MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING, dated as of February 13, 2013 by and between the BAY AREA HEADQUARTERS AUTHORITY ("BAHA"), a joint powers authority established by the Metropolitan Transportation Commission ("MTC") and the Bay Area Toll Authority ("BATA") pursuant to the California Joint Exercise of Powers Act, consisting of California Government Code Sections 6500 through 6599.3 ("Act"), and the ASSOCIATION OF BAY AREA GOVERNMENTS ("ABAG"), a joint powers authority established by the San Francisco Bay Area's cities, towns and counties pursuant to the Act:

WHEREAS, BAHA is the owner of certain real property (the "Property") located at 390 Main Street in the City and County of San Francisco, State of California; and

WHEREAS, the Property consists of a building (the "Facility") comprised of 518,000 gross square feet over eight floors, each of which are identical 64,350-square-foot rectangular plates, measuring 234 by 275 feet, and the ground level which contains approximately 100 parking spaces; and

WHEREAS, BAHA will divide the Facility into two separate components, with approximately 260,000 square feet allocated to the development of separate condominium units to be acquired or leased by governmental agencies, who will also share certain jointly used and common areas (the "Agency Space") and the balance of the Facility to be owned and retained by BAHA for future expansion of the Agency Space and leased by BAHA to public and commercial sector tenants until expansion occurs; and

WHEREAS, BAHA has entered into an architectural and engineering contract to design and plan the retrofit and remodel the Facility, including the creation of individual tenant or condominium units, and concurrently therewith or subsequent thereto will enter into a construction contract or contracts to execute the retrofit and remodel, at BAHA's sole cost; and

WHEREAS, ABAG and MTC each hold condominium interests in the MetroCenter, located at 101 Eighth Street, Oakland, California 94607 (the "MetroCenter"); and

WHEREAS, it is the desire and intention of BAHA to subdivide the Agency Space at the Facility into three (3) separate condominium units, which will be owned by BAHA and leased or sold to other government agencies, including the Bay Area Air Quality Management District and ABAG, and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said condominiums and the owners thereof;

WHEREAS, such mutually beneficial restrictions are to be memorialized in a Bay Area Facility Declaration of Covenants ("CCRs"), a form of which is attached hereto as Appendix 1, and which shall be recorded by BAHA at or about the time of occupation of the Facility; and

WHEREAS, ABAG and BAHA intend to enter into a Purchase and Sale Agreement and Joint Escrow Instructions, a form of which is attached hereto as Appendix 2 ("ABAG Purchase

Agreement") for the purchase by ABAG from BAHA of condominium space within the Agency Space in exchange for ABAG's condominium interests in the MetroCenter; and

WHEREAS, ABAG and BAHA wish to memorialize certain ancillary terms related to the purchase by ABAG of the Agency Space, and which are not otherwise covered by the ABAG Purchase Agreement or the CCRs;

NOW, THEREFORE, BAHA and ABAG, for valuable consideration, agree to the following additional terms as follows:

1. BAHA shall deliver the ABAG's portion of the Agency Space to ABAG in "turnkey" condition, designed to the same standards as the space to be occupied by MTC and the Bay Area Toll Authority ("BATA").

2. BAHA shall pay for ABAG's moving costs, which shall be provided by the same vendor moving MTC and BATA, and which move shall be coordinated with MTC and BATA to provide efficiencies of cost and scale. BAHA shall direct the move and have control over decisions related to the logistics thereto.

3. ABAG shall provide $4.2 million for capital tenant improvements to the Agency Space from funds provided by MTC to ABAG per the funding framework approved by MTC in February.

4. BAHA will execute space plans providing for the functionalities described in Appendix 3, and assigned conference rooms within ABAG space, separate filing area to accommodate 2,000 linear feet of active files and intern workstations.

5. ABAG shall pay in full its share of the MetroCenter's Seismic Retrofit Local Match ($90,920) from its own funds.

6. ABAG's share of the annual Common Expenses at the Facility plus ABAG's annual costs for utilities and janitorial services for the unit ABAG occupies in the Facility that are not included in that year's Common Assessment shall not exceed $314,000 adjusted annually for inflation as measured by the CPI for San Francisco – Oakland – All Urban Consumers, commencing July 1, 2014, or the date ABAG occupies its unit at the Facility, whichever occurs later. ABAG and BAHA shall agree on a methodology to implement this provision. All capitalized terms not defined herein shall have the meanings ascribed to them in the CCRs.

7. Subject to adequate demand, shuttle service from the Embarcadero BART station to the Facility will be provided for all public agency board and committee meetings. BAHA shall determine, in consultation with ABAG, what constitutes "adequate demand."

8. BAHA will provide an on-site food market/deli and coffee shop on the ground floor space of the Facility adjacent to the Board Room and will include alternate seating accommodations for staff and elected officials. Further, the design and proposal process will

include an exploration of ways to create an amenity for the building and make on-site food affordable to building occupants.

9. The ABAG Purchase Agreement and the CCRs in the forms attached hereto substantially reflect the additional terms ABAG and BAHA desire to memorialize as the transaction between the two agencies. ABAG and BAHA shall proceed to conclude negotiation of, and execute said documents in due course.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the date first above written.

ASSOCIATION OF BAY AREA GOVERNMENTS

By: _____
Name: Ezra Rapport
Its: Executive Director

Approved as to form:

_____
Legal Counsel

BAY AREA HEADQUARTERS AUTHORITY

By: _____
Name: _____
Its: Executive Director

By: _____
Name: Brian Mulcahey
Its: Treasurer-Auditor

Approved as to form:

_____
General Counsel

J:\CONTRACT\Contracts-New\Con BAHA\390 Main Purchase\Purchase Agreements\MOU between ABAG and BAHA 390 Main Condo acquisition_final.docx

APPENDIX 1

[FORM OF BAY AREA FACILITY DECLARATION OF COVENANTS]

Appendix 1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF THE

AGENCY SPACE

AT

390 MAIN STREET

SAN FRANCISCO, CALIFORNIA

BY THE

BAY AREA HEADQUARTERS AUTHORITY

DATED: _____, 201_~~2~~

Recorded: _____

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR THE AGENCY SPACE

This DECLARATION, made and entered into this ___th day of _____, 201_~~2~~, by the BAY AREA HEADQUARTERS AUTHORITY (herein called "BAHA" or "Declarant"), a joint powers authority established pursuant to the California Joint Exercise of Powers Act, consisting of California Government Code Sections 6500 through 6599.3; and

WHEREAS, BAHA is the owner of certain real property located at 390 Main Street in the City and County of San Francisco, State of California, described in Exhibit A-1 attached hereto (hereinafter referred to as the "Property"); and

WHEREAS, the Property consists of a building (the "Facility") comprised of 518,000 gross square feet over eight floors, each of which are identical 64,350-square-foot rectangular plates, measuring 234 by 275 feet, and the ground level which contains ___ parking spaces; and

WHEREAS, BAHA will divide the Facility into two separate components, with approximately _____ square feet allocated to the development of separate condominium units to be acquired or leased by governmental agencies, who will also share certain jointly used and common areas (the "Agency Space") and the balance of the Facility to be owned and leased by BAHA to commercial office users (the "Commercial Space") as shown on Exhibit A-2 attached hereto; and

WHEREAS, BAHA will enter into an architectural and engineering contract to design and plan the retrofit and remodel the Facility, including the creation of individual tenant or condominium units, and concurrently therewith or subsequent thereto will enter into a construction contract or contracts to execute the retrofit and remodel, at BAHA's sole cost; and

WHEREAS, the BAY AREA AIR QUALITY MANAGEMENT DISTRICT, a regional air pollution control agency created by the California State Legislature in 1955 pursuant to California Health & Safety Code Sections 40200, et seq. ("BAAQMD") has entered into a lease with BAHA for a portion of the Agency Space (the "BAAQMD Lease"), which lease contains an option to purchase the space leased by it on the terms set forth in the Sale and Purchase Agreement appended as an exhibit to the BAAQMD Lease, and

WHEREAS, the ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority created in 1961 by the San Francisco Bay Area's cities, towns and counties ("ABAG"), has entered into a Purchase and Sale Agreement and Joint Escrow Instructions with BAHA, dated _____ __, 2013 ("ABAG Purchase Agreement") for the purchase of space within the Agency Space; and

WHEREAS, it is the desire and intention of BAHA to subdivide the Agency Space into _____three (3) separate condominium units, which will be owned by BAHA and leased or sold to other government agencies, including BAAQMD, and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvement for the benefit of all of said condominiums and the owners thereof;

NOW, THEREFORE, BAHA, as the owner of the Agency Space and for the purposes set forth above, hereby declares, covenants and agrees as follows:

ARTICLE I

DECLARATION, DESIGNATION OF UNITS AND COMMON AREA

Section 1.01. **Declaration**. BAHA hereby declares that the Agency Space and every part thereof is held and shall henceforth be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the following limitations, covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision and ownership of condominium units within the Agency Space (each a "Condominium" and as further defined in Section 2.01), and are established and agreed upon for the purposes of enhancing and perfecting the value and attractiveness of the Agency Space and every part thereof. All of the limitations, covenants, conditions and restrictions set forth herein shall run with the land and each Condominium therein and shall be binding on all parties having or acquiring any right, title or interest in the Agency Space, or any part thereof, and shall be for the benefit of each owner of any portion of the Agency Space or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest of the owners thereof. This Declaration is made by BAHA pursuant to Civil Code Section 1350, et seq. Each and all of said limitations, easements, and restrictions shall be deemed to be, and shall be construed as equitable servitudes upon such real property enforceable by each owner ("Unit Owner" and as further defined in Section 2.01) of any portion of the Agency Space or any interest therein.

Section 1.02. **Designation of Units and Common Areas**. Ownership of each Condominium within the Agency Space shall include (i) fee title to an individually owned unit ("Unit", and as further defined in Section 2.01(w)), (ii) an undivided interest in the common area as defined below and as shown on the condominium plan attached hereto as Exhibit B ("Common Area" and as further defined in Section 1.02(b)), which undivided interest cannot be altered or changed as long as the prohibition against severability of component interests in a Condominium remains in effect as provided in this Declaration, (iii) a right to use in common with other occupants of the Facility, as and to the extent provided herein and in any rules and regulations promulgated by the Board from time to time, the library, cafeteria, meeting rooms, server rooms, parking areas and other shared spaces owned by BAHA (the "Jointly Shared Spaces" and as further defined in Section 1.02(c)), (iv) a membership in the Corporation and representation on the Board (both as defined in Section 2.01 below), and (v) any exclusive or nonexclusive easement or easements appurtenant to such Condominium as described in this Declaration, the condominium plan attached hereto as Exhibit B ("Condominium Plan" and as further defined in Section 2.01(l)) and the deed to the Condominium.

(a) Each Unit consists of the space bounded by and contained within:

(1) the interior unfinished surfaces (exclusive of paint, tile, carpet, wax, wallpaper, or other finishes) of the perimeter walls, floors, ceilings, windows, and doors thereof;

(2) the network closet or closets serving the Unit, whether or not located within the Unit, and all related cabling from the network closet(s) to individual offices and cubicles within the Unit and

(3) if applicable, the parking spaces in the Facility which are appurtenant to the Unit.

The following are not part of a "Unit": bearing walls, columns, floors except surface finishes thereof, roofs, skylights, windows, foundation, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, electrical security and fire alarm system pumps, telephone and data transmission lines, servers and other central services, pipes, ducts, flues, chutes, conduits, wiring and other utility installations, including electrical and fire sprinklers outlets and lights, wherever located, except plumbing outlets and telephone and data transmission lines located within a Unit solely for the benefit of such Unit and not part of a distribution system serving multiple Units and except BAHA's emergency power supply system located within the BAHA Unit which will be maintained by BAHA for the benefit of the entire Facility as a Common Expense (as defined in Section 2.01(j)).

(b) "Common Area" consists of the entire Agency Space except all Units and the Jointly Shared Space, as defined and designated in this Declaration and as shown on the Condominium Plan and shall include any portions of the Commercial Space housing building systems serving both the Commercial Space and the Agency Space.

(c) "Jointly Shared Space" consists of the publicly accessible library, the cafeteria, the meeting rooms, copier and mail services, record and equipment storage, parking areas, server rooms and those other spaces which are so designated on the Condominium Plan. The Jointly Shared Spaces shall be owned by BAHA and available for use by Unit Owners and other occupants of the Agency Space in common with all other occupants or on an advance reservation basis pursuant to rules established by the Board and administered by the Facility Operator.

ARTICLE II

DEFINITIONS

Section 2.01. **Defined Terms**. Unless otherwise provided or unless the context requires otherwise, the following terms shall be defined as provided in this Section:

(a) Agency Space: That portion of the Facility containing individual office condominium units for lease to or ownership by governmental entities, the Jointly Shared Spaces and the Common Area.

(b) Approved by the Board or Approval by the Board (including all actions required by the Board in this Declaration, the Articles or the Bylaws): Approved by a majority of the members of the Board ~~holding a majority of the Percentage Ownership Interests~~, except as otherwise expressly provided in this Declaration, in the Bylaws and Articles or in any other agreement to which all of the Unit Owners are parties.

(c) Articles: The Articles of Incorporation of the Corporation, as amended from time to time.

(d) Assessments: There are three types of Assessments:

(1) Common Assessments: As defined in Section 7.02.

(2) Extra Common Assessments: As defined in Section 7.03.

(3) Special Assessments: As defined in Section 7.04.

(e) Board: The Board of Directors of the Corporation.

(f) Bylaws: The duly adopted Bylaws of the Corporation, as amended from time to time.

(g) Capital Improvements: Any improvements or alterations which increase the size, value or life of the Facility.

(h) Commercial Space: That portion of the Facility which is owned by BAHA and leased or available for lease to commercial office users.

(i) Common Area: As defined in Section 1.02(b).

(j) Common Expenses:

(1) Definition: "Common Expenses" means the expenses payable by the Corporation for costs of: maintenance, management, administration, operation and ordinary repairs to the Agency Space, including the Common Areas and the Jointly Shared Spaces, but excluding any such expenses which are the responsibility of a Unit Owner or tenant with respect to its Unit. Common Expenses shall include each of the expense categories described in (2) below and reasonable reserves and contingencies for such purposes, compensation paid by BAHA to the Facility Operator for management of the Agency Space, fees paid to accountants, attorneys or other employees and agents for services rendered to the Corporation for the benefit of the Unit Owners collectively in connection with the Agency Space, and all other costs specifically designated to be Common Expenses by or in accordance with the provisions of this Declaration but expressly excluding Capital Improvements made by BAHA to the Facility or the Agency Space, which costs shall be borne solely by BAHA.

(2) Included Expenses: Except as otherwise Approved by the Board, "Common Expenses" shall include the costs of or charges for the following, by way of illustration but not limitation: water and sewer; insurance premiums. licenses, permits and inspections; heat, light, power and steam; internet services; telephone access; janitorial services; maintenance and service agreements on equipment servicing the Agency Space as a whole; window cleaning; garbage services; costs of air conditioning; costs of supplies, materials, equipment and tools; and the cost of contesting by appropriate proceedings the applicability to the Agency Space or the validity of any statute, ordinance, rule or regulation affecting the Agency Space which might increase Common Expenses. All replacements, improvements and

repairs which cost in excess of $250,000 or add five (5) years or more to the useful life of the building system or component being replaced, improved or repaired, but which do not constitute Capital Improvements, shall be amortized over the useful life of the improvement, replacement or repair and the annual amortized portion included in Common Expenses until fully amortized. To the extent any Common Expenses are incurred for the benefit of both the Agency Space and the Commercial Space, the portion of such cost allocated to the Agency Space shall not be greater than the percentage which the square footage of the Agency Space bears to the square footage of the Facility as a whole.

(3) Exclusions from "Common Expenses": "Common Expenses" shall not include depreciation, costs incurred or sums expended contrary to the provisions of this Declaration, advertising costs, leasing expenses, leasing commissions and related property management or lease enforcement costs relating to the rental of any Unit, or portion thereof, by any Unit Owner, real property taxes of any type assessed against the Facility or separately incurred, levied or assessed against a Unit Owner or against a Unit Owner's Condominium, indebtedness secured by a Unit Owner's Condominium and/or Unit or by the Facility as a whole, and other costs that are the responsibility of each Unit Owner individually, including those pursuant to Sections 5.03 and 11.02; provided that nothing contained herein shall preclude the Corporation from collecting monies and paying such expense on behalf of individual Unit Owners where such action is permitted pursuant to the terms of this Declaration.

(k) Condominium: "Condominium" means an estate in real property, as defined in California Civil Code Section 783, consisting of an undivided interest in common in the Common Area, together with a separate fee interest in a Unit and any other separate interests in the real property as are described in this Declaration, in the Condominium Plan, or in the deed conveying the Condominium.

(l) Condominium Plan: "Condominium Plan" means a condominium plan, as defined in California Civil Code Section 1351, respecting the Agency Space, and any amendments to the plan. A copy of the Condominium Plan is attached as Exhibit B.

(m) Corporation: One Bay Area Facility Corporation, a non-profit mutual benefit corporation incorporated in the State of California, which is responsible for oversight of, and policy regarding the Common Area and the Jointly Shared Spaces, and for such aspects of the management and operation of the individual Units as may, from time to time, be requested or be delegated by the respective Unit Owner and Approved by the Board; it being understood that the management and operation of the Common Area and the Jointly Shared Spaces shall be coordinated by BAHA in connection with its contract with the Facility Operator pursuant to the policies established by and the budget Approved by the Board.

(n) Declaration: This Declaration as may be amended from time to time.

(o) Facility: As defined in the Recitals above.

(p) Facility Operator: The entity retained or employed by BAHA and charged with the day to day operation, management, maintenance and upkeep of the Agency Space.

(q) Governing Instruments: The Declaration and the Articles of Incorporation and Bylaws of the Corporation, as they may be amended from time to time.

(r) Member: "Member" means each Unit Owner in its role as a member of the Corporation or any permitted delegate of such Unit Owner.

(s) Mortgage-Mortgagee-Mortgagor; Foreclosure: "Mortgage" means a mortgage or deed of trust encumbering a Condominium or other portion of the Facility. A "Mortgagee" shall include any beneficiary or co-beneficiary under a deed of trust. A "Mortgagor" shall include any trustor under such a deed of trust. "Foreclosure" shall include judicial and nonjudicial foreclosure. A "first" Mortgage or "first" Mortgagee is one having priority as to all other Mortgagees or holders of Mortgages encumbering the same Condominium.

(t) Percentage Ownership Interest or Ownership Interest. The percentage ownership interest held by each Unit Owner, which shall be the percentage which the square footage of such Unit Owner's Unit bears to the total square footage of all Units.

(u) Property: As defined in the Recitals above.

(v) Rules: The written rules promulgated by the Board providing for the operation of the Agency Space, including the Common Areas and the Jointly Shared Spaces. Such rules shall be consistent with the terms and conditions of this Declaration, and in the event of any conflict this Declaration shall prevail. The rules in force at the time this Declaration is executed are attached as Exhibit "C."

(w) Unit: "Unit" is defined in Section 1.02(a). "Unit" does not include other interests in real property that are less than estates in real property, such as exclusive or nonexclusive easements. In interpreting deeds and plans, the existing physical boundaries of a Unit or of a Unit reconstructed in substantial accordance with the original plan shall be conclusively presumed to be its boundaries, rather than the description expressed in the deed or Condominium Plan, regardless of minor variance between boundaries shown on the Condominium Plan or in the deed and those of the building and regardless of settling or lateral movement of the building. Whenever reference to a Unit is made in this Declaration, in the Condominium Plan, in any deed, or elsewhere, it shall be assumed that such reference is made to the Unit as a whole, including each of its component space, described in Section 1.02(a).

(x) Unit Mortgagee: "Unit Mortgagee" is any holder or co-holder of an indebtedness secured by a recorded Mortgage upon a Condominium.

