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**FACILITY LEASE AGREEMENT**

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**FACILITY LEASE AGREEMENT**

**by and between**

**MUNICIPAL IMPROVEMENT CORPORATION OF LOS ANGELES**

**and**

**CITY OF LOS ANGELES**

**Dated as of October 1, 2011**

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## FACILITY LEASE AGREEMENT

**THIS FACILITY LEASE AGREEMENT**, dated as of October 1, 2011 (this "Lease Agreement"), is by and between the MUNICIPAL IMPROVEMENT CORPORATION OF LOS ANGELES, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the "Corporation"), as lessor, and the CITY OF LOS ANGELES, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (the "City"), as lessee.

### W I T N E S S E T H:

**WHEREAS**, the City is authorized pursuant to the laws of the State of California and its charter to lease and acquire real and personal property for municipal purposes;

**WHEREAS**, the Corporation is authorized under its Articles of Incorporation and its Bylaws to provide assistance to the City for any municipal purpose thereof, including acquiring and financing land and equipment and acquiring and constructing various public facilities and the leasing of such facilities, land and equipment to the City for the use, benefit and enjoyment of the public;

**WHEREAS**, in order to finance certain energy retrofit improvements to certain City buildings, the City is leasing the real property and improvements described in Exhibit A hereto (the "Property") to the Corporation pursuant to the Site Lease, dated as of October 1, 2011, by and between the Corporation and the City;

**WHEREAS**, in order to accomplish such financing, the City and the Corporation desire that the Corporation lease the Property back to the City pursuant to this Lease Agreement; and

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

**NOW, THEREFORE**, in consideration of the above premises and of the mutual agreements and covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall for all purposes of this Lease Agreement have the meanings herein specified.

**“Additional Payments”** means the amounts payable by the City pursuant to Section 3.05 of this Lease Agreement.

**“Anti-Terrorism Laws”** means any laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act.

**“Assignment Agreement”** means the Assignment Agreement, dated as of October 1, 2011, by and between the Corporation and the Purchaser, whereby the Corporation sells, assigns and transfers to the Purchaser substantially all of the Corporation’s right, title and interest in and to the Site Lease and this Lease Agreement, including the right to receive Basic Lease Payments, as originally executed and as it may from time to time be amended in accordance with the provisions thereof.

**“Basic Lease Payments”** means the payments required to be made by the City as Basic Lease Payments pursuant to Section 3.04 hereof.

**“City”** means the City of Los Angeles, a charter city and municipal corporation organized and existing under the Constitution and laws of the State, and any successor thereto.

**“City Representative”** means the City Administrative Officer or any Assistant City Administrative Officer, or such other employee of the City as the City Administrative Officer or any City Administrative Officer shall designate in writing, acting on behalf of the City with respect to this Lease Agreement.

**“Code”** means the Internal Revenue Code of 1986.

**“Corporation”** means the Municipal Improvement Corporation of Los Angeles, a nonprofit public benefit corporation duly organized and existing under the Nonprofit Public Benefit Corporation Law of the State, and any successor thereto.

**“Corporation Representative”** means any member of the Board of Directors of the Corporation or the Assistant Secretary and Treasurer of the Corporation, or any other person authorized by resolution of the Board of Directors of the Corporation to act on behalf of the Corporation under or with respect to this Lease Agreement.

**“Delivery Date”** means October 26, 2011.

**“Executive Order”** means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001.

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**“Governmental Board”** means any government or political subdivision, or any agency, board, commission, department or instrumentality of either, or any court, tribunal, central bank or arbitrator governmental board or authority with jurisdiction over the Purchaser.

**“Hazardous Materials”** means any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 9601 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule, or regulation relating to such materials, wastes or substances.

**“Improvements”** means, except as otherwise provided herein, the buildings and related improvements located on the Land.

**“Independent Counsel”** means an attorney duly admitted to the practice of law before the highest court of the state in which such attorney maintains an office and who is not an employee of the Corporation, the Purchaser or the City.

**“Land”** means that certain Land more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

**“Lease Agreement”** means this Facility Lease Agreement, dated as of October 1, 2011, by and between the Corporation and the City, as originally executed and as it may from time to time be amended in accordance with the provisions hereof.

**“Lease Payment Date”** means April 1 and October 1 in each year during the Term of this Lease Agreement, commencing April 1, 2012.

**“Lease Payments”** mean the Basic Lease Payments and the Additional Payments.

**“Loss of Subsidy”** means the occurrence of (a) legislation enacted by the Congress of the United States of America or a ruling, regulation or statement issued by the Treasury Department or the Internal Revenue Service, the effect of which (i) denies, repeals, revokes or reduces the Subsidy Payments, or (ii) imposes one or more new substantive conditions on the receipt by the City of Subsidy Payments and such conditions are unacceptable to the City, or (b) any governmental, administrative, judicial or other official action that is beyond the City’s control and results in the significant reduction or loss of Subsidy Payments to the City or imposes one or more new substantive conditions on the receipt by the City of Subsidy Payments and such conditions are unacceptable to the City; provided, however, that in no event shall a “Loss of Subsidy” occur as the result of the City’s failure or inability for reasons within its control to receive, as and when otherwise payable, all or any portion of any Subsidy Payment from the United States Department of Treasury or the City’s failure to comply with applicable law and regulations to obtain payment of any Subsidy Payment from the United States Department of Treasury, including, without limitation, any offset against any Subsidy Payment as a result of other liabilities of the City to the United States Department of Treasury.



**“Material Adverse Effect”** means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business or operations of the City, or (b) the ability of the City to carry out its business as of the date of this Lease Agreement or as proposed herein to be conducted or to meet or perform its obligations under this Lease Agreement on a timely basis.

**“Matters Contested in Good Faith”** means the imposition of charges, assessments, taxes or other payments, the application of any laws, rules, regulations or policies, or any other matters that could have a Material Adverse Effect (a) then being contested in good faith by appropriate proceedings diligently and continuously pursued, (b) of which the Corporation has been notified in writing and is being kept informed in such detail as the Corporation may from time to time reasonably request, (c) the enforcement of which is effectively stayed during the period of the contest, and (d) with respect to which either (i) adequate reserves in the nature of a cash deposit or pledge of securities, or a payment bond of a corporate surety in the face amount equal to the total amount in controversy, reasonably satisfactory to the Corporation, have been furnished, or (ii) adequate provision therefor, reasonably satisfactory to the Corporation, has been reserved on the financial statements of the City.

**“Net Proceeds”** means any insurance proceeds (including self-insurance proceeds) or condemnation award, paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

**“Patriot Act”** means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Title III of Pub. L. 107 56 (signed into law October 26, 2001).

