

LEASE

by and between

CITY OF SAN JOSE  
("Landlord")

and

DOWNTOWN STREETS, INC.  
("Tenant")

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## LEASE

This Lease is made as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF SAN JOSE (hereinafter "Landlord" or "City"), a public body, corporate and politic, and DOWNTOWN STREETS INC., a non-profit organization ("Tenant").

### I. [§100] SUBJECT OF LEASE

Landlord is the owner of two (2) parcels of real property in San Jose, California. The first property is located at 110 Roundtable Avenue ("110 Property") and is improved with a residential building designated as no. 22 ("110 Building") containing four (4) studio apartments ("110 Units"). The second is located at 127 Roundtable Avenue ("127 Property") and is improved with a residential building ("127 Building") containing four (4) two (2) bedroom apartments ("127 Units"). The 110 Property and the 127 Property are more particularly described on Exhibit A-1 and A-2 attached hereto.

The 110 Property and the 110 Building shall be referred to herein collectively as the "110 Premises" and the 127 Property and the 127 Building shall be referred to herein collectively as the "127 Premises". The 110 Building and the 127 Building shall be collectively referred to herein as the "Buildings". The 110 Units and the 127 Units shall be collectively referred to herein as "Units". The 110 Premises and the 127 Premises shall be referred to herein collectively as the "Premises".

### II. [§200] BASIC LEASE TERMS

#### A. [§201] Lease of Premises

1. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. It is mutually agreed that the leasing hereunder is upon and subject to the terms, covenants and conditions hereof, and that Tenant covenants, as a material part of the consideration of this Lease, to keep, perform and observe each and all of said terms, covenants and conditions.

#### B. [§202] Term and Possession

The term of this Lease shall be for a period of two (2) years (or until sooner terminated as herein provided) (the "Term"), commencing on July 1, 2012 ("Commencement Date") and terminating on June 30, 2014 (the

"Termination Date"). Notwithstanding anything to the contrary contained herein, Landlord shall have the right to terminate this Lease upon not less than ninety (90) days written notice to Tenant.

C. [§203] Rent

For the period commencing on the Commencement Date and terminating on the Termination Date, the annual rental shall be the sum of One Dollar (\$1.00) ("Rent"). Rent shall be payable on the Commencement Date and on or before the first anniversary of the Commencement Date.

D. [§204] Net Lease

This Lease is a net lease. Except as expressly provided to the contrary in this Lease, all costs incurred in the operation and maintenance of the Premises shall be paid by Tenant.

III. [§300] USE, OPERATION AND MAINTENANCE OF PREMISES

A. [§301] Use and Operation of Premises

1. Use of Premises

The parties recognize and acknowledge that the manner in which the Premises and the improvements thereon are used, operated and maintained are matters of critical concern to Landlord. In order to give Landlord assurance as to the manner in which the improvements on the Premises will be used, operated and maintained, Tenant agrees that at all times during the term of this Lease, Tenant shall use and operate the Premises as follows:

a. The Premises shall be used solely for residential purposes to provide housing for homeless or formerly homeless individuals or families that actively participate in neighborhood clean-up programs managed by Tenant as more particularly described in Tenant's proposal to Landlord's Request for Proposal No. 08635 entitled "CDBG Neighborhood Clean-Up 2012-2013 or in other volunteer work programs managed by Tenant ("Occupants"). At least two (2) of the Occupants must be chronically homeless as defined by the Department of Housing and Urban Development ("HUD") and shall be provided through the Care Coordination Program. The remaining Occupants shall have been homeless prior to occupancy. Tenant shall verify the homeless and income status of the Occupants upon occupancy of the Premises and provide such information to Landlord with the Rent Roll required below. Tenant shall comply with all applicable

citizen certification requirements under the Neighborhood Stabilization Program applicable to nonprofit operators.

b. Occupants shall be offered at least a one (1) year lease (“Occupant Sublease”) to the extent the remaining term of this Lease allows Tenant the ability to do so. The Occupant Sublease shall specify any breach or default which will result in termination of the Occupant Sublease and shall provide for a thirty (30) day notice and cure period prior to termination. The Occupant Sublease shall also provide for an appeals process in the event of a termination.

c. Except for one (1) Unit to be occupied by an on-site manager (“Unrestricted Unit”), all other Units shall be occupied by very low-income Occupants earning not more than 50% of Area Median Income (“AMI”) as defined below at rents as required by HUD for very low income individuals and families (“Restricted Units”). Area Median Income means the amounts determined from the schedules of area median income issued for Santa Clara County from time to time by HUD. In determining income eligibility of the Occupants, Tenant shall use the Section 8 Program definition of annual (gross) income. Rent shall be determined consistent with HUD’s rent limits as described in 24 CFR 92.252 (b) (1) (“Low HOME Rent Limits”) subject to a deduction for the applicable utility allowance according to the schedule established by the Housing Authority of Santa Clara County for tenant paid utilities. The Low HOME Rent Limits are published annually. Rents may be adjusted upon receipt of the published Low HOME Rent Limits, provided that the rent charged to existing Occupants shall not be adjusted until the Occupant Sublease is renewed.