(y) Unit Owner: "Unit Owner" means each person or entity holding a record ownership interest in a Condominium, including Declarant. "Unit Owner" shall also mean a lessee of an entire Condominium under a long-term lease from the issuer of a Certificate of Participation; provided that such lease assigns all rights as a "Unit Owner" to the lessee; and provided further that in no event shall both the Unit Owner and its lessee under this Section 2.0l(y) have simultaneous membership in the Corporation. Subject to the preceding, "Ownership" shall include membership in the Corporation. "Owner" shall not include persons or entities who hold an interest in a Condominium merely as security for the performance of an obligation.

ARTICLE III

RELATIONSHIP OF UNIT OWNERS

Section 3.01. **Relationship of Parties**. This Declaration shall not constitute any Unit Owners as partners or joint venturers with each other nor constitute any Unit Owner the agent of any other, nor in any manner limit the Unit Owners in occupying or leasing to others their respective Units or in carrying on their respective separate businesses or activities, nor impose upon any Unit Owner any fiduciary duty by reason of its carrying on its separate business or activity, nor impose upon any Unit Owner any liability or obligation not set forth herein, provided that all of the foregoing is conducted in accordance with the limitations and restrictions expressly set forth herein.

Section 3.02. **Membership**. Declarant and each additional Unit Owner, upon becoming the record owner of a Condominium, shall automatically become a Member of the Corporation and shall remain a Member thereof until it no longer owns any Condominium, at which time its membership in the Corporation shall automatically cease. Ownership of a Condominium shall be the sole qualification for membership in the Corporation. All memberships shall be appurtenant to the Condominium conveyed. A membership held by any Unit Owner shall not be transferred or alienated in any way, except as provided in Section 9.07. Each Member shall appoint one director of the Board, provided that for each of BAHA and BAAQMD, so long as each owns an interest in the Agency Space, its appointee shall be, respectively, the Executive Director and the Executive Officer/APCO of same or the person appointed by the Executive Director or Executive Officer/APCO as his or her representative. Each director shall serve at the pleasure of the appointing Member. The provisions of this Section 3.02 shall not be amended except with the unanimous approval of the Board and each holder of a First Mortgage then encumbering any Condominium.

ARTICLE IV

MANAGEMENT

Section 4.01. **Management of Agency Space.**

(a) Creation of Corporation; Appointment of Facility Operator. The Corporation has been created to provide for oversight of and the establishment of policy regarding the Common Area and the Jointly Shared Spaces and for such aspects of the management and operation of the individual Units as may, from time to time, be requested or be delegated by the Unit Owners and Approved by the Board. The Facility Operator shall be responsible for implementing the directions of BAHA and the Board and for conducting the ordinary and usual business and affairs with respect to the Agency Space.

(b) Overall Management and Control. The overall management and control of the Agency Space shall be vested in BAHA subject to the general policies established by the Board

from time to time and, with respect to Common Expenses, the budgets Approved by the Board. The Board shall have the responsibility to oversee and provide input regarding the management of all of the Common Area in a first class condition and in a good state of repair. Upon request of the applicable Unit Owners(s) and as Approved by the Board, the Corporation, acting by and through the Facility Operator, shall also have the responsibility to manage certain aspects of one or more individual Units. BAHA shall be responsible for making, shall pay from its own funds and shall make all decisions concerning Capital Improvements to the Agency Space, including individual Units, and to the remainder of the Facility, except for improvements to individual Units which the Unit Owners are permitted to make hereunder or which a Unit Owner asks BAHA to make at the cost of the applicable Unit Owner. Except as otherwise expressly provided in the Governing Instruments or any other agreement to which all Unit Owners are party, all decisions of the BAHA respecting the management and control of the Facility and the Agency Space which are consistent with the policies and budget Approved by the Board shall be binding on all the Unit Owners. The Unit Owners covenant and agree that the management and control of the Agency Space shall be in accordance with the Governing Instruments.

(c) Compensation. Except as may be expressly provided for herein or hereafter Approved by the Board and except for payments made to the Facility Operator, no payment will be made to any Board Member, Unit Owner or any member, stockholder, director or employee of a Unit Owner for services rendered in connection with the business or affairs of the Corporation or pertaining to the Agency Space.

Section 4.02. **Authority of the Board**. The Board shall treat all Unit Owners fairly and equitably and, for the benefit of the Agency Space as a whole, the Board shall have the following nondelegable powers and duties:

(a) To review and approve the policies for operation of the Agency Space, including without limitation the allocation of parking spaces, provided however that the Metropolitan Transportation Commission, the Bay Area Toll Authority and BAAQMD shall at all times each have parking within the Facility for the members of their respective Board of Directors in connection with all public meetings attended by such Board members.

(b) To adopt, review and amend two-year budgets for Common Expenses and those Special Assessments payable by all Unit Owners submitted to it by the Facility Manager pursuant to Section 4.04(b) hereof. Each two-year budget shall be adopted or, as appropriate, amended on or before January 1 of each calendar year for the succeeding fiscal year commencing July 1.

(c) To review monthly operating statements of the Corporation, with comparisons to the approved budget, submitted to it by the Facility Operator.

(d) To provide and pay for legal and accounting services pertaining to the operation of the Common Areas and the Jointly Shared Spaces.

(e) To cause appropriate tax returns for the Corporation to be prepared and filed.

(f) To cause to be prepared and distributed to all Unit Owners within one-hundred twenty (120) days after the end of the fiscal year a balance sheet as of the last day of the Corporation's fiscal year and an operating statement for such fiscal year prepared by a Certified Public Accountant reflecting receipts and expenditures of the Corporation.

(g) to review the performance of the Facility Operator, and to delegate authority to and review the performance of employees and independent contractors hired by the Corporation.

(h) To hire and terminate employees and independent contractors.

(i) To assess and cause the Facility Operator to collect from the Unit Owners all applicable Common Assessments, Extra Common Assessments and Special Assessments.

(j) To adopt and amend reasonable written rules governing the Common Area and Jointly Shared Spaces, provided that such rules shall require that, in the event of a scheduling conflict for use of any of the Jointly Shared Spaces, Unit Owners shall have priority over tenants.

(k) Whenever partition may be had pursuant to Civil Code Section 1359(b) or this Declaration, said power of sale is to be exercised pursuant to Code of Civil Procedure Section 872.010 et seq.

(l) To exercise other powers reasonable and necessary to fulfill the Corporation's purposes.

Section 4.03. Intentionally Omitted.

Section 4.04. Authority of the Facility Operator. The Facility Operator may possess all BAHA delegated powers, duties and responsibilities for the day to day operation, management and maintenance of the Agency Space, subject to any limitations that may be imposed by BAHA and the policies established by and the budget Approved by the Board. Without limiting the generality of the foregoing, the Facility Operator may be delegated the following powers and duties:

(a) Rule Making. For the mutual benefit of all Unit Owners and occupants, the Facility Operator may recommend and the Board may adopt or amend reasonable written rules. Such rules shall relate to the operation and use of the Common Area, the Jointly Shared Spaces, the conduct of Unit Owners and occupants, their employees, agents, contractors or invitees, the hours that services such as heating, air conditioning and cleaning will be operative, [restrictions and requirements for the use and maintenance of Units], and the successful operation of the Agency Space for the benefit of all Unit Owners and their employees and tenants. A copy of such rules and all amendments thereto shall be mailed to each Unit Owner and a copy shall be available for inspection. The rules in force at the time this Declaration is executed are attached as Exhibit "C". Said rules and any reasonable amendments, changes or additions thereto which the Board may hereafter make are hereby incorporated in this Declaration and shall be binding upon the Unit Owners and occupants; provided that, it shall not be necessary to re-record this Declaration when the rules are amended.

(b) Budget. Not later than each January 1, prior to the beginning of each fiscal year (July 1 to June 30), the Facility Operator shall prepare or cause to be prepared, and shall submit to the Board for its consideration, a two-year budget or an update of the existing two-year budget for the next fiscal year, setting forth the estimated expenses of operation of the Common Area, the Jointly Shared Spaces and, if applicable, estimated expenses for those management, operation or maintenance functions for any of the Units which may have been delegated to the Corporation pursuant to Section 4.0l (b) and including a reasonable allowance for contingencies and reserves. When adopted by the Board, the budget shall be the basis for the establishment of Common Assessments and Special Assessments pursuant to Article VII of this Declaration. When Approved by the Board, the Facility Operator shall implement the budget, and the expenditures and obligations provided for in the Budget may be made and incurred without further approval by the Board, subject to such limitations as the Board may impose.

Notwithstanding anything to the contrary in this Declaration, any management, operational or maintenance expenses attributable to any of the individual Units shall be allocated to the Unit Owner(s) of such Unit as a Special Assessment so that no other Unit Owner shall be required to bear the expense of managing, maintaining or operating another Unit Owner's Unit. Management, operational and maintenance costs of the Common Area and the Jointly Shared Spaces shall be allocated in accordance with Percentage Ownership Interests; provided, however, that costs attributable to those Jointly Shared Spaces, such as meeting rooms, which are used on a reservation basis, rather than in common by all Unit Owners, shall be allocated, on an estimated basis, in accordance with Percentage Ownership Interest, with a year-end true-up based on percentage of actual use by each Unit Owner and/or its tenants. Actual use shall include the booking of a conference or meeting room, whether or not actually used, and as otherwise determined by the Board from time to time.

(c) Books and Records. The Facility Operator shall maintain copies of the budget approved by the Board, together with any Approved amendments thereto. The Facility Operator shall keep full, complete and correct books of account of the operation of the Common Area and the Jointly Shared Spaces and any other Common Expenses, including vouchers supporting expenditures, and the same shall be open during all reasonable hours for inspection by any Unit Owner. Any Unit Owner may at any time and at its own expense cause an audit or inspection to be made of the books and records of the Facility Operator related to its Unit, the Common Area or the Jointly Shared Spaces, provided that any such audit shall be conducted not later than twenty-four (24) months following the end of the fiscal year for which the records are being audited. In the event an error in the amount of any assessments paid by one or more Unit Owners is discovered, the Facility Operator shall adjust the next assessments due from each Unit Owner to correct the error. Any dispute with respect to amounts owed by any Unit Owner shall be resolved in accordance with the provisions of Section 12.14.

(d) Assessments. The Facility Operator shall collect and deposit assessments and enforce collection of assessments as provided in Article VII of this Declaration.

(e) Services and Utilities. The Facility Operator shall provide and pay, as a Common Expense, for hot and cold running water, sewer, garbage, electrical, heating and air conditioning, telephone, data transmission, lighting and gas and other necessary utility service for the Common Area, Jointly Shared Spaces and, if not separately metered or charged, for the Units. The Facility

Operator shall also provide and pay, as a Common Expense, for repair, gardening, janitorial and security for the Common Area and Jointly Shared Spaces and necessary elevator service for the Agency Space, and shall cause any and all other acts to be done or take place having to do with the operation and maintenance of the Common Area and the Jointly Shared Spaces in first class condition and repair, as and to the extent provided for in the budget Approved by the Board.

(f) Maintenance, Repair, Replacement; Action Where Owner Fails to Act. The Facility Operator shall provide or cause to be provided all necessary maintenance, repairs, replacement, and restoration of the Common Areas and Jointly Shared Spaces, including without limitation all furnishings, equipment and other improvements necessary or appropriate to operate the Common Areas and the Jointly Shared Space, but excluding Capital Improvements.

(1) All costs of ordinary maintenance, repair, replacement and improvements other than Capital Improvements shall be borne by all of the Unit Owners as a Common Expense. All Capital Improvements and restoration (to the extent not covered by insurance carried by the Corporation) and all costs of the initial furnishing of the Common Areas and Jointly Shared Spaces shall be borne by BAHA.

(2) The Facility Operator shall also provide such services for any Unit, if and to the extent necessary to protect or preserve the Common Area, the Jointly Shared Spaces or any other portion of the Facility, including a Unit, and either (A) the Board determines that the Unit Owner has failed or refused to perform said maintenance, repair, replacement, or restoration within a reasonable time (in no event more than thirty (30) days to complete or, if the work cannot reasonably be completed within the 30-day period, to commence within such period and pursue diligently to completion) after written notice of the necessity thereof delivered by the Facility Operator to said Unit Owner or (B) such maintenance, repair, replacement or restoration, in the discretion of the Facility Operator, should be done immediately to prevent damage to any other portion of the Facility or injury to persons, in which event no notice is required. The Board shall levy a Special Assessment against such Unit Owner for the cost of any maintenance, repair, replacement or restoration under this subparagraph (2).

(g) Authority to Contract. In addition to the authority granted pursuant to the foregoing subparagraphs (a) through (f), the Facility Operator shall have the authority, but only to the extent such expenditures are provided for in the budget Approved by the Board or otherwise authorized by the Board or, if the cost is to be paid by BAHA, approved by BAHA.

(1) To contract for the labor or services of such personnel, including employees and independent contractors, as the Facility Operator determines shall be necessary or proper for the operation, maintenance and repair of the Common Area and the Jointly Shared Spaces.

(2) To purchase or contract for materials, supplies, furniture, or structural alterations as are necessary and proper for the operation of the Common Area and the Jointly Shared Spaces.

(h) Payment of Amounts which would Constitute liens. The Facility Operator shall have authority to pay premiums and other assessments which, in the Facility Operator's

commercially reasonable opinion, would be a lien upon the Agency Space or any portion thereof (other than an individual Unit) and to discharge any lien or encumbrance levied against the Agency Space or any portion thereof (other than an individual Unit), to pay taxes or liens levied against any Unit which, in the commercially reasonable opinion of the Facility Operator, may constitute a lien against the Common Area (unless such lien is being contested by the Unit Owner and the Unit Owner provides to the Board security reasonably acceptable to the Board for payment of the lien if the Unit Owner loses the challenge); provided, however, if the Facility Operator pays any lien or encumbrance levied against an individual Unit, the Board shall levy and the Facility Operator shall collect a Special Assessment against such Unit for the amount thereof, to the extent such amount is separately determinable, and provided further if such lien or assessment is attributable to work performed or taxes levied against the Commercial Space or any other space leased by BAHA to non-governmental tenants or otherwise payable by BAHA, the Board shall levy and the Facility Operator shall collect the amount so paid as a Special Assessment against BAHA.

(i) Other Duties. The Facility Operator shall:

(1) Operate all equipment and facilities located within the Common Area and the Jointly Shared Spaces and oversee the operation of the public meeting spaces, other meeting rooms, cafeteria, library and other Jointly Shared Spaces to ensure fair and equitable use by all Unit Owners and their tenants.

(2) Upon Approval of the Board delegate any of its duties hereunder to independent contractors hired by the Corporation.

(3) Receive complaints concerning violations of this Declaration or any rules and regulations applicable to the Agency Space, investigate such complaints and refer them to the Board for further action.

(4) Upon Approval of the Board bring or defend any court or administrative action or proceeding on behalf of the Corporation.

(j) Insurance. The Facility Operator shall obtain and maintain, as a Common Expense, the insurance required to be carried by the Corporation pursuant to Article VIII.

(k) Certification as Facility Operator. The Facility Operator shall record with the County Recorder of the City and County of San Francisco a certificate signed and acknowledged by the Facility Operator and a majority of the Board stating the name and address of the Facility Operator, such certificate shall be *prima facie* evidence that the person named therein is the incumbent Facility Operator and shall be conclusive evidence of the exercise of any authority thereby as to any bona fide purchaser or other third person who supplies labor or materials to the Facility Operator, or to any other person who relies thereon in good faith.

(l) Leasing of Units. The duties of the Facility Operator shall not include marketing activities related to leasing vacant Units or to finding lessees for Unit Owners or tenants of Unit Owners who are vacating Units. Each Unit Owner must conduct its own leasing activity or contract on its own for such services, provided that BAHA or any other Unit Owner may retain the Facility Operator, at such Unit Owner's cost, to act as the leasing agent for its Units.

(m) Business Directory. The Facility Operator may maintain a business directory in the Common Area at a location or locations Approved by the Board. The size, size of type, color and contents of each such directory shall be Approved by the Board.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF UNIT OWNER

Section 5.01. Exclusive Ownership and Possession. Each Unit Owner shall be entitled to the exclusive ownership and possession of its Unit. Each Unit Owner shall have equal access to the Jointly Shared Spaces, subject to such reservation systems as the Facility Operator may establish from time to time for use of the meeting rooms and such allocation of parking spaces in the Facility or at satellite locations as the Board may Approve from time to time. A Unit Owner shall have the exclusive right to paint, repaint, tile, wax, wallpaper, or otherwise refinish and decorate the inner surfaces of the walls, floors, ceilings, windows and doors of its Unit; provided, however that BAHA shall consult with the Board prior to making any material alterations to the Jointly Shared Spaces.

Section 5.02. Leasing.

(a) Right to Lease. Subject to the provisions of Sections 9.04 and 9.09, a Unit Owner, in its sole discretion, may lease its Unit or a portion thereof to one or more unrelated persons or entities, provided that any use other than that set forth in Section 5.11 must be Approved by the Board prior to the signing of any lease between the Unit Owner and its lessee, which approval shall not be unreasonably withheld or delayed. The Jointly Shared Spaces may be leased for the exclusive use of any Unit Owner or a third party only with the consent of all of the Unit Owners. Any lease of a Unit which confers exclusive possession upon the lessee shall require the written concurrence of all Unit Owners of the Unit to be leased, if applicable. Each Unit Owner may conduct its own leasing activity or may contract with an agent to lease on its behalf.

(b) Lease Terms. All leases shall be in writing. A lease agreement shall provide that the terms of the lease shall be subject to any and all limitations contained in the Governing Instruments; provided that the lessor shall have the right, at its sole discretion, to determine whether a violation of such provisions shall constitute a violation of the lease and whether to waive such violations; provided further, that no lessor may thereby avoid responsibility or liability for complying with the limitations contained in the Governing Instruments. Nothing contained herein shall preclude a lessor from pursuing its remedies under its lease for any violation of the Governing Instruments by the lessee.

(c) Notification of Lease of Condominium. Prior to the effective date of the lease of any Unit or portion thereof by a Unit Owner, the Unit Owner/lessor shall notify the Board and the Facility Operator in writing of such lease. Such notification shall set forth: (a) the name of the lessor and the lessee; (b) an identification of the Unit or portion thereof which has been

leased; (c) the lessee's mailing address; and (d) the commencement and termination dates of the lease.

Section 5.03. **Maintenance of Unit**. Each Unit Owner shall have the exclusive right and obligation, at its sole cost and expense, to maintain, repair and refinish its Unit in accordance with the plans and specifications for the Agency Space and in a diligent, good and workmanlike manner. Such maintenance, repair and refinishing shall include all painting, repainting, tiling, waxing, wallpapering or otherwise finishing and decorating the interior surfaces of the walls, floors, ceilings, windows, and doors bounding a Unit.

Section 5.04. **Alterations to Common Areas**. No Unit Owner, or its agents or employees, shall make any modifications or alterations to, or encroach upon, or occupy or obstruct any part of the Common Area or Common Area improvements without Approval of the Board, which approval shall not be unreasonably withheld. All work performed by or for the Unit Owner pursuant to this Section 5.04 shall be performed in a diligent, good and workmanlike manner, with the Unit Owners collectively bearing the costs of labor and materials in accordance with their Percentage Ownership Interests unless the work is required in connection with alterations to a Unit being made by the Unit Owner, in which case the cost shall be borne by the Unit Owner for whom the work is being performed. Each Unit Owner's interest in any such modification or alterations shall be the same as its interest in the Common Area where the modifications or alterations are located.

Section 5.05. **Alterations to Unit**. No Unit Owner, or its agents or employees, shall make any modifications or alterations to its Unit which affect the Common Area or other Units or the easements and restrictions of record without the Approval of the Board, which approval shall not be unreasonably withheld. Nothing shall be done in any Unit which will impair, interfere with, change or damage the structural integrity, functional operation, use or enjoyment of the Agency Space or any other portion of the Facility, except as provided herein. All work to be performed by or for a Unit Owner pursuant to this Section 5.05 shall be performed in a diligent, good and workmanlike manner, with the Unit Owner performing the work bearing all costs of such alterations or modifications.

