payments to be made by the City hereunder, have been assigned absolutely to the Trustee, subject to certain exceptions, pursuant to the Assignment Agreement, to which assignment the City hereby consents. The Corporation hereby directs the City, and the City

hereby agrees, to pay to the Trustee at the Trustee's corporate trust office designated in the Trust Agreement, or to the Trustee at such other place as the Trustee shall direct in writing, all Lease Payments or Prepayments thereof payable by the City hereunder. The Corporation will not assign or pledge the Lease Payments or other amounts derived from the Leased Premises and from its other rights under this Lease except as provided under the terms of this Lease, the Assignment Agreement and the Trust Agreement, or its duties and obligations except as provided under this Lease.

**Section 4.9 Use and Possession.** The total Lease Payments due in any Fiscal Year shall be for the City's right to use and possession of the Leased Premises for such Fiscal Year. During the Term of this Lease, the City shall be entitled to the exclusive use and possession of the Leased Premises, subject only to the Permitted Encumbrances.

**Section 4.10 Abatement of Lease Payments and Additional Payments.**

(a) In the Event of Damage, Destruction, Condemnation or Title Defect. Except to the extent that proceeds of the type described in the following paragraph are available, the amount of Lease Payments and Additional Payments shall be completely or partially abated during any period in which, by reason of material damage, destruction or taking by eminent domain or condemnation of the Leased Premises or defects in the title with respect to the Leased Premises there is substantial interference with the use and right of possession of all or a portion of the Leased Premises by the City. The amount of such abatement shall be such that the resulting Lease Payments, exclusive of the amounts described in the following paragraph, do not exceed the fair rental value (as determined by an independent real estate appraiser selected by the City, who is not an employee of the City) for the use and possession of the portion of the Leased Premises not damaged, destroyed, interfered with or taken. Such abatement shall continue for the period commencing with such material damage, destruction, interference or taking and ending with the substantial completion of the replacement or work of repair or the removal of the title defect causing such interference with use. Except as provided herein, in the event of any such damage, destruction, interference or taking, this Lease shall continue in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage, destruction, interference or taking.

Notwithstanding a substantial interference with the use and possession of all or a portion of the Leased Premises, the City shall remain obligated to make Lease Payments which would otherwise be abated (i) to the extent that moneys derived from any person as a result of any delay in the reconstruction, replacement or repair of the Leased Premises, or any portion thereof, are available to pay the amount which would otherwise be abated; and (ii) to the extent that moneys are available in the Lease Payment Fund to pay the amount which would otherwise be abated. The Lease Payments shall be payable from such amounts paid under (i) and (ii) above as an obligation of the City payable from a special fund.

(b) Repair or Replacement. In the event of such abatement, unless the abatement will be avoided as a result of a prepayment of Lease Payments from Net Proceeds pursuant to Section 6.1(c) hereof, the City will use its best efforts to repair or replace the damaged or destroyed or taken portion of the Leased Premises, as the case may be, from Net Proceeds or special funds of the City or other moneys the application of which would, in the opinion of Special Counsel addressed to the Trustee, the City and the Corporation, not result in the obligations of the City hereunder constituting indebtedness of the City in contravention of the Constitution and laws of the State.

**Section 4.11 Additional Payments.** In addition to the Lease Payments, the City shall also pay such amounts (“Additional Payments”) as shall be required for the payment of all administrative costs of the Corporation relating to the Leased Premises, the Certificates and any Additional Certificates, including, without limitation, all expenses, compensation and indemnification of the Trustee payable by the City under the Trust Agreement, taxes of any sort whatsoever payable by the Corporation as a result of its leasehold interest in the Leased Premises or undertaking of the transactions contemplated herein or in the Trust Agreement, fees of auditors, accountants, attorneys or engineers and any and all other necessary administrative costs of the Corporation or charges required to be paid by it in order to comply with the terms of the Certificates and any Additional Certificates or of the Trust Agreement, including premiums on insurance maintained pursuant to Article V hereof or to indemnify the Corporation and its employees, officers and directors and the Trustee. All such Additional Payments to be paid hereunder shall be paid when due directly by the City to the respective parties to whom such Additional Payments are owing.

**Section 4.12 Net-Net-Net Lease.** This Lease shall be deemed and construed to be a “net-net-net lease” and the City hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, taxes, fees, insurance premiums, rebate payments, reserve deposits, costs associated with the Leased Premises, charges or set-offs whatsoever, except as expressly provided herein.

## **ARTICLE V**

### **INSURANCE**

**[City Risk Management to Approve.]**

#### **Section 5.1 Public Liability and Leased Premises Damage.**

(a) Coverage. The City shall maintain or cause to be maintained, throughout the Term hereof, a standard comprehensive general public liability and property damage insurance policy or policies in protection of the City and the Corporation and their officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the use or operation of any City property or portion thereof.

(b) Limits. Said policy or policies shall provide coverage in the minimum liability limits of One Million Dollars (\$1,000,000) for personal injury or death of each person and Three Million Dollars (\$3,000,000) for personal injury or deaths of two or more persons in each accident or event, and in a minimum amount of Five Hundred Thousand Dollars (\$500,000) for damage to property resulting from each accident or event (in each case subject to a deductible clause of not to exceed Five Hundred Thousand Dollars (\$500,000)). Such public liability and property damage insurance may, however, be in the form of a single limit policy covering all such risks in an amount equal to the liability limits set forth herein.

(c) Joint or Self-Insurance. Such liability insurance, including the deductible, may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and, subject to compliance with Section 5.6(e) hereof, may be maintained in the form of self-insurance by the City.

(d) Payment of Net Proceeds. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which the insurance proceeds shall have been paid.

**Section 5.2 Workers' Compensation.** The City shall also maintain workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure its employees against liability for compensation under the Workers' Compensation Insurance and Safety Act now in force in the State, or any act hereafter enacted as an amendment or supplement thereto (with provision for self-insurance).