**“Permitted Encumbrances”** means, as of any particular time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Section 4.01 hereof, permit to remain unpaid; (b) the Site Lease; (c) this Lease Agreement (including any amendment thereto); (d) any encumbrance, indebtedness and leases permitted under Sections 7.02 hereof; (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law or any mechanics or other liens permitted under Section 4.02 hereof; (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions in existence on the Delivery Date and as may come into existence after the Delivery Date which the City certifies do not materially impair the use of the Property; (g) easements, rights of way and licenses granted to persons who develop or use the real property adjacent to the Property which the City certifies will not damage, reduce the fair market value of or materially impair the use of the Property; and (h) the leases with tenants of the Property in existence as of the Delivery Date and as may come into existence after the Delivery Date.

**“Person”** means an individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Property”** means the Land and the Improvements, including all improvements and facilities currently existing thereon, together with all other improvements, facilities and property

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hereafter acquired, constructed and improved on the Property pursuant to Section 4.02 hereof, but excluding improvements or items excluded under Section 4.02 hereof and excluding, for Property subleased pursuant to Section 7.02 hereof, new improvements (other than modifications of existing improvements) subsequently constructed on such subleased Property.

**“Purchaser”** means Wells Fargo Bank, N.A., and any successor thereto.

**“Rental Period”** means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any year and ending on June 30 in the next succeeding year; except that the first Rental Period during the term of this Lease Agreement shall commence on the Delivery Date and end on June 30, 2012.

**“Site Lease”** means the Site Lease, dated as of October 1, 2011, by and between the City and the Corporation, as originally executed and as it may from time to time be amended in accordance with the provisions thereof.

**“State”** means the State of California.

**“Subsidy Payments”** means the City’s applicable cash subsidy payments from the United States Treasury under Section 54A or 6431 of the Code, as currently in effect, with respect to this Lease Agreement.

**“Term”** means the time during which this Lease Agreement is in effect, as provided for in Section 3.02 hereof.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01. Representations, Warranties and Covenants of the City.** The City represents and warrants to the Corporation, and covenants, as follows:

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

(b) Authorization. The Constitution and laws of the State and the Charter of the City authorize the City to enter into this Lease Agreement, to enter into the transactions contemplated hereby and to carry out its obligations under this Lease Agreement, and the City has duly authorized, executed and delivered this Lease Agreement.

(c) No Violations. Neither the execution and delivery of this Lease Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon the Property, except Permitted Encumbrances.

(d) Pending Litigation. There are no actions, suits or proceedings pending nor, to the best knowledge of the City, are there any actions, suits or proceedings threatened against the City in any court or before any arbitrator of any kind or before or by any governmental or non-governmental body, which, in any case, may have a Material Adverse Effect or which seeks to restrain or would otherwise have a Material Adverse Effect on the transactions contemplated hereby or by the Site Lease or the Assignment Agreement.

(e) Pending Legislation. There is no amendment or, to the knowledge of the City, proposed amendment to the Constitution of the State or any State law or any administrative interpretation of the Constitution of the State or any State law, or any legislation that has passed either house of the legislature of the State, or any judicial decision interpreting any of the foregoing, the effect of which will materially adversely affect the execution, delivery or performance of this Lease Agreement or the Site Lease, or the City's ability to pay the Basic Lease Payments when due.

(f) Financial Statements. The financial statements of the City as of June 30, 2010 and the auditors' reports with respect thereto, copies of which have heretofore been furnished to the Purchaser, are complete and correct and fairly present the financial condition, changes in financial position and results of operations of the City at such dates and for such periods, and were prepared in accordance with generally accepted accounting principles.

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(g) No Defaults. No default or event of default hereunder has occurred and is continuing. No default by the City exist under any contracts, judgments, decrees or orders, except for defaults that, singly or in the aggregate, have not had and will not have a Material Adverse Effect.

(h) No Material Adverse Change. Since the most current date of the written information, financial or otherwise, supplied by the City to the Purchaser (i) there has been no change in the assets, liabilities, financial position or results of operations of the City which might reasonably be anticipated to cause a Material Adverse Effect, (ii) the City has not incurred any obligations or liabilities that might reasonably be anticipated to cause a Material Adverse Effect, and (iii) City has not (A) incurred indebtedness that might reasonably be anticipated to cause a Material Adverse Effect, or (ii) guaranteed the obligations of any other Person.

(i) Title to Property. Upon the execution and delivery of the Site Lease and this Lease Agreement, the City will have a valid fee and subleasehold interest in the Property. The Property is not subject to any lien, except Permitted Encumbrances.

(j) Insurance. The City currently maintains the insurance required by Article IV of this Lease Agreement, which is of such types and in such amounts, or in excess of such amounts, as are customarily carried by, and which insures against such risks as are customarily insured against by, municipalities of like type, size and character as the City.

(k) Anti-Terrorism Laws. The City is not (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order, (ii) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order, (iii) a Person with which the Purchaser is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (iv) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order, or (v) a Person that is named as a "specially designated national and blocked person" on the most current list published by the Office of Foreign Asset Control or any list of Persons issued by the Office of Foreign Asset Control pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list. The City does not (i) conduct any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

**Section 2.02. Representations, Warranties and Covenants of the Corporation.** The Corporation represents and warrants to the City, and covenants, as follows:

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(a) Due Organization and Existence. The Corporation is a nonprofit public benefit corporation duly organized and validly existing under the laws of the State.

(b) Authorization; Power. The Corporation has the power to enter into this Lease Agreement, to enter into the transactions contemplated hereby and to carry out its obligations under this Lease Agreement, and the Corporation, by proper actions of its board of directors, has duly authorized the execution and delivery of this Lease Agreement. The Corporation has full legal power to own, hold, improve and equip real and personal property, and to lease and sell the same.

(c) No Violations. Neither the execution and delivery of this Lease Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Corporation is now a party or by which the Corporation is bound or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Property, except Permitted Encumbrances.

(d) No Encumbrances. The Corporation shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the rights of the City and the Purchaser as provided herein and in the Assignment Agreement and subject to Permitted Encumbrances. Except as expressly provided in this Lease Agreement, the Corporation shall promptly take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time.

## ARTICLE III

### AGREEMENT TO LEASE; TERMINATION OF THIS LEASE; LEASE PAYMENTS

**Section 3.01. Lease of Property.** (a) The Corporation hereby leases the Property to the City, and the City hereby leases the Property from the Corporation, on the terms and conditions hereinafter set forth. The City hereby agrees and covenants during the Term of this Lease Agreement that, except as hereinafter expressly provided, it will use the Property solely for public and municipal purposes so as to afford the public the benefit contemplated by this Lease Agreement and further agrees that it shall not abandon the Property.