Section 5.06. **Suppliers' or Contractors' Liens, Unit Owner's Liability for Liens**. If a lien is filed by a supplier or contractor against any Unit for, or purporting to be for, labor or materials alleged to have been furnished or delivered for any Unit Owner at the request of a Unit Owner, said Unit Owner shall forthwith discharge such lien within two (2) weeks from the date of notice from the Board or the Facility Operator, unless the Unit Owner gives notice within such two (2) week period of its intent to contest the lien and furnishes to the Facility Operator a bond or other security satisfactory to the Board in form and amount and thereafter prosecutes such contest with diligence. If the Unit Owner fails to discharge or contest such lien within the two-week period described above and the Board reasonably determines that the lien could attach to any other portion of the Facility or otherwise adversely affect the other Unit Owners, then the Facility Operator may:

(a) discharge such lien by payment, bond or otherwise without investigation as to its validity or any offsets or defenses thereto; and

(b) specially assess such Unit Owner for the amounts so paid and all costs, and expenses paid or incurred in connection therewith, together with the interest thereon at the rate of ten percent (10%) per annum on the unpaid amount calculated from the date advanced by the Facility Operator to and including the date full payment is received by the Facility Operator.

Section 5.07. **Taxes, Assessments, Utilities, etc**. Each Unit Owner shall be solely responsible for the discharge of obligations which relate solely to use or ownership of its own Unit, including but not limited to taxes, assessments, and separately metered utilities, if any. Where an obligation for which one or more Unit Owners is individually responsible is discharged by the Corporation, such Unit Owners shall be jointly and severally liable to the Corporation by way of Special Assessment for the cost of discharging such obligation. Where an obligation arises because of a Unit Owner's interest in the Common Area, and such obligation does not relate solely to an individual Unit, each Unit Owner shall be liable by way of a Common Assessment or Special Assessment only for its proportional part of the obligation as determined in accordance with its Percentage Ownership Interest.

Section 5.08. **Liability for Obligations Under the Declaration**. Any expenses incurred by the Corporation in fulfilling any obligation of any Unit Owner under this Declaration shall be a debt of the Unit Owner responsible for such obligation and the Corporation may specially assess said Owner for the amount thereof, together with interest in the amount of ten percent (10%) per annum on the unpaid amount calculated from the due date to and including the date full payment is received by the Facility Operator.

Section 5.09. **Use Affecting Insurance Premiums**. Nothing shall be done or permitted in or about the Facility, or brought or kept therein, which shall in any way increase the rate of or cause a cancellation of or otherwise affect any fire or other insurance upon the Agency Space or the Facility as a whole or any property kept within, or conflict with:

(a) any fire laws or regulations;

(b) any insurance policy upon the Facility or the Agency Space or any part thereof, the cost of which is a Common Expense;

(c) any statutes, rules or regulations enacted or established by any government or governmental authority with jurisdiction; or

(d) the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted, to the extent necessary to assure full effectiveness of all insurance on the Agency Space or the Facility as a whole at all times and at rates appropriate to the size and character of the portion of the Facility insured and to supply proper and adequate security, safety, and loss prevention practices.

In the event any use or activity shall lead to an increase in fire or other insurance premiums payable on the insurance obtained by the Board pursuant to Article VIII, or insurance procured by an individual Unit Owner or occupant of the Agency Space, the party causing such increase shall be liable for payment of the same to the Corporation or such individual Unit Owner or occupant as the case may be. The party so charged with increasing premium costs shall have the right to contest the validity of such insurance premium increase.

Section 5.10. **Compliance with Laws and Rules**. Each Unit Owner shall comply with all of the requirements of all governmental authorities, and all laws, ordinances, and rules applicable to its Unit, including the rules and regulations adopted by the Board from time to time.

Section 5.11. **General Restrictions on Use**. Unless otherwise designated herein, each Unit shall be used for general office purposes and uses incidental or related thereto, and for no other use or purpose unless Approved by the Board. The Jointly Shared Spaces include, without limitation, the following uses:

(a) The space designated on Exhibit B as the cafeteria space may be used for the preparation, service and consumption of food and purposes and uses incidental thereto. No Unit Owner or the Corporation shall be liable for any debts or obligations incurred in the course of operating or by the operator of the cafeteria, except to the extent properly included in Common Expenses.

(b) The space designated on Exhibit B as the library space may be used for library purposes and uses incidental and related thereto.

(c) The space designated on Exhibit B as the public meeting space may be use for meeting room purposes and uses incidental and related thereto.

(d) The space designated on Exhibit B as the parking area may be used for parking and passageway purposes and uses incidental and related thereto.

(e) The space designated on Exhibit B as the print shop may be used for printing, copying and uses incidental and related thereto.

(f) The space designated on Exhibit B as the mail room shall serve as a central mail room for all Unit Owners and tenants within the Agency Space.

(g) The space designated on Exhibit B as the server room may be used for installation and maintenance of the servers for the telephone and data services supplied to each Unit, which servers shall be the property of the individual Unit Owners.

(h) The roof top open space may be used as outdoor passive and entertainment space by Unit Owners and their tenants.

Section 5.12. **Special Equipment**. Unless approved by the Board, no Unit Owner or occupant of the Agency Space shall use in general office space any apparatus or device within a Unit or the Jointly Shared Space, including without limitation, machines using current in excess of 220 volts which will in any way substantially increase the amount of electricity, water or compressed air usually furnished or supplied to such portion of the Agency Space or which connects with electric current, water or air, other than through existing electrical outlets, water pipes or air pipes, as applicable, or outlets or pipes hereafter installed in accordance with Section 5.05. The foregoing shall not prohibit, however, the installation of laboratory equipment in spaces specifically designed as a laboratory in compliance with all applicable laws and regulations.

ARTICLE VI

EASEMENTS

There are hereby specifically reserved for the benefit of the Unit Owners, in common and for each Unit Owner severally, as their respective interests shall obtain, the easements, reciprocal negative easements, secondary easements, and rights of way and access particularly identified in this Article.

Section 6.01. **Utilities**. There is reserved for the benefit of each Unit, as dominant tenement, an easement for utility services over, under and through the Common Area (including any common areas in the Commercial Space), and each other Unit, jointly as the servient tenement, in the locations shown on the Condominium Plan.

Section 6.02. **Encroachment**. There is reserved for the benefit of each Unit, as dominant tenement, an easement for encroachment, occupancy, use and maintenance of such portion of the remainder of the Facility, including other Units, as the servient tenement, as shall be encroached upon, used and occupied by the owner of the dominant tenement as a result of any vertical or lateral displacement of any of the building structures or any portion thereof, deviation in construction or reconstruction plans or any reasonably necessary encroachments of one Unit or improvement onto another which does not interfere with the use of the encroached-upon Unit by the Unit Owner or occupant thereof. The easement of encroachment here reserved shall continue notwithstanding that the encroachment may be cured by repair and restoration of the structure.

Section 6.03. **Maintenance and Repair**. The Corporation and each Unit Owner shall have an easement which is appurtenant to the Common Area and all Units, through each Unit and the Common Area for the maintenance and repair of the Common Area and of the easements set forth in this Article, subject in the case of access to an individual Unit to the provisions of Section 6.05 below.

Section 6.04. **Nonexclusive Easements**. Each Unit Owner shall have a nonexclusive easement for use and enjoyment of the Common Area and the Jointly Shared Space and for

ingress, egress and support over and through the Common Area. These easements shall be appurtenant to each Unit and shall be subordinate to any exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Board to regulate time and manner of use and to perform its obligations under this Declaration.

Section 6.05. **Right of Access**. The Board, the Facility Operator, or any person designated by either of them, shall have an irrevocable right of access to each Unit for the purpose of making inspections or for the purpose of correcting any condition originating in a Unit which threatens damage to another Unit, to the Common Area or to any other portion of the Facility, or for the purpose of performing any maintenance or repairs or making any improvements for which the Corporation or BAHA is responsible. A request for entry shall be made in advance to the Unit Owners or occupant of the Unit and such entry shall occur at a time reasonably convenient to them. The person or persons making such entry on behalf of the Board as provided herein shall be accompanied by an authorized representative of such Unit Owner or occupant. In an emergency, such right of entry shall be immediate, whether or not notice has been given or whether or not an authorized representative is present. Any entry hereunder shall be made with as little inconvenience to the Unit Owner or occupant as practicable, and any damage caused thereby shall be repaired by the Corporation and charged as a Common Expense, unless repair of the damage is the responsibility of the Facility Operator under the terms of its contract with BAHA.

Section 6.06. **[Reserved].**

Section 6.07. **Restricted Easement**. **[NTD: To be discussed based on location of various Units and what emergency access is required.]**

(a) Easement. In order to provide an emergency exit from the cafeteria, library, and public meeting spaces and Common Area on the first floor and for any emergency purposes, there is reserved a non-exclusive easement for emergency ingress and egress through the _____ and to the Common Area stairway at the _____ end of the _____ for the benefit of all Unit Owners (except the owner of the _____ Unit), the Board and the Facility Operator, referred to in this Section 6.07 as "grantees" and to the grantees' transferees, successors and assigns and for the benefit of their invitees and guests. Said easement is subject to the conditions set forth in SubSection (b).

(b) Conditions. This easement is a non-exclusive easement and the owner of the _____ Unit shall have the right to make use of the Unit, subject to the easement. Neither the owner of the _____ Unit nor the Grantees shall place any obstruction on the _____ which impairs the easement. This easement shall exist for as long as the _____ shall continue to exist, shall not be extinguished by non-use or abandonment.

Section 6.08. Reserved Exclusive Easement for BAHA Emergency Power System.

(a) Easement. BAHA hereby reserves for itself an exclusive appurtenant easement for installing, operating and maintaining BAHA's emergency power supply system, which is located principally in those portions of the BAHA Unit shown as Spaces ____ and ____ on the Condominium Plan. Said reservation of easement includes the following covenants and conditions, which covenants and conditions BAHA, the other Unit Owners, the Board and Facility Operator, and the successors and assigns of each of them specifically accept.

(b) Conditions.

(1) Scope. This easement shall include the right to place, remove, inspect and maintain all equipment, pipes, ducts, wires, cables and other components of BAHA's emergency power supply system within the easement area shown on the Condominium Plan (the "Emergency Power System Easement"). The easement includes the right of access by BAHA's authorized representatives to all portions of the Emergency Power System Easement at reasonable times and on reasonable notice to any affected Unit Owners or tenants for all the above purposes.

(2) Term. This easement shall exist for as long as the Facility continues to exist and shall not be extinguished by non-use or abandonment.

(3) BAHA's Use. This easement is an exclusive easement and BAHA shall have the exclusive right to make use of the portion of the Agency Space subject to the easement for the purposes stated in Section 6.08 (b) (1) above, notwithstanding the fact that the emergency power supply shall be available to power all of the Agency Space as may be required and shall benefit all of the Unit Owners and their tenants.

(4) Obstruction or Removal. No Unit Owner, nor the Board, the Facility Operator or their agents, successors or assigns shall place any obstruction in the easement area or perform any act which prevents the use of the easement for its intended purpose.

(5) Repair and Maintenance. BAHA shall be responsible, as a Common Expense, for repair and maintenance of the equipment, ducts, pipes, wires, cables and other devices associated with BAHA's emergency power supply system. Responsibility for repair and maintenance of other aspects of the easement area shall be as provided for in the Declaration.

(6) BAHA shall indemnify, defend and hold the other Unit Owners harmless from and against any and all losses, liabilities, claims and damages (including injury to persons or damage to property) attributable to or arising out of the installation, maintenance or operation of the emergency power system.

(7) Successors and Assigns. The Emergency Power System Easement and the agreements contained herein shall run with the BAHA Unit and shall inure to the benefit of and be binding upon all Unit Owners and their respective transferees, successors and assigns.

ARTICLE VII

ASSESSMENT AND COLLECTION PROCEDURES

Section 7.01. **Covenant for Assessments, Creation of Lien, Personal Obligation**. Declarant, for each Unit owned by it within the Agency Space, hereby covenants and each Unit Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Corporation its share of: (1) Common Assessments; (2) Extra Common Assessments; (3) Special Assessments and (4) any other costs required by this Declaration to be borne by such Owner; such assessments to be fixed, established and collected from time to time, as hereinafter provided. The Common, Extra Common and Special Assessments together with interest thereon and costs of collection, as hereinafter provided, shall be a lien upon the Condominium against which each such assessment is made, which lien shall be created and enforced in accordance with the provisions of this Article VII. Each such assessment together with late charges, interest, costs, penalties and reasonable attorney's fees, as provided for herein, shall also be the joint and several personal obligation of each person or entity which was the Unit Owner at the time the assessment fell due.

Section 7.02. **Common Assessments**. Upon Approval or amendment of the budget, the Board shall separately assess each Unit Owner its share of the estimated Common Expenses for such budget year, according to its Percentage Ownership Interest (unless BAHA agrees in writing to a different allocation for any Unit), which assessment shall be due and payable in accordance with the provisions of Section 7.06. Such assessment is herein referred to as a "Common Assessment."

Section 7.03. **Extra Common Assessment**. Upon approval of an expenditure by the Board as a Common Expense not contained in the budget Approved by the Board, the Board shall separately assess each Unit Owner its share of the Extra Common Assessment according to its Percentage Ownership Interest, which shall be due and payable as provided in Section 7.06. Such assessment is herein referred to as an "Extra Common Assessment."

Section 7.04. **Special Assessments**. The Board shall also separately assess each Unit Owner when and as such costs are incurred, for any costs incurred or payments made on behalf of such Unit Owner or to cure conditions for which such Unit Owner is responsible as provided in this Declaration and for any Jointly Shared Space costs allocable to such Unit Owner based on usage of Jointly Shared Space facilities. All Special Assessments shall be due and payable as provided in Section 7.06.

Section 7.05. **Proration of Common Assessments.**

(a) The Board shall assess each Unit Owner for Common and Extra Common Assessments according to Sections 7.02 and 7.03; provided that the cost of all Capital

Improvements to any portion of the Agency Space or the remainder of the Facility shall be borne by BAHA and shall not be included in Common or Extra Common Expenses.

(b) Declarant shall be treated as Unit Owner of all unsold Units, if any, and shall be assessed for Common, Extra Common and Special Assessments allocable to such Units, provided that nothing herein shall preclude a prospective Unit Owner from prepaying its anticipated assessments.

Section 7.06. **Date of Commencement of Assessments; Due Dates; Charges for Late Payments**. A single written notice (the Schedule of Assessments) shall be given annually to each Unit Owner not later than thirty (30) days prior to the commencement of each fiscal year setting forth the Common Assessment payable by such Unit Owner for the succeeding fiscal year and any Extra Common Assessments and Special Assessments known at the time of such notice. Written notice of Extra Common Assessments and Special Assessments levied after the first of the fiscal year, and any adjustments to Common Assessments Approved by the Board, shall be given to each Unit Owner by the Facility Operator at least thirty (30) days prior to their due date. The Schedule of Assessments, or any amendment thereof, shall specify the amounts and due dates for installment payments of the Assessments by each Unit Owner. Common, Special and Extra Common Assessments which appear in the annual notice shall be paid by each Unit Owner to the Facility Operator in equal monthly installments, in advance, on the first day of each month, unless some other due date is established by the Board. Extra Common and Special Assessments not contained in the annual notice shall be paid to the Facility Operator within thirty (30) days of receipt of a notice to pay same. Each installment of Common, Extra Common and Special Assessments shall become delinquent if not paid within ten (10) days after due. Interest thereon shall accrue on each delinquent installment at the rate of ten percent (10%) per annum on the unpaid amount calculated from the date delinquent to and including the date full payment is received by the Facility Operator.

Section 7.07. **Assessments Deposited in Maintenance Fund Bank Account; Disposition of Unexpended Funds.**

(a) Condominium Maintenance Fund Account. Upon Approval by the Board, all assessments levied and collected in accordance with this Declaration, with the exception of those assessments set forth in SubSection (b) hereof, shall be deposited in an account(s) clearly designed as the Condominium Maintenance Fund Account(s). The Facility Operator shall have the control of said account and shall be responsible to the Board for the maintenance of accurate records thereof at all times. The Facility Operator shall act as a fiduciary for the Unit Owners collectively in handling of all accounts. The Facility Operator shall retain all unexpended or excess funds in trust to be applied to the expenses of operation for the next succeeding year, which funds shall be considered by the Facility Operator in calculating the estimated Common and Special Expenses and Assessments for the next succeeding year or refund the same to the Unit Owners entitled thereto.

(b) Condominium Reserve Fund Account. Upon Approval by the Board, there shall be established an account clearly designated as the Condominium Reserve Fund Account. Such

account will be established for the purpose of establishing reserves for, without limitation, repairs, replacements, improvements which are not Capital Improvements and uninsured damage to the Common Area, including the easement areas, and the Jointly Shared Space. Reserve amounts shall be included as separate line items in the annual budget, included in and collected as part of the Common Assessment and shall be deposited in the Condominium Reserve Fund Account and accounted for separately.

(c) Investment. Unexpended and excess reserve funds may be invested in the name of the Corporation in one or more interest-bearing accounts or short-term instruments as Approved by the Board.

(d) Commingling. All sums collected by the Corporation from any Common, Extra Common or Special Assessments, with the exception of funds assessed and collected for the Condominium Reserve Fund Account, may be commingled in a single account. The Facility Operator shall provide to the Board on a monthly basis or as otherwise requested an accounting, on a line item basis of all expenditures from the Condominium Maintenance Fund Account and the Condominium Reserve Fund Account, with a reconciliation against the budgeted amount for each line item on a year-to-date basis.

(e) Account Disbursements. Disbursements from accounts established under this Section shall be governed by rules and procedures Approved by the Board.

Section 7.08. Effect of Nonpayment of Assessment; Delinquency; Notice of Assessment. The assessments which each Unit Owner is obligated to pay shall be a debt of such Unit Owner at the time such assessments become due and payable. In the event of default by any Unit Owner in making such payment, such amounts as may be in default, together with interest thereon at the rate of ten percent (10%) per annum from the date delinquent and all costs which may be incurred by the Board or its authorized representative in the collection of such charges, including reasonable attorney's fees, shall be and become a lien upon the Condominium of the defaulting Unit Owner(s) upon the recordation in the Office of the Recorder of the City and County of San Francisco of a Notice of Assessment; said Notice shall be filed by the Corporation as provided in California Civil Code Section 1367. The Notice of Assessment shall not be recorded unless and until the Facility Operator has delivered to the delinquent Unit Owner(s), not less than two (2) weeks before the recordation of the Notice of Assessment, a written notice of default and demand for payment and unless such delinquency has not been cured within two (2) weeks after delivery of such notice of default.

(a) Subordination to Mortgages. Any lien created or claimed under the provisions of this Declaration is expressly made subject and subordinate to the rights of the Mortgagee under any First Mortgage made in good faith and for value, and no such lien shall, in any way, defeat, invalidate or impair the obligation or the priority of such Mortgage, unless the Mortgagee shall expressly subordinate its interest in writing to such lien.

(b) Priority Over Other Liens. Any assessment or other lien created pursuant to this Declaration shall be superior in lien priority to all other liens which are recorded subsequent to

the recordation of said Notice of Assessment but shall be junior in priority to the lien of those Mortgages described in (a) above.

Section 7.09. **Acceleration**. Upon a Unit Owner becoming three (3) months delinquent, the Board may declare the entire balance of all assessments then due, or to become due in the then current fiscal year, from such defaulting Unit Owner due and payable, which total sum may then be included in any suit, action or proceeding brought to collect said sum. If any action is filed by the Board to enforce the provisions of this Article, any judgment rendered against the defaulting Unit Owner shall include all costs and expenses and reasonable attorney's fees necessarily incurred in prosecuting such action. Notwithstanding acceleration under this section, only the amounts which would have come due under the monthly assessment payment schedule prior to the date the lien is recorded pursuant to Section 7.08 may be secured by said lien.