**Section 5.3 Casualty and Theft Insurance.**

(a) Casualty and Theft Insurance; Coverage. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, insurance against loss or damage to any portion of the Leased Premises caused by fire and lightning, with extended coverage and theft, vandalism and malicious mischief insurance. Said extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, excluding flood and earthquake. The City shall not be required to purchase or maintain earthquake insurance with respect to the Leased Premises.

(b) Amount. Such insurance shall be in an amount not less than the replacement cost of the Leased Premises, subject to a "deductible clause" not to exceed Five Hundred Fifty Thousand Dollars (\$500,000) for any one loss or, in the case of a flood and earthquake rider, ten percent (10%) of the coverage obtained. The term "full replacement value" as used in this Section 5.3 shall mean the actual replacement cost of the improvements constituting the Leased Premises.

(c) Joint or Self-Insurance. Such insurance may be maintained as part of or in conjunction with any other insurance carried or required to be carried by the City, and, subject to compliance with Section 5.6(e) hereof, may be maintained in the form of self-insurance by the City. Insurance obtained through a California joint powers authority of which the City is a member shall not be deemed to be self-insurance.

(d) Payment of Net Proceeds. The Net Proceeds of such insurance shall be paid to the Trustee and deposited in the Net Proceeds Fund and applied as provided in Section 6.1 hereof.

**Section 5.4 Rental Interruption Insurance.**

(a) Coverage and Amount. Upon delivery of the Leased Premises to it for occupancy, the City shall maintain or cause to be maintained rental income or use and occupancy insurance in an amount not less than the maximum remaining scheduled Lease Payments in any future twenty-four- (24) month period, to insure against loss of rental income from the Leased Premises caused by perils covered by the insurance required to be maintained as provided in Section 5.3 hereof. Such rental interruption insurance shall name the Trustee and the Corporation as additionally insured parties and the Trustee as the loss payee.



(b) Joint Insurance. Such insurance may be maintained as part of or in conjunction with any other rental income or use and occupancy insurance carried by the City but may not be maintained in the form of self-insurance by the City.

(c) Payment of Net Proceeds. The Net Proceeds of such rental interruption insurance shall be paid to the Trustee and deposited in the Lease Payment Fund, to be credited towards the payment of the Lease Payments in the order in which such Lease Payments come due and payable if there are insufficient Net Proceeds to pay all Lease Payments due in any such Certificate Year.

**Section 5.5 Title Insurance.** The City shall obtain and, throughout the Term of this Lease, maintain or cause to be maintained title insurance on the Leased Premises, in the form of an ALTA leasehold title insurance policy (with western regional exceptions), in an amount equal to the aggregate principal amount of the Certificates and Additional Certificates Outstanding, issued by a company of recognized standing, duly authorized to issue the same, payable to the Trustee for the benefit of the Owners, subject only to Permitted Encumbrances. Said policy or policies shall insure the City's leasehold estate hereunder in the Leased Premises, subject only to Permitted Encumbrances. All Net Proceeds received under said policy or policies shall be deposited with the Trustee and applied as provided in Section 7.01 of the Trust Agreement. So long as any of the Certificates and Additional Certificates remain Outstanding, each policy of the title insurance obtained pursuant hereto or required hereby shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Certificate Owners and the owners of any Additional Certificates. The Net Proceeds of such insurance shall be applied as provided in Section 6.1 hereof.

#### **Section 5.6 General Insurance Provisions.**

(a) Form of Policies. All policies of insurance required to be procured and maintained pursuant to this Lease and any statements of self-insurance shall be in a form certified by the City Representative or an insurance agent, broker or consultant to the City to comply with the provisions hereof. All such policies shall provide that the insured parties shall be given thirty (30) days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. Each policy of insurance required to be procured and maintained pursuant to Section 5.3 (regarding casualty and theft insurance), Section 5.4 (regarding rental interruption insurance) and Section 5.5 (regarding title insurance) hereof shall provide that all proceeds thereunder shall be payable to the Trustee for the benefit of the Owners. All required insurance policies must be provided by a commercial insurer rated A by Best or A- and A3 by S&P and Moody's, respectively. All policies shall name the City, the Corporation and the Trustee as insureds and the Trustee as a loss payee.

(b) Payment of Premiums. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease, and shall promptly furnish or cause to be furnished to the Trustee a certificate to such effect, as described in paragraph (d) below.

(c) Protection of the Trustee. The Trustee shall not be responsible for the sufficiency or adequacy of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss agreed to by the Trustee.

(d) Evidence of Insurance. The City shall cause to be delivered to the Trustee annually on or before August 1 a certificate stating that the insurance policies required by this Lease are in full force and effect.

(e) Self-Insurance. The City may only elect to self-insure pursuant to Sections 5.1 and 5.2 hereof if and to the extent such self-insurance method or plan of protection shall afford reasonable protection to the Corporation and the Trustee, in light of all circumstances, giving consideration to cost, availability and similar plans or methods of protection adopted by other cities in the State other than the City. Insurance provided through a California joint powers authority of which the City is a member or with which the City contracts for insurance shall not be deemed to be self-insurance for purposes hereof. Any self-insurance maintained by the City pursuant to this Article V shall comply with the following terms:

(i) The self-insurance program shall be approved in writing by the City's City Manager or Assistant City Manager and an independent insurance consultant in accordance with the California Labor Code and the California Government Code;

(ii) The self-insurance program shall include an actuarially sound claims reserve fund out of which each self-insured claim shall be paid; the adequacy of such fund shall be evaluated on an annual basis by the City Representative in a certified statement delivered to the Trustee; and any deficiencies in any self-insured claims reserve fund shall be remedied in accordance with the recommendation of the City Representative;

(iii) The self-insurance fund must be held in a separate trust fund by an independent trustee; and

(iv) In the event the self-insurance program shall be discontinued, the actuarial soundness of its claims reserve fund, as determined by the City Representative, shall be maintained.