(b) The leasing of the Property by the City to the Corporation pursuant to the Site Lease shall not effect or result in a merger of the City's leasehold estate in the Property as lessee under this Lease Agreement and its fee estate in the Property as lessor under the Site Lease, and the Corporation shall continue to have a leasehold estate in the Property pursuant to the Site Lease throughout the term thereof and hereof. This Lease Agreement shall constitute a sublease with respect to the Property. The leasehold interest in the Property granted by the City to the Corporation pursuant to the Site Lease is and shall be independent of this Lease Agreement; this Lease Agreement shall not be an assignment or surrender of the leasehold interest in the Property granted to the Corporation under the Site Lease.

**Section 3.02. Term of Lease Agreement.** The Term of this Lease Agreement shall commence on the Delivery Date, and shall terminate on October 1, 2028, unless such term is otherwise terminated or extended as hereinafter provided. If on October 1, 2028, the Lease Payments payable hereunder shall have been abated at any time and for any reason, then the Term of this Lease Agreement shall automatically be extended until such abated Lease Payments have been paid, except that The term of this Lease Agreement shall in no event be extended more than ten years. If prior to October 1, 2028, all of the remaining Basic Lease Payments are prepaid in accordance with Article IX hereof, the Term of this Lease Agreement shall thereupon terminate.

**Section 3.03. Possession.** The City agrees to accept possession and use of the Property as the owner of the leasehold interest thereof on the Delivery Date.

**Section 3.04. Lease Payments, Basic Lease Payments.** (a) Obligation to Pay. Subject to the provisions of Articles V and IX hereof, the City agrees to pay to the Corporation, its successors and assigns, as rental for the use and occupancy of the Property during each Rental Period, the Basic Lease Payments, on the respective Lease Payment Dates in the respective amounts specified in Exhibit B, a portion of which Basic Lease Payments shall constitute principal components and a portion of which shall constitute interest components. The interest components of the Basic Lease Payments shall be paid by the City as and constitute interest paid on the principal components of Basic Lease Payments. The Lease Payments, including Basic Lease Payment, shall be paid by the City to the Corporation for and in consideration of the right to use and occupy the Property and in consideration of the continued right to the quiet use and enjoyment thereof during each Rental Period for which such Basic Lease Payments are to be paid. Notwithstanding any dispute between the Corporation and the City, the City shall make all

Basic Lease Payments when due and shall not withhold any Basic Lease Payment pending final resolution of the dispute.

The obligation of the City to make the Basic Lease Payments does not constitute a debt of the City or of the State or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State is obligated to levy or pledge any form of taxation or for which the City or the State has levied or pledged any form of taxation.

(b) Default Rate. During any period in which an event of default hereunder has occurred and is continuing, the Basic Lease Payments payable during such period shall be increased so that the interest component thereof for such period represents an effective interest rate of 8.257% per annum on the principal components of the Basic Lease Payments, calculated on the basis of a 360-day year consisting of twelve 30-day months.

(c) Fair Rental Value. The parties hereto have agreed and determined that the total of all Lease Payments for the Property is not greater than the total fair rental value of the Property and that the Lease Payments for the Property for each Rental Period do not exceed the fair rental value of the Property for such Rental Period. In making such determination, consideration has been given to the market value of the Property, other obligations of the parties under this Lease Agreement, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(d) Budget and Appropriation. The City covenants to take such action as may be necessary to include all Lease Payments due hereunder in its annual budgets and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such official to enable the City to carry out and perform the covenants and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(e) Effect of Extension. If the term of this Lease Agreement shall have been extended pursuant to Section 3.02 hereof, the obligation of the City to pay Lease Payments shall continue to and including the date of termination of this Lease Agreement (as so extended pursuant to Section 3.02 hereof). Upon such extension, the principal and interest components of the Basic Lease Payments shall be established so that the principal components will in the aggregate be sufficient to pay all extended and unpaid principal components and the interest components will in the aggregate be sufficient to pay all extended and unpaid interest components; provided, however, that the Lease Payments payable in any Rental Period shall not exceed the annual fair rental value of the Property.

**Section 3.05. Additional Payments.** (a) In addition to the Basic Lease Payments, the City shall pay as Additional Payments (i) all taxes, fees or assessments levied upon the Property or upon any interest therein of the Corporation, (ii) insurance premiums, if any, on insurance required under this Lease Agreement, and (iii) any other fees, costs, or expenses incurred by the Corporation in connection with the execution, performance or enforcement of this Lease

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Agreement, including any amounts necessary to indemnify and defend the Corporation, (iv) a fee for each amendment of this Lease Agreement, consent by the Corporation or waiver by the Corporation under this Lease Agreement, in each case in a minimum amount of \$2,500, (v) the reasonable fees and out-of-pocket expenses for counsel or other reasonably required consultants to the Corporation in connection with advising the Corporation as to its rights and responsibilities under this Lease Agreement or in connection with responding to requests from the City for approvals, consents and waivers, and (vi) amounts payable under Section 4.07 and Section 4.12 hereof.

(b) Additional Payments due under this Section shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or within 30 days after notice in writing from the Corporation to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

**Section 3.06. Abatement of Rent.** During any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's right to use and occupy any portion of the Property, Lease Payments shall be abated proportionately, and the City waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Lease Agreement by virtue of any such interference, and this Lease Agreement shall continue in full force and effect. The amount of such abatement shall be agreed upon by the City and the Corporation; provided, however, that the Lease Payments due for any Rental Period shall not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the City during such Rental Period. The City and the Corporation shall calculate such abatement and the City shall prepare and deliver to the Corporation a written certificate signed by a City Representative setting forth such calculation and the basis therefor. Such abatement shall continue for the period commencing with the date of interference resulting from such damage, destruction, condemnation or title defect and, with respect to damage to or destruction of the Property, ending with the substantial completion of the work of repair or replacement of the Property, or the portion thereof so damaged or destroyed; and the term of this Lease Agreement shall be extended as provided in Section 3.02 hereof.

**Section 3.07. Quiet Enjoyment.** During the Term of this Lease Agreement, the Corporation shall provide the City with quiet use and enjoyment of the Property, and the City shall during such Term peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Corporation, except as expressly set forth in this Lease Agreement. The Corporation shall, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Corporation may lawfully do so.

**Section 3.08. Title to Property.** During the Term of this Lease Agreement, the Corporation shall hold a leasehold interest in the Property. Upon the termination or expiration of this Lease Agreement (other than as provided in Section 8.02 hereof), all right, title and interest of the Corporation in and to the Property shall be transferred to and vested in the City.