Section 7.10. **Notice of Default; Foreclosure Sale**. After recording of said Notice of Assessment, the Board or its authorized representative shall record a Notice of Default and thereafter shall cause the Condominium of said defaulting Unit Owner to be sold in the same manner as a sale as provided in the Civil Code Sections 2924, 2924(b) and 2924(c), or through judicial foreclosure. The Board or an authorized representative, acting on behalf of the Corporation, shall have the power to bid at the foreclosure sale and to acquire, hold, lease, mortgage and convey the Condominium which is subject to said default.

Section 7.11. **Curing of Default**. Upon the timely payment or other satisfaction of all delinquent assessments of a Unit Owner set forth in the Notice of Assessment filed and recorded in accordance with this Article and all other assessments which have become due and payable with respect to the Condominium as to which such Notice of Assessment was filed and recorded following the date of such recordation, together with all costs and interest at the rate of ten percent (10%) per annum which accrued thereon and reasonable attorney's fees, the Board shall cause to be recorded in the Office of the City and County of San Francisco Recorder a further notice, stating the satisfaction and release of the lien created by the Notice of Assessment. A fee in the amount of Twenty-five dollars ($25) covering the cost of preparation and recordation of the Notice of Release and Satisfaction shall be paid to the Corporation prior to the execution, filing and recordation of such Notice of Release and Satisfaction. Such Notice of Release and Satisfaction of lien may be executed by a designee of the Board. For the purposes of this Section 7.11, the term "costs" shall include costs and expenses actually incurred or expended by the Corporation in connection with the preparation and recordation of the Notice of Assessment and in efforts to collect the delinquent assessments secured by the lien created by the Notice of Assessment.

Section 7.12. **Rights of Board; Waiver of Owners**. Each Unit Owner hereby vests in and delegates to the Board, or authorized representative(s) of the Board, the right and power to bring all actions at law or in equity or lien foreclosures, whether judicially or by power of sale, against, any Unit Owner(s) for the collection of delinquent assessments in accordance herewith, and the authority and power to sell the Condominium of such defaulting Unit Owner(s), subject to a First

Mortgage or any other superior lien, and hereby expressly waives any objection to the enforcement of the obligation to pay assessments in accordance with this Declaration.

Section 7.13. **Remedies Cumulative**. Any lien created or claimed under this Article and the right to foreclose the same shall be additional to and not in substitution for all other rights and remedies which the Unit Owner(s) and the Board may have to enforce the provisions of the Governing Instruments, and each and all legal or equitable remedies provided for in this Declaration shall be deemed to be cumulative, whether so expressly provided or not.

Section 7.14. **Failure to Fix Assessments**. The omission by the Board, before the expiration of any fiscal year, to fix the assessments hereunder for that fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration or a release of any Unit Owner or lessee from the obligation to pay the assessments, or any installment thereof, for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

Section 7.15. **Liability for Assessments**. A Unit Owner's liability may not be avoided by a waiver of the use or enjoyment of the Common Area, the Jointly Shared Space or any portion of either or by abandonment of the Condominium against which such assessments are made.

Section 7.16. **Contributions.**

(a) If all or a portion of the Agency Space is damaged, destroyed, or taken under the power of eminent domain and the Board elects or is required to repair or restore the Agency Space as provided in Section 8.06, and the condemnation or insurance proceeds are less than the actual cost of repair or restoration, then each Unit Owner shall contribute a *pro rata* share of the extra costs of restoring its own Unit, and BAHA shall pay all extra costs of repairing the Common Area and the Jointly Shared Space.

(b) Proration shall be determined by allocating insurance or condemnation proceeds among the affected Common Area, Jointly Shared Space and Units based on the percentage of the estimated cost to repair each Unit, the Common Area and the Jointly Shared Space bears to the estimated cost to repair the entire Agency Space.

ARTICLE VIII

INSURANCE; DAMAGE AND DESTRUCTION; EMINENT DOMAIN

Section 8.01. Authority to Purchase.

(a) Common Expenses. All insurance pertaining to the Agency Space or operations of the Corporation (except as hereinafter permitted in Section 8.04) which is acquired and maintained by the Corporation pursuant to this Article shall be a Common Expense.

(b) Independent Advice. To assist in the purchase and administration of its insurance, the Corporation may employ the services of independent appraisers and insurance analysts, consultants or brokers, the expense of which shall be a Common Expense.

Section 8.02. Manner of Purchase. Except as provided in Section 8.04, all insurance shall be purchased from insurance companies and in forms and amounts Approved by the Board and approved by each Mortgagee and shall include but not be limited to the coverages required by this Article. The cost of any insurance coverage which may be required by a Unit Mortgagee in excess of that which may otherwise be required by this Article or Approved by the Board, and which cannot be placed separately by the Unit Owner, shall be paid by the Unit Owner of the Condominium subject to such indebtedness as a Special Assessment.

Section 8.03. Insurance Specifications.

(a) All Risk Physical Loss Coverage. The Agency Space, the Unit Owners' interests in all improvements made by the Unit Owners and their lessees (unless, in the case of lessees, the lessee is required to carry separate insurance covering its improvements), and the Unit Owners' interests in all other insurable improvements within the Agency Space, including personal property used in the operation of the Common Areas and Jointly Shared Spaces or in the maintenance of the Agency Space, shall be insured for the mutual benefit of the Unit Owners under a blanket policy(ies) against loss from all risk of direct physical loss or damage, subject to the standard exclusions, for 100% of the full replacement cost thereof without deduction for physical depreciation and against such perils and in such manner as presently or at any time in the future may commonly be insured against by informed, prudent management of property of like size and character in the San Francisco area and as may from time to time be required by any Unit Mortgagee. The cost of any such insurance policy covering the entire Facility shall be allocated between the Agency Space and the Commercial Space based on the percentage of the total square footage of the Facility attributable to each Space.

(1) Full Replacement Cost.

(A) Definition. For purposes of this Article, "full replacement cost" shall mean the actual cost, without deduction for depreciation, of reconstructing the Agency Space, the Unit Owners' interests in all insurable improvements and betterments effected by the Unit Owners and their lessees, if any, whether part of individual Units, Common Area or Jointly

Shared Spaces and the Unit Owners' and the Corporation's interest in all furnishings, equipment and personal property used in operation and management of the Common Area and the Jointly Shared Spaces including architects' and engineers' supervisory fees.

(B) Determination. "Full replacement cost" shall be determined by a recognized appraisal firm every three (3) years beginning with completion of construction of the Project and installation of all improvements and betterments of the Unit Owners and their lessees, if any. Between each three (3) year appraisal, the replacement costs will be updated annually, using recognized inflation factors Approved by the Board. Each Unit Owner and its lessees, if any, shall promptly supply such data as may be required by the appraiser for the purposes hereof.

(b) Required Provisions. The provisions required by subparagraphs (1) through (7) below or equivalents thereof, in form Approved by the Board and approved by any Mortgagee, shall at all times be part of such blanket policy(ies) to the extent obtainable from the insurers.

(1) Cost of Replacement Endorsement. Such blanket policy(ies) shall provide for settlement of loss thereunder as to the Agency Space and all insured improvements and property in accordance with the Replacement Cost Endorsement, or its equivalent which shall be part of the policy(ies).

(2) Unit Mortgagee/Lender's Loss Payable Endorsement. Such blanket policy(ies) shall provide for insuring each Unit Mortgagee in accordance with the Lender's Loss Payable Endorsement, or equivalent, in form satisfactory to such Unit Mortgagee. The aforesaid Lender's Loss Payable Endorsement shall be modified by the following language to be added to such policy(ies) by endorsement:

"Named Mortgagee(s): Subject in all other respects to the provisions of the Mortgage Clause in this policy, or the Lender's Loss Payable Endorsement attached hereto, any loss to building(s), and all improvements thereto, including personal property used in connection therewith, covered under this policy, which normally would be payable to the named insured(s) and named Mortgagee(s) shall be payable only to the Insurance Trustee named by the insured(s) or such other payee as is elsewhere in this policy provided."

(3) Primary Insurance. Such blanket policy(ies) shall provide that coverage is primary insurance, subject to an occurrence deductible and shall not be affected or diminished by reason of any other insurance coverage maintained by any individual Unit Owner(s) or the Corporation.

(4) Waiver of Subrogation. Such blanket policy(ies) shall provide for a waiver of subrogation against individual Unit Owner(s) and the Corporation and their affiliated and subsidiary companies and all of their officers, agents and employees.

(5) Notice of Cancellation. Such blanket policy(ies) shall provide for written notice to each Unit Owner, each Unit Mortgagee, and the Corporation at least thirty (30) days prior to any effective date of cancellation or change affecting coverage whether initiated by the insurer *or* any insured thereunder;

(6) Conduct of Unit Owner. Such blanket policy(ies) shall provide that the conduct of any Unit Owner or the Corporation will not result in the avoidance of the insurer's liability; and

(7) Insurer's Agreement to Abide by Board Decision. Such blanket policy(ies) shall provide an agreement by the insurer to abide by a Board decision regarding restoration or a waiver of its option to restore the Agency Space, if the Board elects to dispose of the same.

(c) Comprehensive General and Automobile Liability Insurance.

(1) Required Insurance. Comprehensive General and Automobile Liability Insurance shall at all times be maintained for the mutual benefit of all Unit Owners, the Corporation and the officers, agents and employees of the Corporation as named insureds against liability for injuries to persons, including death, or damage to property of members of the public or tenants, agents, employees, licensees or invitees of the Unit Owner(s) or person(s) claiming under them, arising out of any "occurrence" incident to operation of the Agency Space or taking place in, on or about the Agency Space, individual Units, the Common Area, the Jointly Shared Space or any elevators or any escalators therein and the adjoining sidewalks, streets and passageways. Such insurance shall include but not be limited to coverage against liability: (1) under common law or applicable statute, ordinance or regulation relating to sale or distribution of alcoholic beverages within the Agency Space to the extent applicable; (2) for operations of independent contractors; (3) as may be assumed under contract, including without limitation the indemnification provisions hereof; and (4) for bodily injury, death or damage to property arising out of the use by or on behalf of any insured thereunder of owned, non-owned, hired or leased automotive equipment, if any, and not otherwise insured, in furthering the operation and maintenance of the Agency Space.

(2) Liability Limits. The amount of such insurance (including automobile bodily injury and property damage liability insurance) shall be maintained at a combined single limit of One million dollars ($1,000,000) or at such lesser amount as when combined with the policy(ies) specified in Section 8.03(d) shall produce total liability coverage not less than a combined single limit of Ten million dollars ($10,000,000). Said limit shall be reviewed annually by the Board and increased, if at all, in an amount Approved by the Board.

(3) Additional Policy Provisions. The insurance policies specified in Sections 8.03(c) and (d) shall contain the additional policy provisions specified in Sections 8.03(b)(3), (4), (5) and (6).

(d) Umbrella Policy. Excess (Umbrella) Liability Insurance for the mutual benefit of all Unit Owners and the Corporation and the Corporation's directors, officers, agents and employees as named insureds shall at all times be maintained under a policy(ies) (or policies issued in layers) which shall follow all terms and conditions of, and be no less comprehensive as to coverage than, the primary insurance specified in Section 8.03(c); such policy(ies) shall, when combined with the aforesaid primary policy, produce a total single limit of liability not less than Ten million dollars ($10,000,000). The policy will schedule the primary liability policy, as well as the employer's liability section of the Workers' Compensation policy, as underlying insurance.

(e) Workers' Compensation. Workers' Compensation Insurance, including Employers Liability Insurance, shall be carried, if necessary, to provide for payment by the Unit Owner(s) or the Corporation of statutory obligations under the California Workers' Compensation Law and any other applicable laws to employees of the Corporation and employees, if any, of the Unit Owner(s) employed by the Corporation in on or about the Agency Space in the care, maintenance or operation thereof.

(f) Boiler and Machinery Insurance. Boiler and Machinery Insurance in the names of the Unit Owners and the Corporation as insureds shall be maintained in the amount of One million dollars ($1,000,000), or such larger amount as Approved by the Board, to cover loss caused by sudden or accidental breakdown of boilers, pressure vessels, pressure piping and all major components of any central heating, air conditioning and cooling systems as may be Approved by the Board.

The interest of each Unit Mortgagee shall be protected thereunder by a loss payable clause acceptable to each Unit Mortgagee. Such insurance shall not cover liability for bodily injuries or property damage which is insured against under the policies specified in Sections 8.03(c) and (d). The policy and the loss payable clause shall, to the extent obtainable from the insurer, be subject to all additional provisions specified in Section 8.03(b).

(g) Fidelity and Crime Insurance. Crime Insurance in an amount not less than Five hundred thousand dollars ($500,000) shall be carried for the benefit of the Unit Owners and Corporation as insureds against loss caused by criminal and dishonest acts both on and off premises and against infidelity of all officers, agents, independent contractors, and employees of the Corporation, if any. Said insurance shall be subject to change from time to time as to coverage and amounts as may be Approved by the Board.

This coverage, to the extent obtainable from the insurer, shall contain the additional provisions specified in Sections 8.03(b)(3), (4), and (5).

(h) Other Insurance. Such other insurance shall be carried for such amounts and coverage as may be Approved by the Board for preservation of the Space Agency and protection of the interests of the Unit Owners in connection therewith, or as may be required by any Unit Mortgagee (to the extent any coverage required by a Unit Mortgagee cannot be placed separately by that Unit Owner).

Section 8.04. **Unit Owner Insurance**. Each Unit Owner may obtain and keep in force such additional insurance as it may desire to cover its Unit and such improvements therein and thereto as it or any of its lessees may have made, and personal property, including without limitation liability coverages and such rental value or business interruption insurance as the Unit Owner may elect to carry. Such insurance shall contain the same waiver of subrogation as that referred to in Section 8.03(b)(4) and shall be carried for the sole protection and at the sole expense of such Unit Owner and shall not be contributory with any insurance maintained by the Corporation in accordance with Section 8.03.

Section 8.05. General Insurance Conditions.

(a) Copies of Policies. Each Unit Owner, each Unit Mortgagee, if any, and the Facility Operator shall be supplied with certified copies of all insurance policies maintained in accordance with Section 8.03.

(b) Loss Adjustment Provisions.

(1) Adjustment of Casualty losses. Subject to the rights of a Unit Mortgagee to require adjustment by and payment to an independent third party adjuster pursuant to Section 8.09, insurance policies specified in Section 8.03(a) and (f), and if applicable Section 8.03(h), shall name the Corporation as Insurance Trustee. All losses covered by such policies shall be adjusted with the insurers by the Corporation. All proceeds shall be paid to the Corporation to be held in trust for the named insureds and disbursed as provided in Section 8.06 and 8.07.

(2) Adjustment of Fidelity and Crime Insurance. The insurance policy specified in Section 8.03(g) shall name the Corporation as the Insurance Trustee. All losses covered by such policy shall be adjusted with the insurer by the Corporation. All proceeds shall be paid to the Corporation to the held in trust for the named insured and shall be applied by the Corporation to the account, or accounts, affected by the loss.

Section 8.06. Decision to Repair or Restore.

(a) Partial or Complete Destruction.

(1) Board Decision. In the event of any damage or destruction to any portion of the Agency Space by fire or other casualty, the cost of repair or restoration of which:

(A) is equal to two-thirds (2/3) or more of the then full replacement cost of the Agency Space, during the first thirty (30) years following the date of this Declaration;

(B) is equal to one-half (1/2) or more of the then full replacement cost of the Agency Space, during the thirty-first (31st) through fiftieth (50th) year following the date of this Declaration;

(C) is equal to one-third (1/3) or more of the then full replacement cost of the Agency Space if the damage or destruction occurs more than fifty (50) years following the date of this Declaration; and/or

(D) exceeds the applicable insurance proceeds by more than Two hundred thousand dollars ($200,000), regardless of when the damage or destruction occurs; the Board shall decide by unanimous vote, and within ninety (90) days after the occurrence of such damage or destruction, whether or not the Agency Space shall be repaired or restored; provided that the Agency Space may be repaired or restored only if BAHA also elects to repair or restore the remainder of the Facility.

(2) No Board Decision. If the extent of damage or destruction is less than set forth in Section 8.06(a)(1) above, or the Board fails to make a decision within the 90-day period as provided for in said section, the Corporation shall forthwith cause the Agency Space to be repaired or restored unless BAHA has given notice of its election not to restore or repair the remainder of the Facility.

(b) Insurance Proceeds. If the Agency Space is to be repaired or restored in accordance with Sections 8.06(a) and, as appropriate, (j), the proceeds of insurance carried pursuant to Section 8.03 received as a result of such damage or destruction shall be used to pay the cost of such repair or restoration and shall be disbursed as provided in Section 8.07(b).

(c) Costs Exceeding Insurance Proceeds. If the Corporation repairs or restores the Agency Space and the cost thereof is more than the amount of such proceeds, the deficiency between such proceeds and such cost shall be paid by BAHA or the Unit Owners collectively as a Special Assessment as provided in Sections 7.16(a) and (b).

(d) Distribution of Excess Insurance Proceeds. If the Corporation repairs or restores the Agency Space and the cost thereof is less than the amount of such insurance proceeds, the balance of such proceeds remaining after payment of the costs of restoration and repair shall be distributed prorata to the Unit Owners in accordance with the formula set forth in Section 7.l6(b), except that excess proceeds attributable to coverage(s) which exceed the coverage requirements established by the Board and which are paid for by one Unit Owner shall be paid to such Owner.

(e) Notice of Election Not to Repair; Recordation. If a decision of the Board not to repair or restore the Agency Space is made pursuant to Section 8.06(a), the Corporation shall cause to be recorded a Notice setting forth such decision.

(f) Tenants In Common. Upon the recording of such notice, the Unit Owners shall be deemed to be tenants in common in the Agency Space and the Board shall cause an appraisal to be made by a disinterested appraiser of recognized competence in the valuation of property of the nature and in the locality in which the Facility is situated, which appraisal shall set forth an opinion as to the value of the Agency Space as it then exists, together with an opinion of any incremental value, if any, which would accrue if the Agency Space were razed.

(g) Sale of Project. As soon as is reasonably possible after completion of said appraisal, the Unit Owners shall, in concert with BAHA, as the owner of the Commercial Space, sell the Agency Space as part of the overall Facility. If necessary to such sale, the Unit Owners may, but shall not be required to, cause any construction then standing to be razed; provided the costs thereof shall be paid out of any insurance or sales proceeds. The Unit Owners and BAHA shall prepare and file a corrected subdivision map, if required, converting the Facility into single unimproved parcel of land. Such sale shall be free from the effect of this Declaration, with the exception that any provisions hereof relating to distribution of sale and insurance proceeds to the Unit Owners and Unit Mortgagees, and liabilities of the Unit Owners *inter se* shall continue to have full force and effect until such distribution is completed. The Unit Owners are authorized to sell the Agency Space, but if the price is, or the terms of such sale have the effect of reducing such price by, more than fifteen percent (15%) below the appraised value previously obtained, the Unit Owners may not sell the Agency Space without the consent of each Unit Mortgagee.

(h) Proceeds of Sale. The net proceeds of such sale, together with any proceeds of insurance received as a result of such damage or destruction, shall be shared among the Unit Owners in accordance with their respective Percentage Ownership Interests; provided that, if there is an amount secured by a Unit Mortgage or a lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit, the amount payable to the Owner of the encumbered Unit shall first be paid to the First Mortgagee, then any balance shall be paid to the holder or holders of any other liens on such Unit, in their order of priority, before any distribution of proceeds to the Unit Owner whose Unit is so encumbered. If within one (1) year after the date of the recording of a notice pursuant to Section 8.06(e) setting forth the Board's and BAHA's joint decision not to repair or restore the Facility, the Facility has not been sold as provided in Section 8.06(g), then an action may be brought by any Unit Owner(s) for partition of the Agency Space by sale as provided in Civil Code Section 1359. Expiration of the one-year period constitutes compliance with Civil Code Section l359(b)(4).

(i) Recordation of Notice of Damage. Within ninety (90) days after any such damage or destruction occurs, any Unit Owner, any insurer, or the Corporation, may record a notice stating that such damage or destruction has occurred, describing it, identifying the part of the Agency Space suffering such damage or destruction, the name of any insurer against whom claim is made, reciting that such notice is recorded pursuant to this Section 8.06(i) and that a copy of such notice has been served on the Corporation and all Unit Owners and Unit Mortgagees.