**Section 5.7 Cooperation.** The Corporation shall cooperate fully with the City at the expense of the City in filing any proof of loss with respect to any insurance policy maintained pursuant to this Article and in the prosecution or defense of any prospective or pending condemnation proceeding with respect to the Leased Premises or any portion thereof.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

#### Section 6.1 Application of Net Proceeds.

(a) Deposit in Net Proceeds Fund. The City shall remit to the Trustee any Net Proceeds received by the City and the Trustee as provided in Section 5.3 (regarding casualty and theft insurance) and Section 5.5 (regarding title insurance) hereof promptly upon receipt thereof, and pursuant to Section 7.01 of the Trust Agreement, the Trustee shall deposit such Net Proceeds of insurance in the Net Proceeds Fund. The City and/or the Corporation shall transfer to the Trustee any other Net Proceeds (other than Net Proceeds paid under Sections 5.1, 5.2 and 5.4 hereof which shall be applied as described in such sections) received by the City and/or Corporation in the event of

any accident, destruction, theft or taking by eminent domain or condemnation with respect to the Leased Premises, for deposit in the Net Proceeds Fund.

(b) Disbursement for Replacement or Repair of the Leased Premises. Upon receipt of the certification described in paragraph (i) below and the requisition described in paragraph (ii) below, the Trustee shall disburse moneys in the Net Proceeds Fund to the person, firm or corporation named in the requisition as provided in paragraph (ii) below.

(i) Certification. The City Representative must certify to the Corporation and the Trustee that:

(x) Sufficiency of Net Proceeds. The Net Proceeds available for such purpose, together with any other funds supplied by the City to the Trustee in a subaccount of the Net Proceeds Fund for such purpose, are expected to equal at least one hundred percent (100%) of the projected costs of replacement or repair, as demonstrated in an attached reconstruction budget, and

(y) Timely Completion. In the event that damage, destruction or taking results, or is expected to result, in an abatement of Lease Payments, such replacement or repair can be fully completed within a period not in excess of the period in which rental interruption insurance proceeds, as described in Section 5.4 hereof, together with other identified available moneys, will be available to pay in full all Lease Payments coming due during such period as demonstrated in an attached reconstruction schedule.

(ii) Requisition. The City Representative must deliver to the Trustee a Requisition stating with respect to each payment to be made (1) the requisition number, (2) the name and address of the person, firm or corporation to whom payment is due, (3) the amount to be paid and (4) that each obligation mentioned therein has been properly incurred, is a proper charge against the Net Proceeds Fund, has not been the basis of any previous withdrawal, and specifying in reasonable detail the nature of the obligation. Each such cost requisition shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts.

Any balance of the Net Proceeds remaining after such replacement or repair has been completed and after payment or provision for payment of all Certificates as provided in Section 7.01 of the Trust Agreement and all Additional Certificates as provided in any Supplemental Trust Agreement pursuant to which such Additional Certificates are executed and delivered shall be paid to the City after payment of amounts due the Trustee pursuant to Sections 9.6 and 9.7 of the Trust Agreement.

(c) Disbursement for Prepayment. If the City Representative notifies the Trustee in writing of the City's determination that the certification provided in Section 6.1(b)(i) hereof cannot be made or that replacement or repair of any portion of the Leased Premises is not economically feasible or in the best interest of the City, then the Trustee shall promptly transfer the Net Proceeds to the Prepayment Fund as provided in Section 7.01 of the Trust Agreement and apply them to prepayment of the Certificates as provided in Section 4.02 of the Trust Agreement and Additional Certificates as provided in a Supplemental Trust Agreement and prepayment of Lease Payments as provided in Section 10.2 hereof; provided that in the event of damage or destruction in whole of the Leased Premises and in the event such Net Proceeds, together with funds then on hand in the Lease

Payment Fund are not sufficient to prepay all the Certificates and Additional Certificates then Outstanding, then the City shall not be permitted to certify that repair, replacement or improvement of all of the Leased Premises is not economically feasible or in the best interest of the City. In such event, the City shall proceed to repair, replace or improve the Leased Premises as described herein from legally available funds in the then-current Fiscal Year and shall make the required notification to the Trustee pursuant to Section 7.01 of the Trust Agreement and the Trustee shall disburse moneys in the Net Proceeds Fund to the person, firm, or corporation named in the Requisition as provided therein.

## **ARTICLE VII**

### **COVENANTS WITH RESPECT TO THE LEASED PREMISES**

**Section 7.1 Use of the Leased Premises.** The City represents and warrants that it has an immediate need for, and expects to make immediate use of, all of the Leased Premises, which need is not temporary or expected to diminish in the foreseeable future.

**Section 7.2 Interest in the Leased Premises and the Lease.**

(a) Corporation Holds Leasehold Interest During Term. During the Term of this Lease, the Corporation does and shall hold a leasehold interest in the Leased Premises pursuant to the Site Lease. The City shall take any and all actions reasonably required, including but not limited to executing and filing any and all documents reasonably required, to maintain and evidence such title and interest at all times during the Term of this Lease.

(b) Title Transferred to the City at End of Term. Upon expiration of the Term as provided in Section 4.2(b) or 4.2(c) hereof, all right, title and interest of the Corporation in and to all of the Leased Premises shall be transferred to and vest in the City, without the necessity of any additional document of transfer.

**Section 7.3 Quiet Enjoyment.** During the Term, the Corporation shall provide the City with quiet use and enjoyment of the Leased Premises, and the City shall during such Term peaceably and quietly have, hold and enjoy all of the Leased Premises, without suit, trouble or hindrance from the Corporation, or any person or entity claiming under or through the Corporation except as expressly set forth in this Lease. The Corporation will, at the request of the City, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so. Notwithstanding the foregoing, the Corporation shall have the right to inspect the Leased Premises as provided in Section 7.5 hereof.