## ARTICLE IV

### MAINTENANCE; TAXES; INSURANCE AND OTHER MATTERS

**Section 4.01. Maintenance; Utilities, Taxes and Assessments.** (a) During the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City. The City shall, at its own expense, during the Term of this Lease Agreement maintain the Property, or cause the same to be maintained, in good order, condition and repair. The City shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of the Property. The Corporation shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to the Property. The City shall keep the Property free and clear of all liens, charges and encumbrances, subject only to the provisions of Section 4.09 hereof. The City shall pay for the furnishing of all utilities which may be used in or upon the Property during the Term of this Lease Agreement.

(b) The City shall also pay or cause to be paid all taxes, charges, fees and assessments of any type or nature, if any, charged to the City or the Corporation affecting the Property or their respective interests therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

(c) The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Corporation shall notify the City that, in the opinion of Independent Counsel, by nonpayment of any such items, the interest of the Corporation in the Property will be materially endangered or the Property or any part thereof shall be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Corporation with full security against any loss which may result from nonpayment, in form satisfactory to the Corporation.

**Section 4.02. Modification of Property.** The City shall, at its own expense, have the right to make additions, modifications and improvements to the Property. All such additions, modifications and improvements, including those which comprise fixtures, repairs, replacements, additions or modifications to the Property shall thereafter comprise part of the Property and be subject to the provisions of this Lease Agreement, except for (a) those fixtures, repairs, replacements or modifications which are added to the Property by the City at its own expense and which may be removed without damaging the Property, and (b) any items added to the Property by the City pursuant to Section 4.08 hereof. The City shall have the right to conduct a survey of any parcel of land constituting a portion of the Property and to alter or change the boundaries of said parcel as a result of said survey so long as such change or alteration does not interfere with the improvements constructed on said parcel and so long as the remaining parcel together with the improvements thereon does not have a fair rental value less than the Basic Lease Payments attributable to said parcel and improvements. Additions, modifications and

improvements shall not cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and such Property, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall have a fair rental value which is approximately equal to or greater than the fair rental value of the Property immediately prior to the making of such additions, modifications and improvements. The City shall not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any repair or replacements made by the City pursuant to this Section; provided that if any such lien is established and the City shall first notify the Corporation (or cause the Corporation to be notified) of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Corporation with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Corporation. The Corporation shall cooperate fully in any such contest, upon the request and at the expense of the City.

**Section 4.03. Public Liability and Property Damage Insurance.** The City shall maintain or cause to be maintained, throughout the Term of this Lease Agreement, a program of general liability insurance protecting the City, the Corporation and their respective officers, directors, agents, assigns and employees. Such program shall provide coverage for loss or liability for damages for bodily and personal injury, death or property damage occasioned by use of the Property. Such insurance shall be satisfied by a risk retention program.

**Section 4.04. Fire and Extended Coverage Insurance.** (a) The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, insurance against loss or damage to any structures or equipment constituting any part of the Property by fire and lightning, with extended coverage and vandalism and malicious mischief insurance, which coverage may exclude earthquake insurance.

(b) In the event of any uninsured loss to the Property resulting from earthquake (i) the City shall apply for and use its best efforts to obtain financial assistance from the United States of America to be used for the repair, reconstruction or replacement of such Property, and (ii) the City shall repair or replace the Property from moneys, if any, legally available therefor.

(c) Such extended coverage insurance shall, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance. Such insurance shall be in an amount equal to 100% of the replacement cost of the Property (including all improvements thereon). Such insurance may be subject to deductible clauses of not to exceed \$100,000 for any one loss. Such insurance may be satisfied by a combination of commercial insurance, risk pooling under a joint powers authority or similar statutory provision, self-funded loss reserves and, to the extent permitted by law, risk retention programs all in such proportions as are deemed appropriate by professional risk management personnel or independent consultants. The City shall include in its annual budget an item to provide funds for commercial insurance covering physical property damage to the Property.

**Section 4.05. Rental Interruption Insurance.** The City shall procure and maintain, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any part of the Property for a period of 24 months during the Term of this Lease Agreement as a result of any of the hazards covered in the insurance required by Section 4.04 hereof, in an amount to insure against loss of substantial use and possession of the Property. The provider of such insurance shall be rated at least "A" by A.M. Best & Company. The Corporation shall be the beneficiary under such policy and any amounts received thereunder shall be credited towards the Lease Payments in the order in which such Lease Payments come due and payable.

**Section 4.06. Insurance Net Proceeds; Form of Policies; Certificates of Effectiveness.** Each policy of insurance required by Sections 4.04 and 4.05 hereof shall name the Corporation as a loss payee as its interests may appear and shall provide that all proceeds thereunder shall be applied as provided in Section 5.02 hereof. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease Agreement, and shall promptly- furnish or cause to be furnished to the Corporation on or before November 1 annually a certificate of a City Representative stating that such payments have been made and that the insurance policies required by this Lease Agreement are in force and effect. All such policies shall provide that the Corporation shall be given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The Corporation shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

**Section 4.07. Advances.** If the City shall fail to perform any of its obligations under this Article, the Corporation may, but shall not be obligated to, take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as Additional Payments as soon as possible, with interest at a rate per annum equal to 8.257% from the date of the advance to the date of repayment.

**Section 4.08. Installation of City's Personal Property.** The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Corporation shall have no interest, and such items may be modified or removed by the City. Nothing in this Lease Agreement shall prevent the City from purchasing or leasing items to be installed pursuant to this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

**Section 4.09. Liens.** The City shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than the respective rights of the Corporation and the City as herein provided, and Permitted Encumbrances. Except as expressly provided in this Article, the City shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same

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shall arise at any time. The City shall reimburse the Corporation for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 4.10. Substitution of Property.** The City shall, at any time, have the right to substitute for all or a portion of the Property other property of comparable value, and of a comparable essential nature to the City, and having a remaining useful life not less than the useful life of the portion of Property substituted for, but only by providing the Corporation and with a written certificate describing both the new Property and the Property for which it is to be substituted, and stating that such portion of Property is of comparable value and has a useful life not less than the useful life of the Property described in Exhibit A for which it is being substituted and a financing statement, an executed amendment to this Lease Agreement or an executed and acknowledged memorandum of lease for the new Property. All costs and expenses incurred in connection with such substitution shall be borne by the City. Notwithstanding any substitution of Property pursuant to this Section, there shall be no reduction in the Basic Lease Payments due from the City hereunder and there shall be no reduction in the aggregate fair rental value of the Property as a result of such substitution.