(j) Restoration of Individual Unit. Repair and restoration of damage to the interior of any Unit shall be made by and at the expense, including any insurance proceeds distributed to such Owner, of the Unit Owner(s) whose Unit is damaged as provided for in Section 7.16(b).

Section 8.07. Proceeds of Property Insurance - How Settled and Paid.

(a) Responsibility for Negotiations. Except as otherwise provided in Section 8.05(b), in the event of any insured casualty, the Corporation is charged with the duty and responsibility of negotiating settlement of property losses with insurance carrier(s). However, if the cost to repair or restore exceeds the best obtainable settlement by Two hundred thousand dollars ($200,000), and if the Board determines in conjunction with BAHA not to repair or restore the Facility as hereinbefore provided, the Board shall, prior to the acceptance of any such award, obtain in writing the approval of all Unit Mortgagees as to any amount which may be accepted on account of the damage to or destruction of the Agency Space. If the Board and any Unit Mortgagees cannot reach an agreement within sixty (60) days following a request for such approval, the question of the amount of the settlement award shall be submitted to arbitration in accordance with the arbitration provisions of the policies involved.

(b) Distribution of Proceeds. The proceeds of any insurance carried pursuant to Sections 8.03(a) and (f) and, where applicable, Section 8.03(i), shall be disbursed in accordance with sound construction loan procedures and controls, which shall be unanimously Approved by the Board, for the purpose of repairing or restoring the Agency Space, or, if a decision of the Board not to repair or restore the Agency Space is made pursuant to Section 8.06, the Board shall disburse such funds to the Unit Owners in accordance with Section 8.06; provided that if there is

any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to provisions of Article VII on any Unit, the amount otherwise payable to the Unit Owner shall first be paid to the First Mortgagee, then to the holder or holders of such other lien(s) on such Unit before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 8.08. Eminent Domain.

(a) Definition; Notice; Representation; Participation in Proceedings.

(1) "Taking"; "Award". The term "taking" shall mean condemnation by eminent domain or sale under threat of condemnation. The term "award" shall include a settlement made in lieu of award.

(2) Notice. In the event of a threatened taking of all or a portion of the Agency Space, the Facility Operator shall immediately notify all Mortgagees and Unit Owners.

(3) Representation. The Board, or its designee, shall represent the Unit Owners in connection with a taking.

(4) Participation in Proceedings. Each Unit Mortgagee and each Unit Owner may, at its option, if permitted by the court, participate in the proceedings incident to a taking, but in any proceeding, the damages shall be determined for such taking as a whole and not for each Unit Owner's interest therein.

(b) Taking of the Entire Project. If the entire Agency Space is taken, any award shall be payable to and collected by the Corporation. Subject to Section 8.08(d), the net proceeds of award shall be divided among the Unit Owners in accordance with their Percentage Ownership Interests.

(c) Partial Taking. If any portion of the Agency Space is taken, the Board shall unanimously decide, in conjunction with BAHA as the owner of the Commercial Space if the remainder of the Facility is impacted, whether (i) to restore the remainder of the Agency Space or (ii) to bring or permit an action for partition or to sell the remaining portion of the Agency Space in the manner provided in Sections 8.06(e), (f) and (g).

(1) No Board Decision; Partition. If the Board does not reach a unanimous decision pursuant to Section 8.08(c) within ninety (90) days after such taking becomes final, then the Board shall be deemed to permit an action for partition under the conditions of Civil Code Section l359(b)(4), which conditions shall be deemed to have been met. At any time following the fifteenth (15th) day after said ninety (90) days, a Unit Owner may record a Notice of Decision. Upon the recording of such notice, the Unit Owners shall be deemed to be tenants in common in the Agency Space and an action for partition by sale may be brought by any Unit Owner(s) as provided in Civil Code Section 1359.

(2) Restoration. If the Board unanimously decides to restore the remainder of the Agency Space as provided in Section 8.08(c), then the proceeds of award shall be payable to

and collected by the Corporation and shall be disbursed first to compensate any Unit Owner whose Unit has been taken and then applied in accordance with sound construction loan procedures and controls approved by the Board and all Unit Mortgagees as reasonably necessary for the purpose of restoring the remainder of the Agency Space. Any deficiency between the award and costs of restoration shall be treated as a Capital Improvement payable by BAHA.

(3) Balance of Award; Sale Proceeds. If the proceeds of award exceed the compensation payable to any Unit Owner whose Unit is taken plus cost of restoration of the remaining Agency Space, the award, or the balance thereof remaining after deducting such costs, shall be divided among the Unit Owner(s) according to their Percentage Ownership Interests in the portions of the Agency Space taken, subject to the provisions of Section 8.08(d). Upon sale by partition or if sale is authorized under Sections 8.06(e),(f) and (g) by decision of the Board as provided in this Section 8.08(c), the net proceeds of sale shall be divided in accordance with each Unit Owner's Percentage Ownership Interest; provided that such distribution is subject to the provisions of Section 8.08(d).

(d) Lien. The Board shall disburse any such funds to the Unit Owners as determined under Section 8.08(c)(3) set forth above; provided that if there is any amount secured by a First Mortgage or any other lien created in good faith and for value or created pursuant to the provisions of Article VII on any Unit remaining, such amount shall first be paid to the First Mortgagee and then to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

(e) Waiver of Power of Eminent Domain. Declarant by execution hereof and each Unit Owner, upon acceptance of the conveyance of its Condominium and/or interest therein, agrees that, as to each or any of them which now or in the future possesses the power of eminent domain, the exercise of such power is hereby waived and shall not be exercised against or applied to any Condominium or interest in a Condominium within the Agency Space.

Section 8.09. **Unit Mortgagee's Right to Require Independent Trustee**. Notwithstanding any provision in this Article VIII to the contrary, any Unit Mortgagee, upon written request to the Corporation, shall have the absolute right to require that an independent insurance trustee approved by the Board and such Mortgagee be appointed forthwith to replace the Corporation to administer insurance proceeds. The replacement insurance trustee shall be a commercial bank or other financial institution with trust powers with a place of business in the City and County of San Francisco, California, which trustee agrees in writing to accept the trust. The costs of such trustee's service shall be paid by the Unit Owner whose Unit is encumbered and whose Unit Mortgagee makes the request.

ARTICLE IX

RESTRICTIONS ON TRANSFER; ACTIONS FOR PARTITION

Section 9.01. **Unity of Interests**. The Common Area shall remain undivided as set forth herein, and no Unit Owner shall be entitled to sever its interest in a Unit from the appurtenant undivided interest in the Common Area. No Unit may be dealt with, sold, conveyed, hypothecated or encumbered separately from its appurtenant interest in the Common Area. Any effort to do so shall be null and void. It is intended hereby to restrict severability in the manner provided in Civil Code Section 1359(a), or as subsequently amended; provided, however, that no restrictions upon severability contained herein shall extend beyond the period in which the right to partition is suspended under Civil Code Section 1359(b).

Section 9.02. **Right to Partition**. No Unit Owner shall have the right to bring any action for partition of the Agency Space, except as permitted by the provisions of this Declaration, the provisions of Civil Code Section 1359(b), or as may be unanimously approved by the Board and all Unit Mortgages.

Section 9.03. **Proceeds of Sale Incident to Partition**. In the event the Agency Space is sold incident to a partition thereof, the proceeds of such sale shall be shared among the Unit Owners in accordance with their Percentage Ownership Interests; provided that, if there is any amount secured by a First Mortgage or by any other lien on any Unit created in good faith and for value or created pursuant to the provisions of Article VII, such amount shall first be paid to the First Mortgagee, then any balance remaining which is otherwise payable to the Unit Owner of the encumbered Unit shall be paid first to the holder or holders of such other lien(s) on that Unit, in the order of their priority, before any distribution of any proceeds to the Unit Owner whose Unit is so encumbered.

Section 9.04. **Priority on Leases, Sales and Transfers.**

(a) The right of a Unit Owner to sell, lease, assign or otherwise transfer any interest in and to its Unit to any person or entity which is not then a Unit Owner shall be subject to the requirement that such Unit Owner make reasonable attempts to transfer or lease to transferees or lessees in the following order of priority:

(1) other governmental institutions or entities;

(2) nonprofit entities; or

(3) such other lessees or transferees as shall have been first Approved by the Board, which approval shall not be unreasonably withheld.

(b) The requirements of Section 9.04(a) apply only to voluntary leases and transfers. The following list of transactions is specifically exempted from said requirements:

(1) the leasing by BAHA of any space as is necessary to achieve full occupancy of the Agency Space at rates comparable to the rental rates being paid by other governmental tenants, provided that any proposed non-governmental tenant shall be subject to Approval by the Board;

(2) transfer of title pursuant to a deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings instituted against a Condominium and any subsequent sale or lease of such interest by the Mortgagee, the Mortgagee's assignee or the Mortgagee's successor in interest or their successors in interest.

Section 9.05. **Interest in Maintenance and Reserve Fund**. Upon sale or transfer of any interest in a Unit by any Unit Owner, said Unit Owner's interests in the Condominium Maintenance Fund Account and in the Condominium Reserve Fund Account shall thereupon automatically be transferred to said Unit Owner's successor or transferee.

Section 9.06. **Conveyance of Condominiums**. No Unit Owner may convey its undivided interest as a tenant in common in the Common Area, except as specifically permitted herein or as part of a conveyance of all its interest in its Unit.

Section 9.07. **Transfer of Membership.**

(a) The membership of each Unit Owner in the Corporation and its right to appoint a Director to the Board shall be as defined in this Declaration, the Articles and Bylaws and shall be appurtenant to the Condominium giving rise to such membership. Such membership shall not be assigned, transferred, pledged, conveyed or alienated in any way, except:

(1) the giving of a proxy by a Unit Owner to a Unit Mortgagee;

(2) assignment of membership by a Unit Owner to a Unit Mortgagee during foreclosure proceedings;

(3) assignment of membership by a Unit Owner to a lessee who qualifies as a "Unit Owner" pursuant to Section 2.01(w); and

(4) upon the transfer of title to said Condominium and then only to the transferee.

(b) Any attempt to make a prohibited transfer shall be void. Subject to Sections 2.01(w), 3.02 and 9.07(a) above, transfer of a Unit Owner's entire interest in a Condominium shall operate automatically to transfer the appurtenant membership in the Corporation to the new Owner thereof.

(c) If a Unit Owner's entire interest in the Agency Space is acquired by another Unit Owner(s), then the transferring Unit Owner's membership in the Corporation shall be merged for all purposes, including but not limited to voting rights, into the membership(s) of the acquiring

Unit Owner(s) for so long as such acquiring Unit Owner(s) hold such Condominium interest(s). For example, if one Unit Owner sells its entire interest in the Agency Space to another Unit Owner, the remaining Unit Owner would have the percentage vote attributable to the two Units it owns. If the acquiring Unit Owner later sold such interest to a third party, its percentage vote on the Board would be reduced to the percentage vote it held originally.

Section 9.08. **Rights of First Refusal – Sale**. The Declarant hereby reserves for itself and grants to any acquiring Unit Owner (hereinafter be referred to as an "offeree Unit Owner") non-assignable rights of first refusal, as set forth in this Section 9.08, upon the proposed sale of any Unit Owner's (hereinafter "selling Unit Owner") interest in the Agency Space.

(a) Covered Transactions. The offeree Unit Owner's rights of first refusal shall apply to the assignment, sale or exchange of all ownership interests in the Agency Space of the transferring Unit Owner (the "Offered Interest"). Upon the valid and timely exercise of its right of first refusal under this section, the offeree Unit Owner shall purchase the entire Offered Interest or none of it. The following transactions are exempted from this right of first refusal:

(1) the placing of any encumbrance or security interest on a Condominium interest, including a Mortgage;

(2) advances made on account of any obligation secured by an encumbrance upon a Unit Owner's Condominium interest;

(3) transfer of title pursuant to deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings instituted against a Condominium interest; or any subsequent sale of such interest by the Mortgagee, the Mortgagee's assignee or the Mortgagee's successor in interest or their successors in interest.

(4) except as provided in Section 9.08(f), any transfer or sale of any kind of any portion, or all, of a Unit Owner's condominium interest which was previously subject to a right of first refusal which was not exercised;

(5) any transfer to a replacement entity (of any type) which among other things performs substantially the same or similar public functions as the transferring Unit Owner.

(b) Purchase Price. The offeree Unit Owner shall pay the purchase price set forth in the bona fide offer from a third party described in Section 9.07(1) below, unless the offeree Unit Owner and the selling Unit Owner agree to a lesser purchase price (the "Purchase Price").

(c) Procedure. If the offeree Unit Owner exercises the right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Sell. If a Unit Owner desires to sell or transfer the Offered Interest in a transaction not exempted pursuant to Section 9.08(a) above, then such selling Unit Owner shall, upon receipt of a bona fide written offer from a third party to purchase the Offered Interest, which offer the selling Unit Owner desires to accept (hereinafter "bona fide offer"), deliver notice ("Notice") to the offeree Unit Owner by registered or certified mail, return

receipt requested, or better service with evidence of delivery, of its intention to sell or otherwise transfer such Offered Interest. The Notice shall set forth the legal description of the Offered Interest, the terms and conditions of sale or transfer, and the amount secured by each and every Mortgage or lien on part or all of the Offered Interest (if the proposed purchase is to be subject to such existing Mortgage or lien); provided that, the bona fide offer may be inspected and/or copied by the offeree Unit Owners upon a reasonable advance request to the selling Unit Owner. Where the bona fide offer includes an exchange for some other property interest, the fair market value of such property interest shall be determined by an independent, professional real estate appraiser who shall be acceptable to the selling Unit Owner and the offeree Unit Owner; provided that the parties shall cooperate in good faith in the expeditious selection of such appraiser. If the parties are unable to agree on an appraiser, a list of names shall be agreed to by the parties. The parties, in an order determined by lot, shall alternately strike one (1) name from the list until the name of one (1) appraiser remains who shall serve as the appraiser for purposes of this paragraph. The cost of appraisal shall be divided equally among the participating Unit Owners.

(2) Response; Forty-Five (45) Day Time Limit. If the offeree Unit Owner desires to purchase the Offered Interest of the selling Unit Owner, then it shall deliver notice ("Purchase Notice") to the selling Unit Owner by registered or certified mail, return receipt requested, or better service with evidence of delivery, to its address set forth in Section 12.06. A Purchase Notice shall cover the entire Offered Interest or shall be deemed invalid.

To be valid, each such Purchase Notice must be executed by the offeree Unit Owner and shall contain or enclose the following:

(A) Certified copies of resolutions or motions duly adopted by the governing body of the offeree Unit Owner authorizing unconditional exercise of the right of first refusal and consummation of the purchase of the Offered Interest in accordance with the terms and conditions of this Section 9.08:

(B) A statement of the Purchase Price;

(C) The legal description of the Offered Interest;

(D) The agreement that the offeree Unit Owner shall accept title to the Offered Interest, with only those representations and warranties as are customary for an "AS IS/WHERE IS" sale of real estate. The sale may be conditioned upon a nationally recognized title insurance company being prepared to issue title insurance to the offeree Unit Owner upon recordation of the deed, subject only to such liens, encumbrances and other exceptions to title as shall be reasonably acceptable to the offeree Unit Owner. To validly exercise the right of first refusal granted in this section, the offeree Unit Owner must cause its Purchase Notice to be received by the selling Unit Owner not later than forty-five (45) calendar days after the date of receipt by the offeree Unit Owner of the Notice.

If the offeree Unit Owner fails to cause the selling Unit Owner to receive a timely, valid Purchase Notice, the offeree Unit Owner shall be deemed to have automatically waived its rights of first refusal in respect to such sale of the Offered Interest. If no valid Purchase Notice is

timely received by the selling Unit Owner, the selling Unit Owner shall have the absolute right to sell the Offered Interest as provided in Section 9.08(e). Upon request of the selling Unit Owner, the waiving offeree Unit Owner shall promptly furnish, without charge, to the selling Unit Owner an irrevocable written waiver of its right of first refusal with respect to such purchase of the Offered Interest. Such waiver shall be in form acceptable to the selling Unit Owner's title insurer.

(3) Time to Consummate Right of First Refusal Transaction. If a timely Purchase Notice is received by the selling Unit Owner, the offeree Unit Owner shall have sixty (60) calendar days from the date of receipt by the selling Unit Owner of such Purchase Notice within which to close escrow on the Offered Interest and to complete the purchase transaction. Said purchase shall be made on the same terms and conditions as the bona fide offer except that:

(A) Irrevocable escrow instructions, duly executed by the offeree Unit Owner, shall be submitted to the escrow agent (selected by the offeree Unit Owner) on such agent's standard form and setting forth instructions consistent with the provisions hereof and specifically instructing said agent to disburse the full Purchase Price first to the Mortgagee holding the first lien priority Mortgage against the Offered Interest to the extent of the obligation secured by such Mortgage (unless the offeree Unit Owner has agreed to take title subject to or to assume the First Mortgage), then to any other holders of liens against the Offered Interest, in their order of priority and any balance to the selling Unit Owner;

(B) The time for consummation of said transaction and consequences of failing to timely consummate said transaction shall be as set forth in this section.

(d) Withdrawal. After a selling Unit Owner has delivered a Notice as provided in Section 9.08(c)(1), it may not thereafter extinguish the rights herein granted or withdraw the Offered Interest from sale pursuant to the terms and conditions of the right of first refusal set forth herein, except with the express written consent of the offeree Unit Owner.

(e) Failure to Exercise Right of First Refusal. If the offeree Unit Owner fails to cause the selling Unit Owner to receive a timely Purchase Notice pursuant to Section 9.08(c)(2) of if the selling Unit Owner receives notice from the offeree Unit Owner waiving its rights of first refusal, then the selling Unit Owner shall have a period of two hundred seventy (270) days from the date of Notice under Section 9.08(c)(1) within which to consummate a sale or transfer of the Offered Interest to third parties; provided that such sale or transfer shall be on the same terms and conditions as contained in the bona fide offer; provided further that, any approvals required from the Board shall not be unreasonably withheld.

(f) Sale after Two Hundred Seventy (270) Day Period. If the sale described in the bona fide offer referred to in Section 9.08(e) is not consummated within such two hundred seventy (270) day period or if the terms of such proposed sale are modified in any material respect, the Offered Interest shall be subject once again to the offeree Unit Owner's right of first refusal upon delivery of a new Notice pursuant to Section 9.08(c)(1).

(g) Holding Period. The first refusal rights set forth in this Section 9.08 are intended to allow the remaining Unit Owners to acquire the selling Unit Owner's Offered Interest for their

use and not for speculation and resale at a profit. Therefore, in the event that any Offered Interest is acquired by a Unit Owner as provided in this Section 9.08, such Unit Owner shall not transfer fee title to such Offered Interest for a period of two (2) years from the date transfer of title is made. The holding period set forth in this paragraph shall not apply to the initial sale by BAHA of any of the Units in the Agency Space or to judicial and nonjudicial foreclosures or deeds given in lieu of foreclosure.

(h) Termination of Right of First Refusal. Upon transfer of any Unit Owner's interest in its Unit to a third party, other than a governmental entity, the right of first refusal appurtenant to the transferred Unit shall terminate.

Section 9.09. **Right of First Refusal - Lease**. BAHA hereby reserves for itself a nonassignable right of first refusal set forth in this Section 9.09 to lease all or any portion of any other Unit Owner's Unit which such Unit Owner elects, in its sole discretion, to offer for lease to third parties, subject to the limitations set forth in Section 9.09(a) below.

(a) Covered Transactions. BAHA's right of first refusal shall apply to the leasing by the initial purchaser from BAHA (the "Initial Purchaser") of any interest in the Initial Purchaser's Unit to a non-Unit Owner and to any assignment of or sublease under any such lease to a non-Unit Owner. The following transactions are exempted from this right of first refusal:

(1) leases by any successor owner of a Unit), whether its interest is acquired by purchase or by a deed given in lieu of foreclosure or pursuant to judicial or nonjudicial foreclosure proceedings.