**Section 7.4 Installation of the City's Personal Property.** The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other property in or upon any portion of the Leased Premises. All such items shall remain the sole property of the City, regardless of the manner in which the same may be affixed to such portion of the Leased Premises, in which neither the Corporation nor the Trustee shall have any interest, and may be modified or removed by the City at any time; provided that the City shall repair and restore any and all damage to such portion of the Leased Premises resulting from the installation, modification or removal of any such items of equipment. Nothing in this Lease shall prevent the City from purchasing items to be installed pursuant to this Section, provided that no lien or security interest shall attach to any part of the Leased Premises.

**Section 7.5 Access to the Leased Premises.** The City agrees that the Corporation, any Corporation Representative and the Corporation's successors, assigns or designees shall have the right at all reasonable times to enter upon the Leased Premises or any portion thereof to examine and inspect the Leased Premises. The City further agrees that the Corporation, any such Corporation Representative, and the Corporation's successors, assigns or designees shall have such rights of access to the Leased Premises as may be reasonably necessary to cause the proper maintenance of the Leased Premises in the event of failure by the City to perform its obligations hereunder.

**Section 7.6 Maintenance, Utilities, Taxes and Assessments.**

(a) Maintenance; Repair and Replacement. Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Premises, all repair and maintenance of the Leased Premises shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Premises resulting from ordinary wear and tear or want of care on the part of the City or any sublessee thereof. In exchange for the Lease Payments herein provided, the Corporation agrees to provide only the Leased Premises, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932 of the California Civil Code, but such waiver shall not limit any of the rights of the City under the terms of this Lease.

(b) Tax and Assessments; Utility Charges. The City shall also pay or cause to be paid all taxes and assessments, including but not limited to utility charges, of any type or nature charged to the Corporation or the City or levied, assessed or charged against any portion of the Leased Premises or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Lease as and when the same become due.

(c) Contests. The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom; provided that prior to such nonpayment it shall furnish the Corporation and the Trustee with the opinion of an Independent Counsel acceptable to the Corporation, to the effect that, by nonpayment of any such items, the interest of the Corporation in such portion of the Leased Premises will not be materially endangered and that the Leased Premises will not be subject to loss or forfeiture. Otherwise, the City shall promptly pay such taxes, assessments or charges or make provisions for the payment thereof in form satisfactory to the Corporation. The Corporation will cooperate fully in such contest, upon the request and at the expense of the City.

**Section 7.7 Modification of the Leased Premises.**

(a) Additions, Modifications and Improvements. The City shall, at its own expense, have the right to make additions, modifications, and improvements to any portion of the Leased Premises if such improvements are necessary or beneficial for the use of such portion of the Leased Premises. All such additions, modifications and improvements shall thereafter comprise part of the Leased Premises and be subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way cause an abatement of Lease Payments with respect to the Leased Premises or cause it to be used for purposes other than those authorized under the provisions

of State and federal law or in any way which would impair the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest with respect to the Certificates and Additional Certificates (to the extent such Additional Certificates were executed and delivered as tax exempt Certificates); and the Leased Premises, upon completion of any additions, modifications and improvements made pursuant to this Section, shall have an annual fair rental value which is not less than the annual Lease Payments.

(b) No Liens. Except for Permitted Encumbrances, the City will not permit any mechanic's or other lien to be established or remain against the Leased Premises for labor or materials furnished in connection with any additions, modifications or improvements made by the City pursuant to this Section; provided that if any such lien is established and the City shall first notify or cause to be notified the Corporation of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Premises, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Trustee (as assignee of the Corporation). The Corporation will cooperate fully in any such contest, upon the request and at the expense of the City.

(c) Replacements, Redevelopment and Renovation. The City shall, at its own expense, or with the proceeds of Additional Certificates, have the right to make replacements, redevelopment or renovation of all or a portion of the Leased Premises if the following conditions precedent are satisfied:

(i) The City receives an opinion of Special Counsel, a copy of which the City shall furnish to the Corporation and the Trustee, that (1) such replacement does not adversely affect the federal income tax exclusion or the State tax-exempt status of the interest with respect to the Certificates and Additional Certificates (to the extent such Additional Certificates were executed and delivered as tax exempt Certificates), and (2) this Lease will remain the legal, valid, binding and enforceable obligation of the City;

(ii) In the event such replacement, redevelopment or renovation would result in the temporary abatement of Lease Payments as provided in Section 4.10 hereof the City shall have notified any rating agency then providing a rating on the Certificates and shall deposit moneys with the Trustee in advance for payment of Lease Payments from the proceeds of Additional Certificates or from special funds of the City or other moneys, the application of which would not, in the opinion of Special Counsel (a copy of which shall have been delivered to the Trustee), result in such Lease Payments constituting indebtedness of the City in contravention of the Constitution and laws of the State;

(iii) The City shall certify to the Trustee that it has sufficient funds to complete such replacement, redevelopment or renovation; and

(iv) In the case of replacement(s), redevelopment or renovation other than from the proceeds of Additional Certificates, the City and the Trustee receive an independent appraisal from a California certified general appraiser that the annual fair rental value of the replacements will be at least equal to the annual Lease Payments immediately prior to such replacement or redevelopment.

## **Section 7.8     Encumbrances; Alternative Financing Methods.**

(a)     Encumbrances. Except as provided in this Article VII (including without limitation Section 7.7 hereof and this Section 7.8), the City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, liens, charges, encumbrances or claims, as applicable, on or with respect to the Leased Premises, other than Permitted Encumbrances and other than the respective rights of the Corporation and the City as herein provided. Except as expressly provided in this Article VII, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time; provided that the City may contest such liens if it desires to do so. The City shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

(b)     Alternative Financing Methods. Notwithstanding the foregoing, the City may create or suffer to create any mortgage, pledge, liens, charges, encumbrances or claims upon the Leased Premises or any improvements thereto, provided that (1) any such mortgage, pledge, liens, charges, encumbrances or claims shall at any time while any of the Certificates or Additional Certificates remain Outstanding be and remain subordinate in all respects to the Site Lease and Lease and any security interest given to the Trustee for the benefit of the Owners and (2) the City shall have first delivered to the Trustee an opinion of Special Counsel substantially to the effect that such mortgage, pledge, liens, charges, encumbrances or claims would not result in the inclusion of the interest with respect to the Certificates and the Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax exempt Certificates) in the gross income of the owners thereof for purposes of federal income taxation or impair the State tax-exempt status of such interest payments.