**Section 4.11. Hazardous Waste.** The City shall not cause or permit the Property or any part thereof to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process Hazardous Materials, except in compliance with all applicable Federal, state and local laws or regulations, nor shall the City cause or permit, as a result of any intentional or unintentional act or omission on the part of the City or any tenant or subtenant, a release of Hazardous Materials onto the Property. The City shall comply with and ensure compliance by all tenants and subtenants with all applicable Federal, state and local laws, ordinances, rules and regulations, and shall obtain and comply with, and ensure that all tenants and subtenants obtain and comply with, any and all approvals, registrations or permits required thereunder. The City shall (a) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials, on, from, or affecting the Property (i) in accordance with all applicable Federal, state and local laws, ordinances, rules, regulations, and policies, (ii) to the reasonable satisfaction of the Corporation, and (iii) in accordance with the orders and directives of all Federal, state and local governmental authorities, and (b) defend, indemnify, and hold harmless the Corporation, and its assigns, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to (i) the presence, disposal, release, or threatened release of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, and/or (iii) any violation of laws, orders, regulations, requirements or demands of government authorities that are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses. In the event that the Corporation elects to control, operate, sell or otherwise claim property rights in the Property, the City shall deliver the Property free of any and all Hazardous Materials so that the conditions of the Property shall conform with all applicable Federal, state and local laws, ordinances, rules or regulations affecting the Property. Prior to any such delivery of the Property, the City shall pay

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the Corporation, from its own funds, any amounts then required to be paid under clause (b), above.

**Section 4.12. Increased Costs.** If the Purchaser shall determine that any law or governmental guideline or governmental interpretation or application thereof by any Governmental Board charged with the interpretation or administration thereof or compliance with any request or directive of any Governmental Board now existing or hereafter adopted (a) subjects the Purchaser to taxation (except for taxes on the overall net income or share capital of the Purchaser) with respect to this Lease Agreement or payment by the City of the Lease Payments, and fees or other amounts due from the City under this Lease Agreement, (b) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against credits or commitments to extend credit extended by, assets (funded or contingent) of, deposits with or for the account of, or other acquisitions of funds by the Purchaser, (c) imposes, modifies or deems applicable any capital adequacy or similar requirement (i) against assets (funded or contingent) of, or credits or commitments to extend credit extended by, the Purchaser, or (ii) otherwise applicable to the obligations of the Purchaser under this Lease Agreement, then the Purchaser shall from time to time notify, or cause to be notified, the City of the amount determined in good faith (using any reasonable averaging and attribution methods) by the Purchaser (which determination shall be conclusive absent manifest error) to be necessary to compensate the Purchaser for such increase, reduction or imposition. Such amount shall be due and payable by the City to the Purchaser on the 30th day after demand. A certificate by the Purchaser as to the amount due and payable under this Section from time to time and the method of calculating such amount shall be conclusive absent manifest error and shall be provided to the City with the notice described above. In determining any such amount, the Purchaser may use any reasonable averaging and attribution methods.

**Section 4.13. Documentary Taxes.** If at any time any Governmental Board shall require revenue or other documentary stamps or any other tax in connection with the execution or delivery of this Lease Agreement, then, if the City may lawfully pay for such stamps, taxes or fees, the City shall pay, when due and payable, for all such stamps, taxes and fees, including interest and penalties thereon, and the City agrees to save the Corporation harmless from and against any and all liabilities with respect to or resulting from any delay of City in paying, or omission of City to pay, such stamps, taxes and fees hereunder.

**Section 4.14. Notice of Events.** The City shall provide to the Corporation (a) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action that constitutes a default or event of default hereunder, (b) within 30 days following receipt of any claim, written notice of all actions, suits and proceedings before any court, governmental entity or other governmental commission, board, bureau, agency or instrumentality, domestic or foreign, against the City which involve claims against the City equal to or in excess of \$1,000,000 or which involve uninsured claims against the Property equal to or in excess of \$100,000, and (c) prompt written notice of any event which has or is reasonably anticipated to have a Material Adverse Effect.

**Section 4.15. Accounting Records and Financial Statements.** The City shall keep appropriate accounting records in which complete and correct entries shall be made of all transactions relating to the Property, which records shall be available for inspection by the

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Corporation at reasonable hours and under reasonable conditions. The City shall prepare and file with the Corporation annually 270 days after the close of each fiscal year (commencing with the fiscal year ending June 30, 2011) annual audited financial statements of the City for the preceding fiscal year prepared in accordance with generally accepted accounting principles, together with (a) an unqualified opinion of a firm of independent certified public accountants selected in accordance with the City's customary procedures, and (b) a certificate of the controller or chief financial officer of the City that said financial statements are accurate and that there exists no event of default hereunder nor any condition, act or event which, with the giving of notice or the passage of time or both, would constitute an event of default hereunder. The City shall prepare and file with the Corporation annually within 30 days following adoption, a copy of the adopted budget of the City, as approved by the City Council, for such fiscal year. The City shall provide to the Corporation from time to time such other information as the Corporation may reasonably request.

## ARTICLE V

### DAMAGE OR DESTRUCTION, EMINENT DOMAIN; NET PROCEEDS

**Section 5.01. Damage or Destruction; Eminent Domain.** (a) In the event that any portion of the Property is damaged or destroyed, and such damage or destruction would otherwise result in an abatement of all or a portion of the Basic Lease Payments as provided in Section 3.06 hereof, the City shall either (i) apply sufficient funds from the Net Proceeds of the insurance required to be maintained pursuant to Section 4.04 hereof and other legally available funds to the repair or replacement of such portion of the Property to the condition that existed prior to such damage or destruction, or (ii) apply sufficient funds from the Net Proceeds of such insurance and other legally available funds to the prepayment of Basic Lease Payments pursuant to Section 9.02 hereof, which prepayment shall be effected in a manner that results in the maximum amount of Basic Lease Payments becoming due under this Lease Agreement in the then current Rental Period or any subsequent Rental Period, being no greater than the annual fair rental value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction. The City shall give the Corporation written notice of its election to proceed under either clause (i) or clause (ii) of the proceeding sentence no later than 60 days after the receipt of such Net Proceeds.

(b) If all of the Property (or portions thereof such that the remainder is not usable for public purposes by the City) shall be taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall terminate as of the day possession shall be so taken. If less than all of the Property shall be so taken permanently, or if all of the Property or any part thereof shall be taken temporarily, under the power of eminent domain and the remainder is usable for public purposes by the City at the time of such taking, then this Lease Agreement shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and there shall be a partial abatement of Lease Payments in accordance with the provisions of Section 3.06 hereof. The City shall give the Corporation written notice of the receipt of any Net Proceeds from any such exercise of the power of eminent domain no later than 30 days after the receipt of such Net Proceeds.