(2) any lease to a replacement or companion entity (of any type) which among other things performs substantially the same or similar public functions as the Initial Purchaser.

(b) Procedure. If BAHA exercises the right of first refusal, it shall do so in the following manner:

(1) Notice of Intention to Lease; Bona Fide Offer. Upon receipt of a bona fide written offer to lease or sublease all or a portion of the Initial Purchaser's Unit, which the Initial Purchaser is prepared to accept (hereinafter "bona fide offer"), the Initial Purchaser shall give Notice to BAHA of its intention to lease such Condominium interest on the terms and conditions contained in the bona fide offer. The Notice shall identify the interest to be leased (hereinafter "Offered Interest") and the terms and condition of lease. The third party bona fide offer to lease may be inspected and copied by BAHA upon reasonable notice to the Initial Purchaser.

(2) BAHA shall lease the Offered Interest in its "as is" condition or as otherwise provided in the bona fide offer, and the lease shall be subject to Mortgages and other liens of record;

(c) Agreement to Lease. BAHA shall have forty (40) days from the date of the Notice under Section 9.09(b)(1) within which to give Initial Purchaser a written Notice of Intention to lease the entire Offered Interest and fifty (50) days from the date of the Notice under

Section 9.09(b)(1) within which to execute a lease for the entire Offered Interest on the same terms and conditions as contained in the bona fide offer.

(d) Lease to Third Party. If a lease is not timely executed as provided herein by BAHA, then the Initial Purchaser may lease the offered space to third parties at the same or higher rates as those contained in the bona fide offer and otherwise on substantially the same terms and conditions contained in such offer, provided that, such lease shall be executed within one hundred eighty (180) days of the notice set forth in Section 9.09(b)(1). If such lease is not executed within such one hundred eighty (180) day period, BAHA's right of first refusal shall be reinstated as to any leases occurring after such time period.

Section 9.10. [Reserved]

Section 9.11. [Reserved]

Section 9.12. [Reserved]

Section 9.13. Rights in the Event of Foreclosure. Declarant hereby reserves for itself and grants to each Unit Owner the nonassignable rights in event of foreclosure described in this Section 9.13.

(a) Foreclosure. Each Unit Owner shall be deemed to have, and shall have, an interest entitling them to redeem any other Unit from the lien of any mortgage under Civil Code Section 2903 and that, upon redemption of the mortgaged property, such other Unit Owners shall have the rights against the mortgagor Unit Owner which are set forth in Civil Code Section 2903.

(b) Deed in Lieu of Foreclosure.

(1) Notice. If, in lieu of foreclosure, a mortgagor Unit Owner proposes to give a deed to the mortgaged property to a Mortgagee, the Unit Owner and Mortgagee shall reduce their agreement to writing and the mortgagor Unit Owner shall give notice in writing to the other Unit Owners advising them of the terms and conditions of the proposed transaction, providing each with copies of such written agreement.

(2) Right of Other Unit Owners. Upon receipt of a Notice under Section 9.13(b)(1) above, the other Unit Owners, acting in concert or otherwise, shall have the right to acquire the mortgaged property by making the following payments in cash within ninety (90) days of the Notice under Section 9.13(b)(1).

(A) To the Mortgagee: the full amount of the indebtedness secured by such mortgage, together with the Mortgagee's cost and expenses allowable under Civil Code Section 2924(d).

(B) To the mortgagor Unit Owner: the consideration, if any, that was agreed by the Mortgagee to be paid to such mortgagor Unit Owner in consideration of its giving such deed in lieu of foreclosure.

If the other Unit Owners oversubscribe the mortgaged interest and cannot reach timely agreement to divide such interest among themselves, then the Unit Owner which shall acquire the mortgaged interest shall be chosen by the mortgagor Unit Owner by lot.

(3) Waiver. If the other Unit Owner(s) fail to make timely payment for such mortgaged interest as required herein, then the right to purchase under Section 9.13(b) shall be waived and the mortgagor Unit Owner may give such deed in lieu of foreclosure to the Mortgagee pursuant to the terms of their agreement.

Section 9.14. **Recomputation of Interest**. Upon acquisition by an existing Unit Owner of any interest of another Unit Owner through outright purchase, purchase at foreclosure or otherwise, the acquiring Unit Owner's Percentage Ownership Interest shall be recomputed, as necessary, to reflect the acquiring Unit Owner's new holdings.

Section 9.15. **Other Encumbrances**. So long as BAHA or BAAQMD owns an interest in the Agency Space, neither of them shall voluntarily encumber its interests in the Agency Space, or any portion thereof, without the prior written consent of the other, which consent shall not be unreasonably withheld. At such time as BAHA no longer owns any interest in the Project, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAHA. At such time as BAAQMD no longer owns any interest in the Project, the provisions of this Section 9.15 shall no longer apply to the interest initially owned by BAAQMD.

ARTICLE X

MORTGAGE PROTECTION

Section 10.01. **Warranty**. Declarant and each Unit Owner, by accepting a deed subject to this Declaration, each covenants and warrants that any Unit Mortgagees shall be entitled to the rights and guarantees set forth in this Article X.

Section 10.02. **No Impairment**. The following rights of a Unit Mortgagee shall not be impaired:

(a) Subject to compliance with Section 9.13(a), to foreclose or take title to a Unit pursuant to the remedies provided in the Mortgage; or

(b) Subject to compliance with Section 9.13(b), to accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or

(c) To sell or lease a Unit so acquired by the Unit Mortgagee without interference.

Section 10.03. **Reserve Fund**. The Corporation's assessments shall provide an adequate reserve fund for maintenance, repairs and replacement of those common elements that must be replaced on a periodic basis. The Condominium Reserve Fund Account shall be funded through Common Assessments.

Section 10.04. **Subordination**. Any lien created or claimed in the provisions of this Declaration is expressly made subject and subordinate to the rights of any First Mortgage which encumbers all or any interest in a Condominium, made in good faith and for value; and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of such Mortgage unless the Mortgagee expressly subordinates its interest, in writing, to such lien. If any Condominium and/or interest therein is encumbered by a First Mortgage made in good faith and for value, the foreclosure of any lien created by any provision set forth in this Declaration for assessments, or installments of assessments, shall not operate to affect or impair the lien of the Mortgage. On foreclosure of the Mortgage, the lien for assessments or the installments that have accrued up to the time of foreclosure shall be subordinate to the lien of the Mortgage, with the foreclosure-purchaser taking title to the Condominium or interest therein free of the lien for assessments or installments that have accrued up to the time of the foreclosure sale. On taking title to the Condominium and/or interest therein, the foreclosure purchaser shall be obligated to pay only assessments or other charges levied or assessed by the Corporation that become due or payable on or after the foreclosure purchaser acquired title to the Condominium and/or interest therein. The subsequently levied assessment or other charges may include previously unpaid assessments, provided all Unit Owners, including the foreclosure-purchaser and its successors and assigns, are required to pay their proportionate share of such assessment as provided in Section 7.05 relating to Common and Extra Common Assessments. As used herein, the term "foreclosure" shall include both judicial and nonjudicial (i.e., trustee's sales), and a deed (or assignment) in lieu of foreclosure.

Section 10.05. **Amendment of Declaration**. No amendment to this Declaration shall affect the rights of the holder of any First Mortgage recorded prior to recordation of such amendment who does not join in the execution thereof.

Section 10.06. **Additional Subordination Agreements**. By subordination agreement Approved by the Board, the benefits of Sections 10.04 and 10.05 may be extended to Mortgagees not otherwise entitled thereto; provided, however, that nothing contained herein shall give the Board the power to affect the rights of the holders of a recorded Mortgage.

Section 10.07. **Prior Written Approval of Mortgagees**. The prior written approval of each Unit Mortgagee shall be required for the following:

(a) The abandonment or termination of the Common Area or Jointly Shared Space, except for abandonment or termination in the case of substantial destruction by fire or other

casualty under Section 8.06, or in the case of a taking by condemnation or eminent domain under Section 8.08, unless the taking by condemnation violates the provisions of Section 8.08(e) regarding waiver of the power of eminent domain.

(b) Any change in the method of determining the obligations, assessments, dues or other charges that may be levied against a Unit Owner, or to change the pro rata interest or obligations of any Condominium for purposes of levying assessments or charges or allocating distributions of insurance proceeds or condemnation awards for determining the pro rata share of ownership of each Unit Owner in the Common Area.

(c) Any action or omission to act by the Corporation seeking to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Area for the benefit of the Unit Owners collectively shall not be deemed a transfer within the meaning of this Section 10.07(c).

(d) The use of hazard insurance proceeds from losses to any Unit or portion of Common Area for other than the repair, replacement or a restoration of the improvements thereon, except as provided in Section 6.06.

(e) The failure to maintain fire and extended coverage insurance on insurable Corporation property and on the Common Area and Units on a current replacement cost basis in an amount not less than required under Section 8.03(a).

Section 10.08. **Written Notification Obligation**. The Facility Operator shall notify in writing all Mortgagees holding a Mortgage on a particular Unit of any default by the Owner of such Unit in the performance of its obligations under the Governing Instruments and any other related documents, if such default is not cured within thirty (30) days. It shall be the responsibility of each Unit Owner to notify the Facility Operator within thirty (30) days after the Mortgage is given of the name and address of the holder of any Mortgage on its Unit.

Section 10.09. **Right to Inspect**. Upon reasonable request, a Unit Mortgagee shall be entitled to:

(a) Inspect the books and records kept by the Facility Operator during normal business hours.

(b) Receive an annual financial statement, preparation of which is required under Section 4.02(f).

Section 10.10. **Notice of Damage**. In the event of substantial damage to or destruction of any Unit or any part of the Common Area, a Unit Mortgagee shall be entitled to timely notice of any such damage or destruction and no provisions of the Governing Instruments shall entitle the Unit Owner of the Unit subject to the mortgage to have priority over the Unit Mortgagee holding

the mortgage on such Unit with respect to the distribution to such Unit Owner of any insurance proceeds.

Section 10.11. **Notice of Condemnation Proceeding**. In the event of a threatened taking of all or a portion of the Agency Space, the Facility Operator shall give notice to Mortgagees as provided in Section 8.08(a)(2). No provision of the Governing Instruments shall entitle the Owner of a Unit subject to a Mortgage to priority over a Mortgagee holding the Mortgage on such Unit with respect to the distribution to such Unit Owner of the proceeds of any award or settlement.

Section 10.12. **Authority of Unit Owners to Cure Default**. Nothing herein contained shall be deemed to limit or restrict the right of the Corporation or any Unit Owner(s), pursuant to Civil Code Section 2924(c), to cure any defaults under Mortgages. Upon Approval by the Board, the Corporation is expressly authorized, but not required to, cure any and all such defaults by payment to the Mortgagee(s) of the defaulting Unit Owner(s). Without limitation on any remedy of the Unit Owners provided in Section 9.13, such payments shall be a debt of the defaulting Unit Owners and be made a Special Assessment against the defaulting Unit Owner(s) and, if so assessed, shall be secured by the lien created under Section 7.08, which lien shall be subject to this Article X. In no event shall any amounts advanced by the Corporation to cure defaults under a Mortgage secured by an individual Unit Owner's Unit become the responsibility of or be assessed against the other Unit Owners.

Section 10.13. **Mortgagee Protection Clause**. No breach of any of the covenants, conditions and restrictions in this Declaration, nor the enforcement of any of the lien provisions herein, shall defeat or render invalid the rights under any Mortgage on any Unit made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding upon and effective against any Unit Owner whose title is derived through foreclosure or otherwise. Any Mortgagee who acquires title to a Condominium and/or interest therein by foreclosure or by deed (or assignment) in lieu of foreclosure shall not be obligated to cure any breach of this Declaration occurring prior to its acquisition of title to the Condominium.

Section 10.14. **Status of Loan to Facilitate Resale**. Any Mortgage given to secure a loan to facilitate the resale of a Condominium or interest therein after acquisition by foreclosure or by deed (or assignment) in lieu of foreclosure shall be deemed to be a loan made in good faith and for a value and entitled to all the rights and protections of Mortgages under this Declaration.

Section 10.15. **Right of First Refusal Inapplicable to Mortgagee**. Except for the right of first refusal described in Section 9.08 as originally recorded, no right of first refusal or similar restriction on the right of a Unit Owner to sell, lease, transfer, or otherwise convey such Unit Owner's Condominium and/or interest therein shall be granted to the Corporation or other Unit Owners or persons without the written consent of each Mortgagee of the affected Condominium or interest therein. Any right of first refusal or option to purchase a Condominium or interest therein that may hereafter be granted to the Corporation (or other person, firm or entity,

including Unit Owners) shall not impair the rights of a First Mortgagee (i) to foreclose or take title to the Condominium or interest therein pursuant to the remedies provided in the Mortgage; or (ii) to accept a deed (or assignment) in lieu of foreclosure in the event of default under the Mortgage; or (iii) to sell or lease a Condominium acquired by the Mortgagee.

Section 10.16. **Conflict with Other Provisions**. In the event of any conflict between any of the provisions of this Article X and any other provisions of this Declaration or the Articles, or the Bylaws, the provisions of this Article X shall control.

ARTICLE XI

COMPLIANCE, LIABILITY, BREACH AND DEFAULT

Section 11.01. **Compliance and Breach**. Each Unit Owner shall comply with all provisions of the Governing Instruments.

Section 11.02. **Liability**. Each Unit Owner shall be liable for the expense of any maintenance, repair, restoration or replacement rendered necessary by, or any loss, cost, expense, damage or other liability, including attorney fees, caused or occasioned by, its negligence or misconduct or that of its tenants, agents, employees, licensees or invitees, or its failure to comply with the provisions of this Declaration, but only to the extent that such expense, loss, cost, damage or other liability is not covered by the proceeds of insurance carried by the Corporation.

Section 11.03. **Right of Entry**. Violation of any of the provisions, covenants, conditions, restrictions, easements or reservations herein contained shall give the Board, or the Facility Operator, with the Approval of the Board, the right to enter the property upon or as to which such violation exists and to summarily abate and remove at the expense of the Unit Owner thereof, any erection, thing or condition that exists thereon contrary to the intent and meaning of the provisions of this Declaration. The Facility Operator and the Board shall not thereby be deemed guilty of any manner of trespass by such entry, abatement or removal.

Section 11.04. **Nuisance**. The result of every act or omission, whereby any provision, condition, restriction, covenant, easement or reservation herein contained is violated, in whole or in part, is hereby declared to be and constitute a nuisance and every remedy allowed by law or equity against a nuisance, either public or private, shall be applicable against every such result and may be exercised by any Unit Owner or the Corporation. Such remedies shall be deemed cumulative and not exclusive.

Section 11.05. **Breach of Duty to Maintain**. In addition to the other rights hereunder, if any Unit Owner fails to maintain its Unit or make repairs thereto, in such manner as may be necessary to preserve and protect the attractive appearance and value of the Agency Space, the

Corporation shall cause to be performed the necessary work in accordance with Section 4.04(f)(3).

Section 11.06. **Enforcement**. The Unit Owners and/or the Board may bring a legal action for damages against any Unit Owner which defaults in the performance of any of the provisions, conditions, restrictions, easements, covenants or reservations of the Governing Instruments including, but not limited to, the covenant to pay assessments. Further, they shall be entitled to enjoin any violation of the Governing Instruments and shall further be entitled to prosecute any other legal or equitable action that may be necessary to protect the Agency Space. If they shall deem it necessary to initiate any legal or equitable action for the protection of the Agency Space against any Unit Owner, the prevailing party in such litigation shall be entitled to receive its reasonable attorney's fees and costs. Failure to enforce any provision of the Governing Instruments shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.07. **Remedy at Law Inadequate**. The respective rights and obligations of the Unit Owners shall be enforceable in equity as well as at law or otherwise. Each Unit Owner confirms that damages at law may be an inadequate remedy for a breach or threatened breach of this Declaration. Each Unit Owner agrees that, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing herein contained is intended to, nor shall limit or affect any rights at law or by statute or otherwise of any Unit Owner aggrieved as against another for a breach or threatened breach of any provision hereof.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01. **Severability**. The provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provisions of this Declaration.

Section 12.02. **Liberal Construction**. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Agency Space.

Section 12.03. **Waiver**. No consent or waiver, express or implied, by any party hereto of any breach or default by any other party in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same or any other obligations of such party under this Declaration. Failure on the part of any party to complain of any act or failure to act of any other party or to declare any of the other parties in default, regardless of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

Section 12.04. **Number and Gender**. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural, and vice versa.

Section 12.05. **Headings; References**. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Declaration, and all references herein to Articles, Sections or subdivision thereof shall refer to the corresponding Article, Section or subdivision thereof of this Declaration, unless specific reference is made to the Articles, Sections or subdivisions of another document or instrument.

Section 12.06. **Notices**. All notices, demands or requests provided for or permitted to be given pursuant to this Declaration shall be in writing and shall be sent to the parties at the address of each such Unit Owner's Unit or at such other address as the Unit Owner may specify in writing to the Facility Operator from time to time and addressed to the chief executive officer or equivalent of such Unit Owner. Unless otherwise provided herein, all notices shall be given by personal delivery, by overnight courier or by U.S. mail, certified with return receipt requested. All notices shall be deemed received upon the earlier of actual receipt, one business day after deposit with a nationally or regionally recognized overnight courier or three (3) business days after deposit in the U.S. mail.

Section 12.07. **Covenants Running with the Land**. All provisions of this Declaration shall be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to every Unit and the appurtenances thereto.

Section 12.08. **Amendment of Declaration**. Unless a greater vote is expressly required herein to amend any particular provision of this Declaration, and subject to the rights of Mortgagees described in Article X of this Declaration, the Board may amend this Declaration by a vote of a majority of its members or, if there are only two members, by unanimous vote. A copy of each amendment shall be certified by each Unit Owner as having been duly adopted and shall be effective when recorded in the Official Records of the Recorder of the City and County of San Francisco; provided that an amendment to the rules adopted by the Board pursuant to Section 4.02(j) need not be recorded.

Section 12.09. **Term of Covenants, Conditions and Restrictions**. Subject to the provisions of Article X relating to the rights of Mortgagees, these Covenants, Conditions and Restrictions shall continue and be effective until a majority of the Unit Owners or, if there are only two Unit Owners, both Unit Owners, deem that they shall terminate, in the event of which determination the Board shall place on record with the City and County of San Francisco Recorder a duly executed notice of such termination.

Section 12.10. **Successors and Assigns**. This Declaration shall be for the benefit of and be binding upon all Unit Owners, their respective heirs, personal representatives, successors,

purchasers, lessees, sublessees, encumbrancers, donees, grantees, mortgagees, lienors and assigns.

Section 12.11. **Joint and Several Liability**. In the case of joint ownership of a Condominium, if any, the liability of each of the Owners thereof in connection with the liabilities and obligations of Owners set forth in or imposed by this Declaration shall be joint and several.

Section 12.12. **Priority of Governing Instruments**. In the event that there are any conflicts or inconsistencies in or between the Governing Instruments, such conflict or inconsistency shall be resolved by giving precedence to the Governing Instruments in the following order: this Declaration, the Articles and the Bylaws.

Section 12.13. **Arbitration of Dispute**. Any controversy arising among Unit Owners or between a Unit Owner and the Board concerning the rights and obligations of any party under the terms of this Declaration shall be determined by binding arbitration by and under the commercial rules of the American Arbitration Association ("Commercial Rules"). Arbitration hearings shall be held in the City and County of San Francisco. Any such controversy shall be arbitrated by a single arbitrator, who shall be an impartial real estate professional or lawyer having not less than ten years experience developing, managing or representing owners of commercial office properties in the San Francisco area. The arbitrator shall be appointed under the Commercial Rules and shall determine the controversy in accordance with applicable law, the intention of the parties as expressed in the Declaration and any amendments thereto and the evidence produced at the arbitration hearing. Pre-arbitration discovery shall be permitted in accordance with the Commercial Rules or California law applicable to arbitration proceedings. The arbitrator's determination shall be rendered within thirty days after the conclusion of the hearing and may include an award of attorneys' fees and costs to the prevailing party. By accepting title to a Unit, each Unit Owner agrees to be bound by the provisions of this Section 12.13.