**Section 7.9     Corporation's Disclaimer of Warranties.** THE CORPORATION MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PREMISES, OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY IS LEASING THE LEASED PREMISES AS IS. In no event shall the Corporation be liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease, the Site Lease, the Assignment Agreement or the Trust Agreement for the existence, furnishing, functioning or the City's use and possession of the Leased Premises.

**Section 7.10     The City's Right to Enforce Warranties of Vendors or Contractors.** The Corporation hereby irrevocably appoints the City its agent and attorney-in-fact during the Term of this Lease, so long as the City shall not be in default hereunder, to assert from time to time whatever claims and rights, including without limitation, warranty claims, claims for indemnification and claims for breach of any representations, respecting the Leased Premises which the Corporation may have against any vendor or contractor. The City's sole remedy for the breach of any such warranty, indemnification or representation shall be against the vendor or contractor with respect thereto, and not against the Corporation, nor shall such matter have any effect whatsoever on the rights and obligations of the Corporation with respect to this Lease, including the right to receive full and timely Lease Payments and all other payments due hereunder. The City shall be entitled to retain any and all amounts recovered as a result of the assertion of any such claims and rights. The Corporation

shall, upon the City's request and at the City's expense, do all things and take all such actions as the City may request in connection with the assertion of any such claims and rights.

#### **Section 7.11 Substitution or Release of the Leased Premises.**

(a) The City shall have the right to substitute alternate real property for any portion of the Leased Premises or to release a portion of the Leased Premises from the lien of this Lease by satisfying the conditions set forth in paragraphs (i) through (v) of this Section 7.11. All costs and expenses incurred in connection with such substitution or release shall be borne by the City. Notwithstanding any substitution or release pursuant to this Section, there shall be no reduction in or abatement of the Lease Payments due from the City hereunder as a result of such substitution or release. Any such substitution or release of any portion of the Leased Premises shall be subject to the following specific conditions, which are hereby made conditions precedent to such substitution or release:

(i) The City shall have delivered a written certificate to the Trustee setting forth its findings that the Property, as constituted after such substitution or release: (A) has an annual fair rental value at least equal to the maximum Lease Payments payable by the City in any rental period; and (B) has a useful life in excess of the final maturity of any Outstanding Certificates;

(ii) the City shall have obtained or caused to be obtained an ALTA title insurance policy or policies with respect to any substituted property in the amount at least equal to the aggregate principal amount of any Outstanding Certificates of the type and with the endorsements described in Section 5.02 hereof;

(iii) the City shall have provided the Trustee with an opinion of Special Counsel to the effect that such substitution or release will not, in and of itself, cause the interest evidenced and represented by the Certificates and any Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax-exempt Certificates) to be included in gross income for federal income tax purposes;

(iv) the City, the Corporation and the Trustee shall have executed, and the City shall have caused to be recorded with the Santa Clara County Recorder, any document necessary to reconvey to the City the portion of the Leased Premises being released and to include any substituted real property in the description of the Leased Premises contained herein and in the Site Lease; and

(v) the City shall have provided notice of such substitution or release to each rating agency then rating the Certificates.

#### **Section 7.12 Compliance with Law, Regulations, Etc.**

(a) Except as described in subsection (b) below, the City has, after due inquiry, no knowledge and has not given or received any written notice indicating that the past or present use of the Leased Premises or any practice, procedure or policy employed by it in the conduct of its business materially violates any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the



handicapped, or restrictive covenants or other agreements affecting title to the Leased Premises (collectively, "Laws and Regulations"). Without limiting the generality of the foregoing, neither the City nor to the best of its knowledge, after due inquiry, any prior or present owner, tenant or subtenant of the Leased Premises has, other than as set forth in subsections (a) and (b) of this Section or as may have been remediated in accordance with Laws and Regulations, (i) used, treated, stored, transported or disposed of any material amount of flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic, or regulated substances or related materials, as defined in CERCLA, RCRA, CWA, CAA, TSCA and Title III, and the regulations promulgated pursuant thereto, and in all other Environmental Regulations applicable to the City, the Leased Premises or the business operations conducted by the City thereon (collectively, "Hazardous Materials") on, from or beneath the Leased Premises, (ii) pumped, spilled, leaked, disposed of, emptied, discharged or released (hereinafter collectively referred to as "Release") any material amount of Hazardous Materials on, from or beneath the Leased Premises, or stored any material amount of petroleum products at the Leased Premises in underground storage tanks.

(b) Excluded from the representations and warranties in subsection (a) hereof with respect to Hazardous Materials are those Hazardous Materials in the amounts ordinarily found in the inventory of, or used in the maintenance of the City's City Hall, Library, or related buildings, the use, treatment, storage, transportation and disposal of which has been and shall be in compliance with all Laws and Regulations (the "Permitted Use").

(c) No portion of the Leased Premises located in an area of high potential incidence of radon has an unventilated basement or subsurface portion which is occupied or used for any purpose other than the foundation or support of the improvements to the Leased Premises.

### **Section 7.13 Environmental Compliance.**

(a) Other than the Permitted Use, the City shall not use or permit the Leased Premises or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements on the Leased Premises and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the Release or threat of Release of Hazardous Materials on, from or beneath the Leased Premises or onto any other Leased Premises excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of a municipal corporation, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release of Hazardous Materials other than the Permitted Use, the City shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Trustee, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Leased Premises, in compliance with all Environmental Regulations. Notwithstanding anything to the contrary contained herein, underground storage tanks shall only be permitted subject to compliance with subsection (d) and only to the extent necessary to maintain the improvements on the Leased Premises.