**Section 5.02. Application of Net Proceeds.** (a) The Net Proceeds of any insurance received on account of any damage to or destruction of the Property, or a portion thereof, shall be applied as provided in Section 5.01 hereof.

(b) The Net Proceeds of any award made in eminent domain proceedings for the taking of the Property, or any portion thereof, shall applied to the prepayment of Basic Lease Payments as provided in Section 9.02 hereof.

## ARTICLE VI

### DISCLAIMER OF WARRANTIES; ACCESS

**Section 6.01. Disclaimer of Warranties.** The Corporation and its assigns make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Property, or any other representation or warranty with respect to the Property. In no event shall the Corporation or its assigns be liable for incidental, indirect, special or consequential damages, in connection with existence, furnishing, functioning or the City's use of the Property.

**Section 6.02. Access to the Property.** The City agrees that the Corporation, and the Corporation's assigns, shall have the right at all reasonable times to inspect the Property. The City further agrees that the Corporation, and the Corporation's assigns, shall have such rights of access to the Property as may be reasonably necessary to cause the proper maintenance of the Property in the event of failure by the City to perform its obligations hereunder; provided, however, that neither the Corporation nor the Corporation's assigns shall have any obligation to cause such proper maintenance.

**Section 6.03. Release and Indemnification.** The City shall, to the extent permitted by law, indemnify and save the Corporation and its assigns, and their respective officers, agents, directors, employees, harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City, including, without limitation, as a result of the use, presence, storage, disposal or release of any hazardous waste on or about the Property, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any act of negligence of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, or (d) any act or negligence of any sublessee of the City with respect to the Property. No indemnification is made under this Section or elsewhere in this Lease Agreement for willful misconduct, negligence, or breach of duty under this Lease Agreement by the Corporation or its assigns, or their respective.



## ARTICLE VII

### ASSIGNMENT, SUBLEASING AND AMENDMENT

**Section 7.01. Assignment by the Corporation.** The City understands and agrees that, upon the execution and delivery of the Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), substantially all of the Corporation's right, title and interest in and to this Lease Agreement will be sold, assigned and transferred to the Purchaser. The City hereby consents to such sale, assignment and transfer. Upon the execution and delivery of the Assignment Agreement, references in the operative provisions hereof to the Corporation shall be deemed to be references to the Purchaser, as assignee of the Corporation.

**Section 7.02. Assignment and Subleasing by the City.** Neither this Lease Agreement nor any interest of the City hereunder shall be sold, mortgaged, pledged, assigned, or transferred by the City by voluntary act or by operation of law or otherwise; provided, however, that the City may, without the consent of the Purchaser, sublease the Property or any portion thereof, subject to all of the following conditions:

(a) this Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City;

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

(c) such sublease, and any further sublease or use of such Property, shall not cause the Property to be used for any unlawful purpose;

(d) such sublease shall be subject to termination upon default by the City hereunder and shall not diminish the rights and remedies of the Corporation hereunder in such event of a default;

(e) such sublease shall contain such provisions for the maintenance of insurance on any improvements constructed on the subleased Property and such provisions for the allocation of proceeds from such insurance and the allocation of proceeds from eminent domain or condemnation proceedings as shall be satisfactory in the opinion of Independent Counsel to maintain the rights of the Corporation to such proceeds;

(f) such sublease shall contain provisions securing the timely payment of all taxes, fees, charges and assessments arising from or related to the subleased Property, and securing such Property from the establishment and maintenance of any mechanics or other liens for labor or materials furnished in connection with such improvements;

(g) improvements existing on the Property or such portion thereof at the time of the sublease may be modified by a sublessee only in accordance with the provisions of Section 4.02 hereof; and

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(h) prior to such sublease becoming effective, the City shall furnish the Corporation such opinions of counsel and certificates as the Corporation may reasonably require to evidence the satisfaction of the above conditions precedent to such sublease.

**Section 7.03. Amendment of this Lease Agreement.** This Lease Agreement may only be amended or modified by a written instrument executed and delivered by the City and the Corporation.

## ARTICLE VIII

### EVENTS OF DEFAULT AND REMEDIES

**Section 8.01. Event of Default Defined.** The following shall be “events of default” under this Lease Agreement and the terms “events of default” and “default” shall mean, whenever they are used in this Lease Agreement, with respect to the Property, any one or more of the following events:

(a) failure by the City to pay any Basic Lease Payment or other payment required to be paid hereunder at the time specified herein, and the continuation of such failure for a period of ten days;

(b) failure by the City to observe and perform any covenant, condition or agreement in this Lease Agreement on its part to be observed or performed, other than as referred to in the preceding paragraph (i), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation; provided, however, that, if the failure stated in such notice can be corrected, but not within such period, the Corporation shall not unreasonably withhold its consent to an extension of such time if the City receives a certificate from a City Representative to the effect that corrective action is being instituted by the City within the applicable period and is being diligently pursued to correct the default;

(c) the filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted;

(d) any representation or warranty made by the City herein or in any certificate, financial or other statement furnished by the City to the Corporation pursuant hereto or in connection herewith shall prove to have been inaccurate, misleading or incomplete in any material respect when made;

(e) any material provision of this Lease Agreement or the Site Lease shall at any time for any reason cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the City, or the City shall renounce the same or deny that it has any further liability hereunder or thereunder; and

(f) any material provision of this Lease Agreement or the Site Lease shall at any time for any reason cease to be the legal, valid and binding obligation of the City or shall cease to be in full force and effect, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the City, or the City shall renounce the same or deny that it has any further liability hereunder or thereunder.

**Section 8.02. Remedies on Default.** Whenever any event of default referred to in Section 8.01 hereof shall have occurred and be continuing, the Corporation may exercise any and all remedies available pursuant to law or granted pursuant to this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Upon any such event of default, the Corporation, in addition to all other rights and remedies it may have at law, shall have the option to do the following:

(a) Without terminating this Lease Agreement (i) to collect each installment of Lease Payments as the same become due and enforce any other terms or provisions hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Property, or (ii) to exercise any and all rights of entry and re-entry upon the Property. If the Corporation does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Corporation for any deficiency arising out of the re-leasing of the Property or, in the event the Corporation is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Corporation or any suit in unlawful detainer, or otherwise, brought by the Corporation for the purpose of obtaining possession of the Property or exercise of any other remedy by the Corporation. The City hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the City to obtain possession and re-lease the Property in the event of default by the City in the performance of any covenants herein contained to be performed by the City and to remove all personal property whatsoever situated upon the Property and to place such property in storage or other suitable place in the County of Los Angeles, for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Corporation from any costs, loss or damage whatsoever arising or occasioned by any such possession and re-leasing of the Property and the removal and storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained. The City hereby waives any and all claims for damages caused or which may be caused by the Corporation in re-entering and taking possession of the Property as herein provided and all claims for damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City that may be in or upon the Property. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Corporation to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Corporation in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such event of default, the right to terminate this Lease Agreement shall vest in the Corporation to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City further waives the right to any rental obtained by the Corporation in

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excess of the Lease Payments and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its service in re-leasing the Property.