[Signatures continued on next page.]

WHEREFORE, this Declaration has been executed in San Francisco, California as of the date first written above.

BAY AREA HEADQUARTERS AUTHORITY

By: _____
Executive Director

By:_____
Treasurer-Auditor

Approved as to form:

_____
General Counsel

APPENDIX 2

[FORM OF PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS]

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of the ___ day of _____, 2013 by and between BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("BAHA"), and ASSOCIATION OF BAY AREA GOVERNMENTS, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("ABAG").

IN CONSIDERATION of the respective agreements hereinafter set forth, BAHA and ABAG hereby agree as follows:

1. Property. BAHA hereby agrees to sell and convey to ABAG, and ABAG hereby agrees to purchase from BAHA, subject to the terms and conditions set forth herein, the following (collectively, the "Property"):

1. that certain office condominium unit identified as **[Unit/Suite]** ___ located at 390 Main Street, San Francisco, California 94105, as more particularly described in Exhibit A attached hereto (the "Unit"), together with all rights, privileges, easements and appurtenances to or affecting the Unit, including without limitation membership in the Corporation, the right to use the Common Area and the Jointly Shared Spaces and the _____ (__) parking spaces appurtenant to the Unit, as more fully set forth in that certain Declaration of Covenants, Conditions and Restrictions (the "CC&R's") recorded in the Official Records of the City and County of San Francisco as Document No. _____ on _____ 20___ the (collectively, the "Real Property");

2. all of BAHA's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer systems and other equipment installed by BAHA in the Unit (the ("Personal Property"); and

3. all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the Unit (the ("Intangible Property").

All capitalized terms not otherwise defined herein shall have the meanings set forth in the CC&R's.

2. Purchase Price; Independent Consideration.

Purchase Price and Manner of Payment. The purchase price (the "Purchase Price") to be paid by ABAG to BAHA for the Property at closing shall be ABAG's condominium ownership interest in its condominium unit ("ABAG Unit") located in the MetroCenter, located at 101 Eighth Street, Oakland, California 94607 ("MetroCenter") together with all rights, privileges, easements and appurtenances to or affecting the ABAG Unit, together with (1) all of ABAG's right, title and interest in and to the work stations, office furniture, fixtures, telephone and computer cabling and other equipment installed by ABAG ("ABAG Personal Property") and (2) all "as-built" plans and specifications and governmental permits and approvals relating to the use and occupancy of the ABAG Unit ("ABAG Intangible Property").

The Purchase Price shall be paid through recordation of deed and execution of other necessary documents through the escrow established pursuant to Section 7 below.

(b) Independent Consideration. Upon mutual execution of this Agreement, ABAG shall deliver to BAHA in cash the sum of ONE HUNDRED AND NO/100 DOLLARS ($100.00) (the "Independent Contract Consideration") which amount has been bargained for and agreed to as consideration for ABAG's exclusive option to purchase the Property provided hereunder and for BAHA's execution and delivery of this Agreement. The Independent Contract Consideration is in addition to and independent of all other consideration provided in this Agreement, and is nonrefundable in all events.

3. BAHA's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, BAHA shall, to the extent BAHA has not already done so, deliver or cause to be delivered to ABAG the following, to the extent in BAHA's actual possession (collectively, the "Due Diligence Materials") at BAHA's sole cost and expense: (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the Property, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the Property (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the Property which BAHA desires ABAG to assume; and (f) copies of all building occupancy permits, including certificates of occupancy, for the Unit. The Due Diligence Materials are for ABAG's use in connection with ABAG's investigation of the Property. ABAG acknowledges that, except as otherwise provided in Section 9 below, BAHA is not making any representation or warranty of any kind with respect to the Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by ABAG.

4. ABAG's Deliveries. Within a reasonable period of time following the mutual execution of this Agreement, ABAG shall, to the extent ABAG has not already done so, deliver or cause to be delivered to BAHA the following, to the extent in ABAG's actual possession (collectively, the "ABAG Due Diligence Materials"): (a) a current preliminary title report prepared by Title Company with respect to the Real Property, together with legible copies of all underlying documents referenced therein (collectively, the "ABAG Preliminary Report"), (b) copies of any environmental reports, studies, surveys and other documentation with respect to the environmental condition of the Unit or the real property on which it is located (the "ABAG Environmental Documents"), (c) copies of all other existing reports, plans, surveys, drawings and specifications relating to the ABAG Unit and the MetroCenter, (d) copies of all documents regarding litigation, liens or threatened claims with respect to the ABAG Unit and the MetroCenter (if any), (e) copies of all contracts and agreements with respect to management and maintenance of the ABAG Unit and the MetroCenter which ABAG desires BAHA to assume; and (f) copies of all building occupancy permits, including certificates of occupancy, for the ABAG Unit and the MetroCenter. The ABAG Due Diligence Materials are for BAHA's use in connection with BAHA's investigation of the ABAG Unit and the MetroCenter. BAHA acknowledges that, except as otherwise provided in Section __ below, ABAG is not making any

representation or warranty of any kind with respect to the ABAG Due Diligence Materials, including their accuracy, completeness or suitability for reliance thereon by BAHA.

5. ABAG's Review and BAHA's Disclaimer.

1. Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by ABAG and BAHA or (ii) the date on which BAHA has delivered the Due Diligence Materials to ABAG.

2. Physical Inspection. ABAG hereby covenants that it will observe and inspect the physical condition of the Unit, the building of which it is a part, including without limitation the Common Area and the Jointly Shared Spaces. Further, the ABAG agrees to the selection and the installation of the Personal Property in the Unit.

3. Title. ABAG shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by ABAG in writing within the applicable review period shall be deemed approved and shall be referred to as "Permitted Exceptions." In the event that ABAG notifies BAHA in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("Objections"), BAHA shall have the right, but not the obligation, to cure any of the Objections by removing or causing the Title Company to insure over such Objections within thirty (30) days after receipt of the Objections, during which period the Closing will be postponed if necessary. If BAHA is unable to cure any Objections within said thirty (30) day period, or if BAHA gives ABAG written notice at anytime during said thirty (30) day period stating that BAHA declines to attempt to cure any of the Objections, then ABAG will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from BAHA, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the Objections (and the ABAG's Condition Precedent described in Section 5.2 of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, BAHA shall be obligated to remove from title on or before Closing any monetary liens affecting the Property (other than monetary liens resulting from ABAG’s acts).

4. As-Is Sale. Except as otherwise expressly set forth in Section 9 and Section 15 of this Agreement and any of the documents delivered by BAHA at Closing, neither BAHA nor its directors, officers, employees, agents, representatives or attorneys (collectively, the "BAHA Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to ABAG including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the Property for ABAG's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the Due Diligence Materials, or as to any other past, present or future matter whatsoever. ABAG acknowledges and agrees that it has satisfied itself regarding the condition of the Property and the foregoing matters, and, except as otherwise provided in this Section 4.4,

that the Property will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that ABAG assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

5. ABAG's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by BAHA at Closing, ABAG, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges BAHA, its agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which ABAG has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. ABAG hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

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

ABAG hereby specifically acknowledges that ABAG has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

_____
ABAG Initials

6. BAHA's Review and ABAG's Disclaimer.

1. Inspection Period. As used herein, the term "Inspection Period" shall refer to a period of time to expire at 5:00 p.m., Pacific Time, on the date that is ten (10) days following the later of (i) full execution of this Agreement by BAHA and ABAG or (ii) the date on which ABAG has delivered the Due Diligence Materials to BAHA.

2. Physical Inspection. BAHA hereby covenants that it will observe and inspect the physical condition of the ABAG Unit, the MetroCenter of which it is a part, including without limitation the Common Area, the Library Unit, the Meeting Room Unit, the Parking Unit and the Cafeteria Unit. Further, BAHA agrees to the selection and the installation of the ABAG Personal Property in the ABAG Unit.

3. Title. BAHA shall complete its review of the Preliminary Report and all documents and information pertaining to any exceptions to title listed therein prior to the expiration of the Inspection Period. Any such exceptions not expressly disapproved by BAHA in writing within the applicable review period shall be deemed approved and shall be referred to as "ABAG Permitted Exceptions." In the event that BAHA notifies ABAG in writing of its disapproval of any exceptions to title listed in the Preliminary Report on or before the expiration of the applicable review period ("ABAG Objections"), ABAG shall have the right, but not the obligation, to cure any of the ABAG Objections by removing or causing the Title Company to insure over such ABAG Objections within thirty (30) days after receipt of the ABAG Objections,

during which period the Closing will be postponed if necessary. If ABAG is unable to cure any ABAG Objections within said thirty (30) day period, or if ABAG gives BAHA written notice at anytime during said thirty (30) day period stating that ABAG declines to attempt to cure any of the ABAG Objections, then BAHA will have the option, within five (5) business days after the end of said thirty (30) day period or receipt of said written notice from ABAG, as its sole right and remedy, to either (i) terminate this Agreement in which event neither party shall have any further obligations to the other hereunder except under provisions of this Agreement which specifically state that they survive termination or (ii) waive the ABAG Objections (and the BAHA's Condition Precedent described in Section ___ of this Agreement) and proceed to Closing. Notwithstanding anything to the contrary contained herein, ABAG shall be obligated to remove from title on or before Closing any monetary liens affecting the ABAG Unit (other than monetary liens resulting from BAHA's acts).

4. As-Is Sale. Except as otherwise expressly set forth in Section__ and Section __ of this Agreement and any of the documents delivered by ABAG at Closing, neither ABAG nor its members, directors, officers, employees, agents, representatives or attorneys (collectively, the "ABAG Parties") or contractors have made any representations, guaranties, promises, statements, assurances or warranties, express or implied, to BAHA including, without limitation, any pertaining to the suitability, habitability or merchantability or fitness of the ABAG Unit for BAHA's intended use or for any use whatsoever, the physical or environmental condition thereof, the expenses of operating the Unit, the condition of title thereto, the truth, accuracy or completeness of the ABAG Due Diligence Materials, or as to any other past, present or future matter whatsoever. BAHA acknowledges and agrees that it has satisfied itself regarding the condition of the ABAG Unit and the foregoing matters, and, except as otherwise provided in this Section ___, that the ABAG Unit will be purchased in its "AS IS" condition and "WITH ALL FAULTS" on the Closing Date and that BAHA assumes the risk that adverse physical, environmental, economic or legal conditions may not have been revealed by its investigation.

5. BAHA's Release. Except with respect to any claims arising out of any breach of covenants, representations or warranties set forth in this Agreement or in the documents delivered by ABAG at Closing, BAHA, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges ABAG, its members, agents, affiliates, successors and assigns from any and all rights, claims and demands at law or in equity, whether known or unknown at the time of this agreement, which BAHA has or may have in the future, arising out of the physical, environmental, economic or legal condition of the Property. BAHA hereby specifically waives the provisions of section 1542 of the California Civil Code ("Section 1542") and any similar law of any other state, territory or jurisdiction. Section 1542 provides:

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

BAHA hereby specifically acknowledges that BAHA has carefully reviewed this subsection and discussed its import with legal counsel and that the provisions of this subsection are a material part of this Agreement.

_____
BAHA Initials

7. ABAG's Conditions Precedent to Closing. The following are conditions precedent to ABAG's obligation to purchase the Property (the "ABAG's Conditions Precedent"). ABAG's Conditions Precedent are intended solely for the benefit of ABAG and may be waived only by ABAG in writing. In the event any ABAG's Condition Precedent is not satisfied, ABAG may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

1. Property Condition. ABAG's inspection, review and approval, prior to expiration of the Inspection Period, of the Due Diligence Materials, including, without limitation, the Preliminary Report and the Environmental Documents, which approval shall be deemed given unless ABAG shall give written notice of disapproval prior to the expiration of the Inspection Period;

2. Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to ABAG upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined to equal the fair market value of the ABAG Unit, as reflected in an independent appraisal of a certified commercial real property appraiser jointly selected by BAHA and Purchaser), insuring fee simple title to the Property in ABAG, subject only to the Permitted Exceptions and such other exceptions as ABAG shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "Title Policy").

3. Performance by BAHA. BAHA shall have complied, in all material respects, with all of BAHA's duties and obligations contained in this Agreement and all of BAHA's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

8. BAHA's Conditions Precedent to Closing. The following are conditions precedent to BAHA's obligation to sell the Property (the "BAHA's Conditions Precedent"). BAHA's Conditions Precedent are intended solely for the benefit of BAHA and may be waived only by BAHA in writing. In the event any BAHA's Condition Precedent is not satisfied, BAHA may, in its sole and absolute discretion and without limiting any of its other rights and remedies under this Agreement, at law or in equity, terminate this Agreement.

1. Property Condition. BAHA's inspection, review and approval, prior to expiration of the Inspection Period, of the ABAG Due Diligence Materials, including, without limitation, the ABAG Preliminary Report and the ABAG Environmental Documents, which approval shall be deemed given unless BAHA shall give written notice of disapproval prior to the expiration of the Inspection Period;

2. Recordation of Condominium Map for 390 Main Street. A condominium map establishing the Unit as a separate legal parcel shall have been recorded.

3. Recordation of Grant Deed(s) for ABAG Unit and ABAG's Interest in the Library Unit, Meeting Room Unit, Parking Unit and Cafeteria Unit. One or more grant deeds showing the ownership of the ABAG Unit and of ABAG's Interest in the Library Unit, Meeting Room Unit, Parking Unit and Cafeteria Unit as transferred to the BAHA.

4. Title Insurance. Title Company shall be irrevocably and unconditionally committed to issue to BAHA upon the Closing an ALTA owner's policy of title insurance (2006) in the amount of the Purchase Price (which shall be determined as set forth above in paragraph 5.2.), insuring fee simple title to the ABAG Unit in BAHA, subject only to the Permitted Exceptions and such other exceptions as BAHA shall have approved in writing prior to Closing and containing such endorsements as are approved by the Title Company during the Inspection Period (the "ABAG Unit Title Policy")

5. Performance by ABAG. ABAG shall have complied, in all material respects, with all of ABAG's duties and obligations contained in this Agreement and all of ABAG's representations and warranties contained in or made pursuant to this Agreement shall have been true and correct, in all material respects, when made and shall remain true and correct, in all material respects, as of the Closing Date.

9. Escrow; Closing.

1. Escrow. Upon mutual execution of this Agreement, the parties hereto shall deposit a fully executed copy of this Agreement with First American Title Insurance Company, 1850 Mt. Diablo Blvd., Suite 300, Walnut Creek, California 94596; Escrow Officer: Kitty Schlesinger) (hereinafter "Title Company" or "Escrow Holder") and this Agreement shall serve as instructions to Escrow Holder for consummation of the purchase contemplated hereby. BAHA and ABAG shall execute such supplemental escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement, provided such supplemental escrow instructions are not in conflict with this Agreement as it may be amended in writing from time to time. In the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions signed by ABAG and/or BAHA, the terms of this Agreement shall control.

2. Closing. The parties intend for the consummation of the sale of the Property as provided hereunder (the "Closing") to take place through escrow on the date that is ten (10) business days after the expiration of the Inspection Period, or on such earlier date as may be agreed to by BAHA and ABAG (the "Closing Date").

3. BAHA's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, BAHA shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-1 (the "390 Main Street Deed");

(ii) Bill of Sale. Two (2) duly executed counterpart originals of two separate bills of sale with respect to the Personal Property and the ABAG Personal Property, respectively, in the form attached to this Agreement as Exhibit C (the "Bills of Sale");

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of two separate assignments and assumption of intangible property in the form attached to this Agreement as Exhibit D (the "Assignments"); and

(iv) BAHA's Certificate. A duly executed Certificate confirming the continued truth and accuracy as of the Closing Date of the representations and warranties set forth in Section 9, except as otherwise may be set forth in the Certificate.

4. ABAG's Closing Deliveries. On or before the last business day immediately preceding the Closing Date, ABAG shall deliver to Escrow Holder the following:

(i) Deed. A duly executed and acknowledged grant deed in the form attached to this Agreement as Exhibit B-2 (the "MetroCenter Deed")

(ii) Bill of Sale. Two (2) duly executed counterpart originals of each of the separate Bills of Sale;

(iii) Assignment and Assumption of Intangible Property. Two (2) duly executed counterpart originals of each of the separate Assignments;

(iv) Preliminary Change of Ownership Report. A duly executed and original preliminary change of ownership report (if required)**;** and

(v) Closing Costs. Immediately available funds in the amount of the ABAG's share of Closing Costs.

5. Additional Closing Documents. BAHA and ABAG shall each deposit such other instruments as are reasonably required by Escrow Holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof.

10. Closing Costs and Prorations. BAHA and ABAG agree to the following prorations and allocation of costs ("Closing Costs") regarding this Agreement:

1. Real Estate Taxes Assessments. ABAG and BAHA are each governmental entities and are not subject to real property taxes. In the event there are any assessments which attach to governmentally owned real property, such assessments shall be prorated and adjusted between BAHA and ABAG as of the Closing Date so that (1) with respect to the Unit, BAHA shall pay, or give ABAG credit for, any such assessments that accrued on or prior to the Closing Date and ABAG shall pay, or assume, any such assessments that accrue after the Closing Date, and (2) with respect to the ABAG Unit, ABAG shall pay, or give BAHA credit for, any such assessments that accrued on or prior to the Closing Date and BAHA shall pay, or assume, any such assessments that accrue after the Closing Date. The obligations of ABAG and BAHA set forth in this Section 8.1 shall survive the Closing.

2. Property Expenses. There shall be no proration at Closing of utilities and Common Area assessments for the Unit or the ABAG Unit. These expenses shall be paid by ABAG and the BAHA, respectively, after Closing.

3. Title Insurance and Escrow Fee. BAHA shall pay the premium attributable to the Title Policy and the ABAG Title Policy and any reasonable and customary escrow fee or charge imposed by Escrow Holder.

4. Recording Costs. BAHA shall pay the cost of recording the Deeds and all other documents, if any, recorded pursuant to the terms of this Agreement.

5. Transfer Taxes. No governmental documentary transfer or transaction taxes or fees shall be payable in connection with this transaction because both ABAG and BAHA are exempt governmental entities.

The provisions of this Section 8 shall survive the Closing.

11. Representations and Warranties of BAHA. BAHA hereby represents and warrants to ABAG as follows:

1. Power and Authority. BAHA has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (iii) to complete the transactions contemplated by this Agreement. BAHA has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing, (B) the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and (C) the completion of the transactions contemplated by this Agreement.

2. Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing have been duly executed and delivered by BAHA and constitute valid and binding obligations of BAHA.

3. No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by BAHA to ABAG at the Closing and the performance by BAHA of its obligations under this Agreement and under the documents to be executed and delivered by BAHA to ABAG at the Closing and the completion of the transactions contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which BAHA is party or by which BAHA is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to BAHA or any judgment, order or decree of any court or governmental authority that is binding on BAHA.

4. Ownership. BAHA has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the Property.

5. Actions. To BAHA's knowledge, except for the on-going discussions with the San Francisco Planning Department concerning the current zoning of the Real Property, (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or

value of the Property, (ii) there are no special assessment proceedings affecting the Property, (iii) there is no litigation pending or threatened in writing against BAHA arising out of the ownership or operation of the Property or that might detrimentally affect the Property or the ability of BAHA to perform its obligations under this Agreement. BAHA shall notify ABAG promptly of any such proceedings or litigation of which BAHA becomes aware, and (iv) BAHA has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

6. Contracts for Improvements and Other Encumbrances. To BAHA's knowledge, other than possible construction contract retentions for which funds have been reserved by BAHA, at the time of Closing there will be no outstanding written or oral contracts made by BAHA for any improvements to the Property which have not been fully paid for and, except as set forth in the Preliminary Report, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the Property and which were not disclosed in writing to ABAG prior to the date of this Agreement.