(b) The City shall comply with, and shall cause all tenants, subtenants, licensees, guests, invitees, contractors, employees and agents on the Leased Premises to comply with, all Environmental Regulations, and shall keep the Leased Premises free and clear of any liens imposed pursuant thereto; provided, however, that notwithstanding that a portion of this covenant is limited to the City's use of its best efforts, the City shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way the City's obligations contained in subsection (c) hereof as provided in subsection (c) hereof. Upon receipt of any notice from any person with regard to the Release of Hazardous Materials other than the Permitted Use on, from or beneath the Leased Premises, the City shall give prompt written notice thereof to the Trustee prior to the expiration of any period in which to respond to such notice under any Environmental Regulation.

(c) Irrespective of whether any representation or warranty contained in Section 7.12 hereof is not true or correct, the City shall, to the extent permitted by law, defend, indemnify and hold harmless the Trustee, the Owners, the Corporation and each of their respective employees, agents, officers, directors, trustees, successors and assigns, from and against any claims, demands, penalties, fines, attorneys' fees (including, without limitation, attorneys' fees incurred to enforce the indemnification contained in this Section 7.13), consultants' fees, investigation and laboratory fees, liabilities, settlements (five (5) Business Days' prior notice of which the Trustee shall have delivered to the City), court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to, (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Leased Premises, (ii) any personal injury (including wrongful death) or Leased Premises damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached (five (5) Business Days' prior notice of which the Trustee shall have delivered to the City), or governmental order relating to Hazardous Materials on, from or beneath the Leased Premises, (iv) any violation of Environmental Regulations or subsection (a) or (b) hereof by it or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees, and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the City is strictly liable under any Environmental Regulation, its obligation under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnitee. The obligations and liabilities under this Section 7.13(c) shall survive the payment and satisfaction of all Certificates and Additional Certificates or resignation or removal of the Trustee.

(d) The City shall conform to and carry out a reasonable program of maintenance and inspection of all underground storage tanks, and shall maintain, repair, and replace such tanks only in accordance with Laws and Regulations, including but not limited to Environmental Regulations.

**Section 7.14 Condemnation of Leased Premises.** The City hereby covenants and agrees, to the extent it may lawfully do so, that, except as described in Section 6 of the Site Lease, so long as any of the Certificates or Additional Certificates remain outstanding and unpaid, the City will not exercise the power of condemnation with respect to the Leased Premises. The City further covenants and agrees, to the extent it may lawfully do so, that if for any reason the foregoing covenant is determined to be unenforceable or if the City shall fail or refuse to abide by such covenant and condemns the Leased Premises, then the appraised value of the Leased Premises shall not be less than the sum of: (i) as to Certificates and Additional Certificates then subject to optional

prepayment, the principal and interest components of such Certificates and Additional Certificates outstanding through the date of their prepayment, and (ii) as to Certificates and Additional Certificates not then subject to optional prepayment, the amount necessary to defease such Certificates and Additional Certificates to the first available prepayment date in accordance with the Trust Agreement.

## **ARTICLE VIII**

### **ASSIGNMENT, SUBLEASING AND AMENDMENT**

**Section 8.1 Assignment by the Corporation.** Except as provided herein, in the Trust Agreement and the Assignment Agreement, the Corporation will not assign this Lease to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in Section 2.2 hereof.

**Section 8.2 Assignment and Subleasing by the City.**

(a) Assignment. This Lease may be assigned by the City, so long as such assignment does not, in the opinion of Special Counsel, adversely affect the State tax-exempt status or the exclusion from gross income for federal income tax purposes of the interest with respect to the Certificates and any Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax exempt Certificates) or affect the validity of this Lease. In the event that this Lease is assigned by the City, the obligation to make Lease Payments hereunder shall remain the obligation of the City.

(b) Sublease. The City may sublease all or any portion of the Leased Premises subject to all of the following conditions:

(i) This Lease and the obligation of the City to make Lease Payments and Additional Payments hereunder shall remain obligations of the City; and

(ii) The City shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to the Corporation and the Trustee, a true and complete copy of such sublease;

(iii) The City shall furnish to the Corporation and the Trustee, an opinion of Special Counsel to the effect that the sublease will not cause the interest due with respect to the Certificates and any Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax exempt Certificates) to be subject to State personal income tax or adversely affect the exclusion from gross income for federal income tax purposes of such amounts, provided that no such opinion shall be required with respect to the subleases in effect upon the Delivery Date.

**Section 8.3 Amendments and Modifications.** This Lease may be amended or any of its terms modified with the written consent of the City and the Trustee (as assignee of the Corporation), in accordance with Article X of the Trust Agreement.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

**Section 9.1 Events of Default Defined.** The following shall be “events of default” under this Lease and the terms “events of default” and “default” shall mean, whenever they are used in this Lease, any one or more of the following events:

(a) Payment Default. Failure by the City to pay any Lease Payment required to be paid hereunder by the corresponding Lease Payment Date; and

(b) Covenant Default. Failure by the City to observe and perform any warranty, covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto or in the Trust Agreement or in the Site Lease, other than as referred to in clause (a) of this Section, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation, the Trustee, or the Owners of not less than a majority in aggregate principal amount of Certificates and Additional Certificates then Outstanding; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Corporation, the insurer of any Additional Certificates or such Owners, as the case may be, shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the City within the applicable period and diligently pursued until the default is corrected.

(c) Bankruptcy or Insolvency. The filing by the City of a case in bankruptcy, or the subjection of any right or interest of the City under this Lease to any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted.