(b) To terminate this Lease Agreement and re-lease all or any portion of the Property. In the event of the termination of this Lease Agreement by the Corporation at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Property by the Corporation in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Corporation all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments. Any surplus received by the Corporation from such re-leasing shall be the absolute property of the Corporation and the City shall have no right thereto, nor shall the City be entitled to apply any surplus as a credit in the event of a subsequent deficiency in the rentals received by the Corporation from the Property. Neither notice to pay rent or to deliver up possession of the Property given pursuant to law nor any proceeding taken by the Corporation shall of itself operate to terminate this Lease Agreement, and shall be or become effective by operation of law, or otherwise, unless and until the Corporation shall have given written notice to the City of the election on the part of the Corporation to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

**Section 8.03. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Corporation to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article or by law.

**Section 8.04. No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Lease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

**Section 9.01. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain Award.** (a) If Net Proceeds of any insurance are received on account of any damage to or destruction of the Property, or a portion thereof, and, pursuant to subsection (a) of Section 5.01 hereof, the City has elected not to repair or replace the portion of the Property so damaged or destroyed, such Net Proceeds, together with other legally available funds of the City, shall be applied, to the prepayment of the principal components of the Basic Lease Payments, at a prepayment price equal to the amount of the principal components so prepaid, plus the interest components related thereto accrued to the date of such prepayment, together with a premium of \$25,000. Such Net Proceeds and other legally available funds shall be applied to such prepayment on the Lease Payment Date first occurring after the date on which the City gave, or was required to give, in accordance with subsection (a) of Section 5.01 hereof, written notice to the Corporation of such election by the City. Such Net Proceeds and other legally available funds shall be applied to such prepayment of each principal component of the Basic Lease Payments in an amount equal to the amount by which such principal component would be abated as a result of such damage or destruction pursuant to Section 3.06 hereof.

(b) The Net Proceeds of any award made in eminent domain proceedings for the taking of the Property, or any portion thereof, shall be applied, to the prepayment of the principal components of the Basic Lease Payments, at a prepayment price equal to the amount of the principal components so prepaid, plus the interest components related thereto accrued to the date of such prepayment, together with a premium of \$25,000. Such Net Proceeds shall be applied to such prepayment on the Lease Payment Date first occurring after the date on which the City gave, or was required to give, in accordance with subsection (b) of Section 5.01 hereof, written notice to the Corporation of the receipt of such Net Proceeds. Such Net Proceeds shall be applied to such prepayment of each principal component of the Basic Lease Payments in proportion to the amount by which such principal component is abated as a result of such damage or destruction pursuant to Section 3.06 hereof.

**Section 9.02. Optional Prepayment.** (a) The City shall have the option to prepay, from any source of available funds, the principal components of the Basic Lease Payments, in whole or in part, on any date on or after October 1, 2013, at a prepayment price equal to the amount of the principal components so prepaid, plus the interest components related thereto accrued to the date of such prepayment, together with a premium of \$25,000.

(b) The City shall have the option to prepay, from any source of available funds, the principal components of the Basic Lease Payments, in whole or in part, on any date on or after the date of a Loss of Subsidy, at a prepayment price equal to the amount of the principal components so prepaid, plus the interest components related thereto accrued to the date of such prepayment, without premium.

(c) Before making any prepayment pursuant to this Section, the City shall give written notice to the Corporation specifying the date on which the prepayment will be made,

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which date shall be not less than 15 nor more than 60 days from the date such notice is given to the Corporation.

**Section 9.03. Effect of Prepayment.** If all remaining principal components of the Basic Lease Payments are prepaid pursuant to this Article, the Term of this Lease Agreement shall thereupon terminate. If principal components of the Basic Lease Payments are prepaid pursuant to this Article, but less than all of the remaining principal components of the Basic Lease Payments are so prepaid then, as of the date of such prepayment, the principal and interest components of the Basic Leases shall be recalculated in order to take such prepayment into account. The City agrees that if, following a partial prepayment of principal components of the Basic Lease Payments, the Property is damaged, destroyed or taken by eminent domain, or a defect in title to the Property is discovered, the City shall not be entitled to, and by such prepayment waives the right of, abatement of such prepaid principal components of the Basic Lease Payments and the City shall not be entitled to any reimbursement thereof.

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## ARTICLE X

### MISCELLANEOUS

**Section 10.01. Notices.** Any written notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City:                      Office of the City Administrative Officer  
City of Los Angeles  
200 North Main Street  
City Hall East Room 1500  
Los Angeles, California 90012  
Attention: MICLA Coordinator

If to the Corporation:            Municipal Improvement Corporation of Los Angeles  
c/o City Administrative Officer  
200 North Main Street  
City Hall East, Room 1500  
Los Angeles, California 90012  
Attention: Assistant Secretary and Treasurer

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if given by courier or delivery service or if personally served or delivered, upon delivery, (b) if given by telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, or (d) if given by any other means, upon delivery at the address specified in this Section.

**Section 10.02. Binding Effect.** This Lease Agreement shall inure to the benefit of and shall be binding upon the Corporation and the City and their respective successors and assigns.

**Section 10.03. Severability.** In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 10.04. Net-Net-Net Lease.** This Lease Agreement shall be deemed and construed to be a "net-net-net" lease and the City hereby agrees that the Lease Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges or set-offs whatsoever. The City's obligation to make Lease Payments in the amount and on the terms and conditions specified in this Lease Agreement shall be absolute and unconditional without any right of set-off or counterclaim.

**Section 10.05. Further Assurances and Corrective Instruments.** The City and the Corporation shall, from time to time, execute, acknowledge and deliver, or cause to be executed,



acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

**Section 10.06. Governing Law.** This Lease Agreement shall be governed by and construed in accordance with the laws of the State.