7. Hazardous Materials. To BAHA's knowledge and except as set forth in the Due Diligence Materials, there has been no release, storage, treatment, generation or disposal of Hazardous Materials by BAHA, or any other party during BAHA's ownership of the Property, on, under or from the Property in violation of any applicable laws, ordinances or regulations. For purposes of this Agreement, the term "Hazardous Materials" shall mean any toxic or hazardous waste, material or substance, including, without limitation, asbestos, petroleum, petroleum products, underground storage tanks now or previously containing any other Hazardous Materials, substances defined as "hazardous substances", "hazardous waste" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; Hazardous Materials Transportation Act, 49 U.S.C. Sec. 1801; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; and other substances defined as hazardous waste and hazardous substances in applicable state or local laws and/or in any regulations and publications promulgated pursuant to said laws.

12. Representations and Warranties of ABAG. ABAG hereby represents and warrants to BAHA as follows:

1. Power and Authority. ABAG has the power and authority (i) to enter into this Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing, (ii) to perform its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and (iii) to complete the transaction contemplated by this Agreement. ABAG has taken all governmental action necessary to authorize (A) the execution and delivery of this Agreement and the documents to be executed and delivered by ABAG to BAHA at the Closing, (B) the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and (C) the completion of the transaction contemplated by this Agreement.

2. Binding and Enforceable. This Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing have been duly executed and delivered by ABAG and constitute valid and binding obligations of ABAG.

3. No Conflict. The execution and delivery of this Agreement and all of the documents to be executed and delivered by ABAG to BAHA at the Closing and the performance by ABAG of its obligations under this Agreement and under the documents to be executed and delivered by ABAG to BAHA at the Closing and the completion of the transaction contemplated by this Agreement will not result in (i) a breach of, or a default under, any contract, agreement, commitment or other document or instrument to which ABAG is party or by which ABAG is bound or (ii) a violation of any law, ordinance, regulation or rule of any governmental authority applicable to ABAG or any judgment, order or decree of any court or governmental authority that is binding on ABAG.

4. ABAG's Investigation. ABAG has examined, inspected and conducted its own investigation of all matters with respect to the physical and environmental condition of the Property, permissible uses, zoning, covenants, conditions and restrictions and all other matters which in ABAG's judgment bear upon the value and suitability of the Property for ABAG's purposes. ABAG acknowledges that, except as otherwise provided herein, BAHA has not made any representation of any kind in connection with soils, environmental or physical conditions on, or bearing on, the use of the Property, and ABAG is relying solely on ABAG's own inspection and examination of such items and not on any representation of BAHA.

5. Ownership. ABAG has not granted any option or right of first refusal or first opportunity to any other party to acquire any interest in any of the ABAG Unit.

6. Actions. To ABAG's knowledge (i) there are no condemnation, zoning or other land-use regulation proceedings, either instituted or planned to be instituted, which would materially and adversely affect the use, operation or value of the ABAG Unit, (ii) there are no special assessment proceedings affecting the ABAG Unit, (iii) there is no litigation pending or threatened in writing against ABAG arising out of the ownership or operation of the ABAG Unit or that might detrimentally affect the ABAG Unit or the ability of ABAG to perform its obligations under this Agreement. ABAG shall notify BAHA promptly of any such proceedings or litigation of which ABAG becomes aware, and (iv) ABAG has received no written notice from any governmental entity that the Property is in violation of any applicable laws, ordinances or regulations.

7. Contracts for Improvements and Other Encumbrances. To ABAG's knowledge, at the time of Closing there will be no outstanding written or oral contracts made by ABAG for any improvements to the ABAG Unit which have not been fully paid for and, except as set forth in the preliminary title report pertaining to the ABAG Unit, there are no existing or proposed easements, covenants, restrictions, agreements or other documents which affect title to the ABAG Unit and which were not disclosed in writing to BAHA prior to the date of this Agreement.

8. Hazardous Materials. To ABAG's knowledge there has been no release, storage, treatment, generation or disposal of Hazardous Materials by ABAG, or any other party during ABAG's ownership of the ABAG Unit, on, under or from the ABAG Unit in violation of any applicable laws, ordinances or regulations.

13. Survival. All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and shall survive the execution and delivery of this Agreement, the 390 Main Street Deed, the MetroCenter Deed and the Closing, provided that the representations and warranties set forth in Sections 9.4 through 9.8 and 10.4 through 10.8 shall survive the Closing only for a period of nine (9) months following the Closing Date and, if no claim is made in writing within such period, shall expire and be of no further force and effect.

14. Casualty or Condemnation.

1. In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing, and the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars ($50,000,000), then ABAG shall have the right to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such casualty and the cost of such repair and/or restoration. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

2. In the event any of the Property is damaged and/or destroyed by fire or other casualty prior to the Closing where (i) the cost to repair and/or restore such damage and/or destruction does not exceed Fifty Million Dollars ($50,000,000), or (ii) the cost to repair and/or restore such damage and/or destruction exceeds Fifty Million Dollars ($50,000,000) but this Agreement is not terminated pursuant to Section 12.1 above as a result thereof, then the Closing shall occur as scheduled notwithstanding such damage; provided, however, that BAHA shall be obligated, at its cost, to restore or repair the Unit to its prior condition and shall retain its interest in all insurance proceeds payable in connection with such damage or destruction. BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

3. In the event a governmental entity commences eminent domain proceedings (or threatens in writing to commence such proceedings) to take any portion of the Unit, or the ABAG Unit, or any other portion of the building in which either is located which would impair ABAG's use of the Unit, or the BAHA’s use of the ABAG Unit, respectively, after the date hereof and prior to the Closing, then (1) with respect to the Unit, ABAG shall have the option to terminate this Agreement by written notice to BAHA within five (5) business days after ABAG has received written notice from BAHA of the occurrence of such commencement or threatened commencement, and (2) with respect to the ABAG Unit, BAHA shall have the option to terminate this Agreement by written notice to ABAG within five (5) business days after BAHA has received written notice from ABAG of the occurrence of such commencement or threatened commencement. In the event of any such termination, ABAG and BAHA shall each be liable for one-half of any escrow fees or charges, and neither party shall have any further liability or obligation under this Agreement.

4. In the event a governmental entity commences any such eminent domain proceedings after the date hereof and prior to the Closing and this Agreement is not terminated pursuant to Section 13.3 above as a result thereof, then the Closing shall occur as scheduled notwithstanding such proceeding; provided, however, that (1) with respect to the Unit, BAHA's

interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the Unit shall be assigned to ABAG as of the Closing or credited to ABAG if previously received by BAHA and (2) with respect to the ABAG Unit, ABAG's interest in all awards arising out of such proceedings which are attributable to the taking of any portion of the ABAG Unit shall be assigned to BAHA as of the Closing or credited to BAHA if previously received by ABAG. ABAG's and BAHA's obligations pursuant to the immediately preceding sentence shall survive the Closing.

15. Covenants.

(a) BAHA Covenants.

1. Continued Operation of the Property. Between BAHA's execution of this Agreement and the Closing, BAHA shall cause the Property to be operated and maintained in substantially the condition existing upon the date of this Agreement. Prior to the Closing, BAHA may not materially alter the Property in any way without ABAG's prior written authorization.

2. Condominium Map. BAHA shall, at BAHA's cost, file all applications and take all other actions necessary to obtain all required approvals of (1) with respect to the Unit, a condominium map establishing the Unit as a separate legal parcel and shall cause the condominium map to be recorded in the Official Records of the City and County of San Francisco as expeditiously as is commercial reasonable and (2) with respect to the ABAG Unit, a condominium map establishing the ABAG Unit as a legal parcel owned by BAHA and shall cause the condominium map to be recorded in the Official Records of the County of Alameda as expeditiously as is commercial reasonable.

(b) ABAG Covenant. Between ABAG's execution of this Agreement and the Closing, ABAG shall cause the ABAG Unit to be operated and maintained in substantially the condition existing upon the date of this Agreement. Prior to the Closing, ABAG may not materially alter the ABAG Unit in any way without BAHA's prior written authorization.

16. Brokers. Each party hereby agrees to indemnify, protect and defend the other (by counsel reasonably acceptable to the party seeking indemnification) against and hold the other harmless from and against any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, resulting from any claims for a real estate commission, finders fee or other real estate brokerage-type compensation by any person or entity based upon the acts of that party with respect to the transaction contemplated by this Agreement. The obligations of ABAG and BAHA under this Section 14 shall survive the Closing.

17. Hazardous Materials Indemnity.

(a) BAHA Indemnity. BAHA shall indemnify, defend and hold harmless ABAG from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by BAHA or any of its employees, agents or contractors of Hazardous Materials on, under or from the Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the Unit, any cost of

repair of the Unit necessitated by the remediation or removal of Hazardous Materials from the Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the Unit. The indemnification obligations set forth in this Section 15 shall survive the Closing. BAHA expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

(b) ABAG Indemnity. ABAG shall indemnify, defend and hold harmless BAHA from any Repair and Remediation Costs (as defined below) arising from the release, treatment, use, generation, storage or disposal by ABAG or any of its employees, agents or contractors of Hazardous Materials on, under or from the ABAG Unit occurring prior to the Closing. As used in this subparagraph the term "Repair and Remediation Costs" means the cost of any required or necessary remediation or removal of Hazardous Materials from the ABAG Unit, any cost of repair of the ABAG Unit necessitated by the remediation or removal of Hazardous Materials from the ABAG Unit and the costs of any testing, sampling or other investigations or preparation of remediation or other required plans undertaken in connection with the remediation or removal of Hazardous Materials from the ABAG Unit. The indemnification obligations set forth in this Section 15 shall survive the Closing. ABAG expressly preserves its rights against other parties, and does not release or waive its rights to contribution, against any other party.

18. Miscellaneous.

1. Notices. Any and all notices, elections, approvals, consents, demands, requests and responses ("Notice") permitted or required to be given under this Agreement shall be given in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section 16.1. Any Notice shall be effective upon receipt but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Notices sent by telecopy shall be effective only if also sent by nationally recognized express overnight courier service for delivery within two (2) business days.

If to ABAG:

Association of Bay Area Governments
390 Main Street, Suite _____
San Francisco, CA 94105
Attn: _____
Tel: _____
Fax: _____

With a copy to:

_____
_____
_____

Attn: _____
Tel: _____
Fax: _____

If to BAHA:

Bay Area Headquarters Authority
390 Main Street, Suite ____
San Francisco, CA 94105
Attn: Executive Director
Tel: _____
Fax: _____

with a copy to:

_____
_____
_____
Attn: _____
Tel: _____
Fax: _____

If to Escrow Holder:

First American Title Insurance Company
1850 Mt. Diablo Blvd., Suite 300
Walnut Creek, California 94596
Attn: Kitty Schlesinger
Tel: 925-927-2154
Fax: 925-927-2180

2. Successors and Assigns. Subject to the provisions hereof, this Agreement shall be binding upon the successors and assigns of BAHA and ABAG. The parties acknowledge that the right to purchase the Property pursuant to the terms of this Agreement is personal to the Association of Bay Area Governments or any successor governmental agency performing the same functions, and neither ABAG's nor BAHA's rights hereunder may be otherwise assigned without the prior written consent of BAHA or ABAG, respectively, which may be withheld in BAHA's or ABAG's, respectively, sole discretion. Any assignment in violation of this Section 18.2 shall be void.

3. Attorneys' Fees. In the event of any litigation or other proceeding to enforce the provisions of this Agreement or to resolve any dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other proceeding shall be entitled to, in addition to any other damages assessed, its or his reasonable attorneys' fees and all other costs and expenses incurred in connection with such litigation or other proceeding.

4. Amendments. This Agreement may be amended or modified only by a written instrument executed by BAHA and ABAG.

5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

6. Schedules and Exhibits. Each of the schedules and exhibits attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

7. Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including, without limitation, any letters of intent previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement.

8. Captions. The Section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

9. Time of the Essence. Time is of the essence of this Agreement. As used in this Agreement, a "business day" shall mean a day which is not a Saturday, Sunday or recognized federal or state holiday. If the last date for performance by either party under this Agreement occurs on a day which is not a business day, then the last date for such performance shall be extended to the next occurring business day.

10. Severability. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Purchase and Sale Agreement and Joint Escrow Instructions as of the date first above written.

ASSOCIATION OF BAY AREA GOVERNMENTS

By: _____
Name: _____
Its: _____

Approved as to form:

_____
Legal Counsel

BAY AREA HEADQUARTERS AUTHORITY

By: _____
Name: _____
Its: Executive Director

By: _____
Name: _____
Its: Treasurer-Auditor

Approved as to form:

_____
General Counsel

[Signature Page to Purchase and Sale Agreement and Joint Escrow Instructions]

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

The real property referred to herein below is situated in the City and County of San Francisco, State of California, and is described as follows:

APN:

EXHIBIT B-1

FORM OF 390 MAIN STREET DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will is due and owing.

GRANT DEED

FOR VALUABLE CONSIDERATION**,** the receipt and sufficiency of which are hereby acknowledged, BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantor"), hereby grants, transfers and assigns to ASSOCIATION OF BAY AREA GOVERNMENTS, a regional planning agency ("Grantee"), that certain real property located in the City and County of San Francisco, State of California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ___ day of _____, 20__.

"GRANTOR"

BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act

By: _____
Name: _____
Its: _____

STATE OF _____)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

EXHIBIT B-2

FORM OF METROCENTER DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

_____
_____
_____
Attn: _____

APN: _____

THIS SPACE ABOVE FOR RECORDER'S USE

Pursuant to Section 11922 of the Revenue and Taxation Code, no transfer tax will is due and owing.

GRANT DEED

FOR VALUABLE CONSIDERATION**,** the receipt and sufficiency of which are hereby acknowledged, ASSOCIATION OF BAY AREA GOVERNMENTS, a regional planning agency ("Grantor"), hereby grants, transfers and assigns to BAY AREA HEADQUARTERS AUTHORITY, a joint powers authority established pursuant to the California Joint Exercise of Powers Act ("Grantee"), that certain real property located in the City and County of Alameda, California and which is more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, together with all rights, privileges, easements and appurtenances pertaining thereto.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed, to be effective as of this ___ day of _____, 20__.

"GRANTOR"

ASSOCIATION OF BAY AREA
GOVERNMENTS, a regional planning agency

By: _____
Name: _____
Its: _____

STATE OF _____)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Exhibit A to Grant Deed

Description of Real Property

[to be attached]

Exhibit B

EXHIBIT C

FORM OF BILL OF SALE

[to be conformed to sale of each of the Unit and the ABAG Unit]

This BILL OF SALE is made and entered into to be effective as of the ____ day of _____, 20__, by and between BAY AREA HEADQUARTERS AUTHORITY ("Seller") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Buyer").

WHEREAS, Seller and Buyer are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20___ (the "Agreement"), pursuant to which Seller agreed to sell to Buyer and Buyer agreed to purchase from Seller an office condominium unit located at 390 Main Street, Suite ___, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement.

WHEREAS, pursuant to the Agreement, Seller is to convey to Buyer certain office furnishings, equipment and other personal property (collectively, the "Personal Property").

NOW, THEREFORE, in consideration of Buyer entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby sells, transfers, conveys and assigns all of Seller's right, title and interest in and to the Personal Property, to have and to hold the Personal Property unto the Buyer and its successors and assigns forever.

EXCEPT FOR ANY EXPRESS REPRESENTATIONS OR WARRANTIES SET FORTH IN THE AGREEMENT, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE ABOVE-DESCRIBED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ENVIRONMENTAL CONDITION, AND BUYER ACCEPTS THE ABOVE-DESCRIBED PROPERTY IN AN "AS IS - WHERE IS" CONDITION, WITH ALL FAULTS.

IN WITNESS WHEREOF, the undersigned has executed this Bill of Sale as of the date first written above.

BUYER:	SELLER:
ASSOCIATION OF BAY AREA GOVERNMENTS	BAY AREA HEADQUARTERS AUTHORITY
By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____

EXHIBIT D

FORM OF ASSIGNMENT

ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PROPERTY **[AND CONTRACTS]**

[to be conformed to sale of each of the Unit and the ABAG Unit]

This ASSIGNMENT AND ASSUMPTION OF INTANGIBLE PERSONAL PROPERTY **[AND CONTRACTS]** (this "Assignment") is made and entered into to be effective as of the ____ day of _____, 20___, by and between BAY AREA HEADQUARTERS AUTHORITY ("Assignor") and ASSOCIATION OF BAY AREA GOVERNMENTS ("Assignee").

WHEREAS, Assignor and Assignee are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions dated _____, 20__ (the "Agreement"), pursuant to which Assignor agreed to sell to Assignee and Assignee agreed to purchase from Assignor an office condominium unit located at 390 Main Street, Suite ____, in the City and County of San Francisco, State of California, all as more particularly described in the Agreement (the "Real Property"). Capitalized terms used but not defined herein shall have the meaning given such terms in the Agreement.

WHEREAS, pursuant to the Agreement, Assignor is to convey to Assignee certain Intangible Property relating to the Real Property.

[WHEREAS, pursuant to the Agreement, Assignor is to assign its interest in certain service agreements, maintenance agreements and other contracts relating to the Real Property which agreements and contracts are listed in Schedule 1 attached hereto (collectively, the "Contracts").]

NOW, THEREFORE, in consideration of Assignee entering into the Agreement and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee and Assignor hereby agree as follows:

1. Intangible Property. Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Intangible Property.

2. Contracts. **[TO BE DELETED IF NO CONTRACTS]**

(a) Assignor hereby grants, conveys, transfers and assigns to Assignee all of Assignor's right, title and interest in and to the Contracts. Assignor agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Contracts to be performed prior to the date hereof.

(b) Assignee shall perform or cause to be performed Assignors' obligations, if any, under the Contracts from and after the date of this Assignment, and agrees to indemnify, defend, protect and hold Assignor harmless from and against any and all liability, loss, cost, damage and expense (including, without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignor relating to obligations with respect to the Contracts to be performed after the date hereof. Assignors agrees to indemnify, defend, protect and hold Assignee harmless from and against any and all liability, loss, cost, damage and expense (including without limitation, attorneys' and paralegals' fees and costs) asserted against, incurred or suffered by Assignee relating to obligations with respect to the Leases and Contracts to be performed before the date hereof.

3. Further Actions. Each of Assignor and Assignee hereby covenants that it will, at any time and from time to time upon written request therefor, execute and deliver to the other, its nominees, successors and/or assigns, any new or confirmatory instruments and do and perform any other acts which the other, its successors and/or assigns, may reasonably request in order to fully assign and transfer to and vest in Assignee, its nominees, successors and/or assigns, and protect its and/or their rights, title and interest in and enjoyment of, all of the assets of Assignor intended to be transferred and assigned hereby, or to enable Assignee, its successors and/or assigns, to realize upon or otherwise enjoy any such assets, or to effect the allocation of responsibility for performance under the Contracts.

4. Miscellaneous. The provisions of this Assignment shall be binding upon and inure to the benefit of Assignor, Assignee and their successors and assigns. This Assignment may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Intangible Property **[**and Contracts**]** as of the date first written above.

ASSIGNEE:	ASSIGNOR:
ASSOCIATION OF BAY AREA GOVERNMENTS	BAY AREA HEADQUARTERS AUTHORITY
By: _____	By: _____
Name: _____	Name: _____
Its: _____	Its: _____

Schedule 1 to Assignment

List of Contracts

[to be attached]

APPENDIX 3

Office Functionality at 390 Main
List of Functional Requirements

Offices for 3 executive staff and 1 legal counsel
Offices for 5 department directors with adjacent conference room for meetings of 3-4 people)
Offices for 9 program managers/supervisors (P5-level)

Workstations for 50 staff members
Workspace for 3 office support staff
Workspace for 5 interns

General file storage for Planning, Communications, Exec, etc.
Dedicated storage for active files in Finance, POWER, FAN, and PLAN
Space for 3-4 multi-purpose copiers/scanners/printers and 1 production copier

Executive conference room
Conference room or similar area for auditors

The following shall be provided for in the joint agency shared space which is separate from the ABAG Space:

Conference Rooms and training room
Computer data center/server room
Computer storage and work area
Reception area
Mail area
Kitchen/break room