**Section 9.2 Remedies on Default.** Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, it shall be lawful for the Corporation to exercise any and all remedies available pursuant to law or granted pursuant to this Lease. Notwithstanding anything herein or in the Trust Agreement to the contrary, THERE SHALL BE NO RIGHT UNDER ANY CIRCUMSTANCES TO ACCELERATE THE LEASE PAYMENTS OR OTHERWISE DECLARE ANY LEASE PAYMENTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE AND PAYABLE. After the occurrence of an event of default hereunder, the City will surrender possession of the Leased Premises to the Corporation, if requested to do so by the Corporation, the Trustee or the Owners, in accordance with the provisions of the Trust Agreement.

(a) No Termination; Repossession and Re-Lease on Behalf of the City. In the event the Corporation does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the Corporation may, with the consent of the City, which consent is hereby irrevocably given, repossess the Leased Premises and re-lease it for the account of the City, in which event the City’s obligation will accrue from year to year in accordance with this Lease and the City will continue to receive the value of the use of the Leased Premises from year to year in the form of credits against its obligation to pay Lease Payments. The obligations of the City shall remain the same as prior to such default, to pay Lease Payments and Additional Payments whether the

Corporation re-enters or not. The City agrees to and shall remain liable for the payment of all Lease Payments and Additional Payments and the performance of all conditions contained herein and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Leased Premises, or, in the event the Corporation is unable to re-lease the Leased Premises, then for the full amount of all Lease Payments and Additional Payments to the end of the Term of this Lease, but said Lease Payments and Additional Payments and/or deficiency shall be payable only at the same time and in the same manner as provided above for the payment of Lease Payments and Additional Payments hereunder, notwithstanding such repossession by the Corporation or any suit brought by the Corporation for the purpose of effecting such repossession of the Leased Premises or the exercise of any other remedy by the Corporation.

The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to repossess and re-lease the Leased Premises in the event of default by the City in the performance of any covenants contained herein to be performed by the City and to remove all personal property whatsoever situated upon the Leased Premises, to place such property in storage or other suitable place in the County of Santa Clara, for the account of and at the expense of the City, and the City hereby covenants and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such repossession and re-leasing of the Leased Premises. The City hereby waives any and all claims for damage caused or which may be caused by the Corporation in repossessing the Leased Premises as provided herein and all claims for damages that may result from the destruction of or the injury to the Leased Premises and all claims for damages to or loss of any property belonging to the City that may be in or upon the Leased Premises.

The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Corporation to re-lease the Leased Premises in the event of such repossession without effecting a surrender of this Lease, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Corporation to be effected in the sole and exclusive manner provided for in subparagraph (b) below.

The City shall retain the portion of rental obtained by the Trustee, as assignee of the Corporation, that is in excess of the Lease Payments and Additional Payments, the fees, expenses and costs of the Trustee of re-leasing the Leased Premises, and all amounts payable by the City under this Lease and the Trust Agreement.

In the event that the liability of the City under this subsection (a) is held to constitute indebtedness or liability in any year exceeding in any year the income and revenue provided for such year, the Corporation, or the Trustee or the Owners, as assignees of the Corporation, shall not exercise the remedies provided in this subsection (a).

(b) Termination; Repossession and Re-Lease. In the event of the termination of this Lease by the Corporation at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any repossession of the Leased Premises by the Corporation in any manner whatsoever or the re-leasing of the Leased Premises), the City nevertheless agrees to pay to the Corporation all costs, losses or damages howsoever arising or occurring payable at the same time and in the same manner as is provided herein in the case of payment of Lease Payments and Additional Payments. Any proceeds of the re-lease or other disposition of the Leased Premises

by the Corporation shall be deposited into the Lease Payment Fund and be applied in accordance with the provisions of Section 5.04 of the Trust Agreement. Any surplus received by the Trustee, as assignee of the Corporation, from such re-leasing over total Lease Payments shall be remitted to the City. Additional Payments that would have been due hereunder and the fees, expenses and costs of the Trustee as assignee of the Corporation on re-leasing the Leased Premises shall be remitted to the City. Neither notice to pay rent or to deliver up possession of the Leased Premises given pursuant to law nor any proceeding taken by the Corporation to recover possession of the Leased Premises shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease. The City covenants and agrees that no surrender of the Leased Premises for the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice. No such termination shall be effected either by operation of law or act of the parties hereto, except only in the manner herein expressly provided.

(c) Opinion of Special Counsel. The re-leasing of the Leased Premises as provided herein shall be subject to the opinion of Special Counsel that such re-leasing will not cause the interest with respect to the Certificates and any Additional Certificates (to the extent such Additional Certificates are executed and delivered as tax-exempt Certificates) to be subject to State personal income tax or adversely affect the exclusion from gross income for federal income tax purposes of such amounts.

(d) No Termination by The City. Under no circumstances may the City terminate this Lease as a remedy for a default by the Corporation in the performance of any obligation of the Corporation hereunder.

**Section 9.3 No Remedy Exclusive.** No remedy conferred herein upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 9.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Lease should default under any of the provisions hereof and the nondefaulting party should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will pay on demand to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

**Section 9.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease should be breached by either party and thereafter waived by the other party; such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 9.6 Application of the Proceeds from the Re-Lease of the Leased Premises.**

All amounts received by the Corporation under this Article IX shall, subject to Section 13.03 of the Trust Agreement, be deposited by the Trustee in the Lease Payment Fund and credited towards the Lease Payments in order of Lease Payment Dates.

**Section 9.7 Trustee and Owners to Exercise Rights.** Such rights and remedies as are given to the Corporation under this Article IX have been assigned by the Corporation to the Trustee under the Assignment Agreement, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners as provided in the Trust Agreement. In addition to the rights and remedies assigned by the Corporation to the Trustee, to the extent that the Trust Agreement and this Lease confer upon or gives or grants to the Trustee any right, remedy or claim under or by reason of the Trust Agreement or this Lease, the Trustee is hereby explicitly recognized as being a third party beneficiary hereunder and may enforce any such right, remedy or claim conferred given or granted.