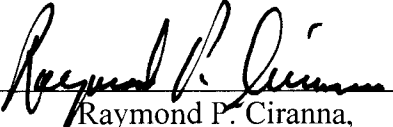
**Section 10.07. Execution in Counterparts.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have caused this Lease Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**MUNICIPAL IMPROVEMENT  
CORPORATION OF LOS ANGELES**

By:   
Natalie R. Brill,  
Assistant Secretary and Treasurer

**CITY OF LOS ANGELES**

By:   
Raymond P. Ciranna,  
Assistant City Administrative Officer

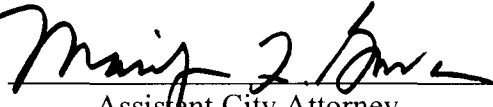
ATTEST:

JUNE LAGMAY, CITY CLERK

By:   
Deputy City Clerk

APPROVED AS TO FORM:

CARMEN A. TRUTANICH, CITY ATTORNEY

By:   
Assistant City Attorney

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**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

All that property situated in the County of Los Angeles, State of California, described as follows together with any improvements thereto:

**PARCEL 1:**

THOSE PORTIONS OF LOTS 4 AND 5, TRACT NO. 4541, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 33, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING NORTHERLY AND ADJOINING THE LINE PARALLEL WITH AND DISTANT 198.00 FEET NORTHERLY MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF SAID LOTS 4 AND 5 TOGETHER WITH THE EASTERLY 10.00 FEET OF SAID LOT 4 AND THE WESTERLY 28.00 FEET OF SAID LOT 5, BOTH LYING SOUTHERLY OF SAID PARALLEL LINE.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOTS 4 AND 5 DESCRIBED AS FOLLOWS:

1. THE NORTHERLY PORTIONS OF SAID LOTS 4 AND 5 LYING WITHIN THE LAND DESCRIBED AS PARCEL 392 AND 393 IN DEED TO L.A.C.F.C.D. PER INSTRUMENT RECORDED ON BOOK 31686, PAGE 342, OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER.
2. THE SOUTHERLY 20.00 FEET OF SAID LOTS 4 AND 5 LYING WITHIN THE PUBLIC STREET.
3. THAT PORTION OF THE NORTHERLY 87.00 FEET OF THE SOUTHERLY 164.00 FEET OF THE EASTERLY 10.00 FEET OF SAID LOT 4, LYING ABOVE THE ELEVATION OF 627.80 FEET, M.S.L. AS ESTABLISHED RELATIVE TO THE CITY OF LOS ANGELES, BUREAU OF ENGINEERING BENCH MARK NO. 08-15380 (1985 ADJUSTMENT) HAVING AN ELEVATION OF 617.364 FEET M.S.L. AS SHOWN IN THE PRECISE BENCH BOOK OF SAID CITY.

**PARCEL 2:**

FOR THE BENEFIT OF PARCEL NO. 1 DESCRIBED ABOVE, A PERMANENT EASEMENT AND RIGHT OF WAY FOR COMMUNITY DRIVEWAY AND ACCESS PURPOSES UPON AND ACROSS THE FOLLOWING DESCRIBED PROPERTY, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA.

THE WESTERLY 18 FEET OF THE SOUTHERLY 198 FEET OF LOT 4, TRACT NO. 4541, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49 PAGE 33 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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EXCEPTING THEREFROM THOSE PORTIONS WITHIN PUBLIC STREET.

PARCEL 3:

A NON-EXCLUSIVE EASEMENT FOR FIRE TRUCK TURNAROUND OVER THE FOLLOWING DESCRIBED PROPERTY:

THAT PORTION OF LOT 4 OF TRACT NO. 4541, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 33, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS BELOW:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE NORTH 06° 01' 00" WEST, 30.79 FEET ALONG THE EASTERLY LINE OF SAID LOT; THENCE NORTH 51° 01' 00" WEST, 14.14 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 83° 59' 00" WEST, 20.00 FEET; THENCE NORTH 06° 01' 00" WEST, 20.00 FEET; THENCE NORTH 83° 59' 00" EAST, 20.00 FEET; THENCE SOUTH 06° 01' 00" EAST, 20.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

AN EASEMENT FOR THE RIGHT TO USE A DRIVING AISLE FOR VEHICULAR ACCESS OVER THE FOLLOWING DESCRIBED PROPERTY:

THE NORTHERLY 12.00 FEET OF THE SOUTHERLY 55.79 FEET OF THE WESTERLY 92.30 FEET OF THE EASTERLY 102.30 FEET OF LOT 4, TRACT NO. 4541, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 49, PAGE 33, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

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**EXHIBIT B**

**SCHEDULE OF BASIC LEASE PAYMENTS**

Lease Payment Date	Principal Component	Interest Component	Total Basic Lease Payment
04/01/2012	\$665,000.00	\$218,478.70	\$883,478.70
10/01/2012	315,000.00	239,562.68	554,562.68
04/01/2013	315,000.00	232,857.90	547,857.90
10/01/2013	320,000.00	226,153.13	546,153.13
04/01/2014	315,000.00	219,341.93	534,341.93
10/01/2014	315,000.00	212,637.15	527,637.15
04/01/2015	320,000.00	205,932.38	525,932.38
10/01/2015	320,000.00	199,121.18	519,121.18
04/01/2016	320,000.00	192,309.98	512,309.98
10/01/2016	320,000.00	185,498.78	505,498.78
04/01/2017	325,000.00	178,687.58	503,687.58
10/01/2017	325,000.00	171,769.95	496,769.95
04/01/2018	325,000.00	164,852.33	489,852.33
10/01/2018	330,000.00	157,934.70	487,934.70
04/01/2019	325,000.00	150,910.65	475,910.65
10/01/2019	330,000.00	143,993.03	473,993.03
04/01/2020	330,000.00	136,968.98	466,968.98
10/01/2020	330,000.00	129,944.93	459,944.93
04/01/2021	330,000.00	122,920.88	452,920.88
10/01/2021	330,000.00	115,896.83	445,896.83
04/01/2022	335,000.00	108,872.78	443,872.78
10/01/2022	335,000.00	101,742.30	436,742.30
04/01/2023	335,000.00	94,611.83	429,611.83
10/01/2023	340,000.00	87,481.35	427,481.35
04/01/2024	335,000.00	80,244.45	415,244.45
10/01/2024	340,000.00	73,113.98	413,113.98
04/01/2025	340,000.00	65,877.08	405,877.08
10/01/2025	345,000.00	58,640.18	403,640.18
04/01/2026	340,000.00	51,296.85	391,296.85
10/01/2026	340,000.00	44,059.95	384,059.95
04/01/2027	345,000.00	36,823.05	381,823.05
10/01/2027	345,000.00	29,479.73	374,479.73
04/01/2028	345,000.00	22,136.40	367,136.40
10/01/2028	695,000.00	14,793.08	709,793.08

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WITNESS my hand and official seal.

Signature Laura A. Gao

[SEAL]



STATE OF CALIFORNIA                    )  
  ) ss  
COUNTY OF LOS ANGELES            )

On October 25, 2011, before me, Laura A. Gao, Notary Public, personally appeared Raymond P. Ciranna, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature *Laura A. Gao* [SEAL]