## **ARTICLE X**

### **PREPAYMENT OF LEASE PAYMENTS**

**Section 10.1 Security Deposit.** Notwithstanding any other provision of this Lease, the City may, on any date, secure the payment of all or a portion of the Lease Payments and Additional Payments by a deposit by it with the Trustee of cash and/or Government Obligations as provided in Section 14.01 of the Trust Agreement. In the event such deposit is sufficient to pay all Lease Payments and Additional Payments, and provided that the City has paid any other amounts due and owing under this Lease and the Trust Agreement, all obligations of the City under this Lease, and all security provided by this Lease for said obligations, shall cease and terminate, excepting only the obligation of the City to make, or cause to be made, Lease Payments and Additional Payments from such deposit. On the date of said deposit title to the Leased Premises shall vest in the City automatically and without further action by the City or the Corporation (except as provided herein). Said deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease. The Corporation shall execute and deliver such further instruments and take such further action as may reasonably be requested by the City for carrying out the title transfer of the Leased Premises.

**Section 10.2 Extraordinary Prepayment.** The City shall be obligated to prepay the Lease Payments in whole or in part on any date, from and to the extent of any Net Proceeds or other moneys theretofore deposited in the Prepayment Fund (at least forty-five (45) days prior to the date fixed for prepayment of the Certificates and any Additional Certificates) pursuant to Section 4.02 of the Trust Agreement. The City and the Corporation hereby agree that such Net Proceeds or other moneys shall be credited towards the City's obligations hereunder (except in the case of such Prepayment of the Lease Payments in whole) pro rata among Lease Payments so that following Prepayment, the remaining annual Lease Payments will be proportional to the initial annual Lease Payments.

**Section 10.3 Optional Prepayment.** Subject to the terms and conditions of this Section, the Corporation hereby grants an option to the City to prepay all or a portion of the Lease Payments to the extent and on the dates at the prepayment prices set forth in Section 4.03 of the Trust Agreement and in any Supplemental Agreement. The City shall provide notice to the Trustee at least forty-five (45) days prior to the date fixed for prepayment of the Certificates (or on such later date as

shall be consented to by the Trustee). The City and the Corporation agree that such prepayments shall be credited toward the City's obligations hereunder corresponding to the resulting prepayment of the Certificates and Additional Certificates in accordance with Section 4.03 of the Trust Agreement and any Supplemental Agreement on the dates and at the prepayment prices provided therein.

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.1 Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received on the earlier of the day of actual receipt or five (five) Business Days after deposit in the United States mail in first-class or certified form, postage prepaid, to the City or the Corporation, as the case may be, at the addresses indicated in Section 14.05 of the Trust Agreement. The Corporation, the City, and the Trustee, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 11.2 Binding Effect.** This Lease shall be binding upon and inure to the benefit of the Corporation and the City and their respective successors and assigns. Whenever in this Lease either the Corporation or the City is named or referred to, such reference shall be deemed to include the successors or assigns thereof and all the covenants and agreements in this Lease contained by or on behalf of the Corporation or the City shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

**Section 11.3 Severability.** In the event any provision of this Lease shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 11.4 Execution in Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.5 Applicable Law.** This Lease shall be governed by and construed in accordance with the laws of the State

**Section 11.6 Representatives.** Whenever under the provisions of this Lease the approval of the Corporation or the City is required, or the Corporation or the City is required to take some action at the request of the other, such approval or such request shall be given for the City by the City Representative, and for the Corporation by the Corporation Representative, and any party hereto shall be authorized to rely upon any such approval or request.

**Section 11.7 Captions.** The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope of intent of any provision or Section of this Lease.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]*



IN WITNESS WHEREOF, the Corporation has caused this Lease to be executed in its name by its duly authorized officer, and the City has caused this Lease to be executed in its name by its duly authorized officer, as of the date and year first above written.

CUPERTINO PUBLIC FACILITIES  
CORPORATION, as lessor

By: \_\_\_\_\_  
Steven Scharf  
President

ATTEST:

\_\_\_\_\_  
Kristen Squarcia  
Secretary

CITY OF CUPERTINO, as lessee

By: \_\_\_\_\_  
Steven Scharf  
Mayor

ATTEST:

\_\_\_\_\_  
Kristen Squarcia  
City Clerk

## **CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the Leased Premises conveyed under the foregoing to the City of Cupertino ("the "City"), a municipal corporation and a general law city duly organized under and by virtue of the laws of the State of California, is hereby accepted by the undersigned officer or agent on behalf of the City, pursuant to authority conferred by resolution of the said City Council adopted on September 15, 2020, and the City consents to recordation of a memorandum thereof by its duly authorized officer.

Dated: October \_\_, 2020

CITY OF CUPERTINO

By: \_\_\_\_\_  
Steven Scharf  
Mayor

ATTEST:

\_\_\_\_\_  
Kirsten Squarcia  
City Clerk

**EXHIBIT A**  
**SCHEDULE OF LEASE PAYMENTS**

**[To Come At Pricing]**

<i>Interest Payment Date*</i>	<i>Principal Component</i>	<i>Interest Component</i>	<i>Lease Payments</i>
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\* Lease Payments are due on the second Business Day prior to each Interest Payment Date, as provided under the Lease Agreement.

## **EXHIBIT B**

### **LEGAL DESCRIPTION OF THE LEASED PREMISES**

Real property in the City of Cupertino, County of Santa Clara, State of California, described as follows:

#### **PARCEL ONE:**

LOT 7, AS SHOWN ON THAT CERTAIN MAP ENTITLED TRACT NO. 3743 CUPERTINO TOWN CENTER, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 16, 1964, IN BOOK 186 OF MAPS, PAGE(S) 36 AND 37

#### **PARCEL TWO:**

PARCELS A, B, C & D, AS SHOWN ON THAT CERTAIN PARCEL MAP ENTITLED, "PARCEL MAP, BEING ALL OF LOT 4, TRACT NO. 3743, CITY OF CUPERTINO", WHICH PARCEL MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON MARCH 07, 1974 IN BOOK 337 OF MAPS, PAGE 11.

APN 369-31-033