d. Within thirty (30) days after initial occupancy of the Premises, Tenant shall submit to Landlord a rent roll in the form, and containing the information, as shown on the rent roll attached hereto as Exhibit B (“Rent Roll”) and such other documentation as reasonably requested by Landlord to verify Tenant’s compliance with the affordability and occupancy requirements set forth herein. Thereafter, on or before January 30, 2014, July 1, 2014 and January 30, 2014, Tenant shall submit to Landlord an updated Rent Roll and such other documentation as reasonably requested by Landlord to verify Tenant’s compliance with the affordability and occupancy requirements set forth herein.

e. With each Rent Roll submitted to Landlord, Tenant shall also provide the following information:

- (i) the reasons any Occupants move from the Premises, if known,
- (ii) the number of Occupants that stay housed for 6 months, 12 months and 2 years, and
- (iii) the number of Occupants who obtain non-volunteer employment (either with Tenant or another employer)

f. On or before September 15, 2012 and, at least once a quarter thereafter, Tenant shall provide to Landlord an income and expense report showing all income received from, and income incurred for, operation of the Buildings. On or before December 31, 2012, Tenant shall provide a management plan for the operation and occupancy of the Buildings. The management plan shall contain a tenant selection policy, which policy shall be approved by Landlord.

g. Occupancy of the Restricted Units shall be as follows: studio - one (1) person, two (2) bedrooms – not more than three (3) persons.

h. Tenant shall provide an on-site property manager to manage and oversee the Premises (“Manager”). The Manager shall have the right to occupy the Unrestricted Unit described above.

i. The parties acknowledge that the 110 Premises is in a home owner association (“HOA”) and is subject to recorded covenants, conditions and restrictions (“CC&Rs”), a copy of which has been provided to Tenant. Manager or another representative of Tenant shall attend regular meetings of the HOA and Tenant shall comply with the CC&Rs in its use and operation of the 110 Premises.

2. Limitations on Use. Except for the residential use described above, Tenant shall not use the Premises for any other purpose without the prior written approval of Landlord, which approval shall be within the sole and absolute discretion of Landlord.

B. [§302] Use Prohibitions

Tenant agrees that in connection with the use and operation of the Premises it shall not:

1. Use or permit the use of any loudspeakers, public address systems, sound amplifiers, radio or broadcast within the Premises in such manner that any sounds reproduced, transmitted or produced shall be directed primarily beyond the interior of the Premises; or

2. Permit undue accumulation of garbage, trash, rubbish or any other refuse; or

3. Create, cause, maintain or permit any nuisance in, on or about the Premises; or

4. Use or allow the Premises to be used for any unlawful purpose or for any purpose which violates the terms of any recorded instrument affecting the Premises; or

5. Do or permit to be done anything in any way which unreasonably disturbs the occupants of neighboring property.

C. [§303] Repairs and Maintenance of the Premises

1. Tenant Obligations.

a. Tenant, at Tenant's sole cost and expense, shall keep the Premises in good condition and repair, including maintaining all plumbing, HVAC, electrical and lighting fixtures and equipment within the Premises, and all doors and windows (both interior and exterior) in the Premises, interior and exterior walls, and any flooring (collectively, "Tenant's Maintenance Obligations"). Tenant, at its sole cost and expense, shall keep the entirety of the interior of the Premises, including any furniture, fixtures, and equipment in good condition and repair. Such upkeep and maintenance shall include, without limitation, reasonable measures to protect wood, stucco and concrete surfaces from weathering, deterioration and aging, and to protect from and promptly remove graffiti or other defacement from such surfaces. Notwithstanding the above, Tenant's obligations under this paragraph shall not include making (a) any capital improvements to the Building; or (b) any structural or seismic repairs, improvements or alterations to the Premises or the Building

b. If at any time during the term after written notice from Landlord, Tenant fails to maintain the Premises or make any repairs or replacements as required by this section, Landlord may, but shall not be required to, enter the Premises and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord.

2. Landlord's Obligations.

Except for Additional Maintenance Obligations approved by Landlord as provided below, Landlord shall not be obligated to maintain any portion of the Premises or make any repairs and/or replacements to the Premises. To the extent any maintenance, repairs and/or replacements are required to be made to the Premises, including any capital improvements, and such maintenance, repairs and/or replacements are not Tenant's Maintenance Obligations as described above ("Additional Maintenance Obligations"), Tenant shall notify Landlord in writing and Landlord shall have sixty (60) days to

determine whether Landlord, in its sole and absolute discretion, desires to fund any such Additional Maintenance Obligations. If Landlord decides to fund the Additional Maintenance Obligations, Landlord shall notify Tenant in writing and this Lease shall remain in full force and effect and Landlord shall fund the Additional Maintenance Obligations. If Landlord decides not to fund the Additional Maintenance Obligations, Landlord shall notify Tenant in writing of such decision and Tenant shall have thirty (30) days after receipt of such notice to notify Landlord in writing of Tenant's election to (i) fund the Additional Maintenance Obligations itself, (ii) terminate this Lease, or (iii) continue under this Lease without making any of the Additional Maintenance Obligations. If Tenant elects to terminate this Lease, the Lease shall terminate sixty (60) days after Tenant's notice to Landlord. If Tenant elects to fund the Additional Maintenance Obligations, this Lease shall remain in full force and effect and Tenant shall fund the Additional Maintenance Obligations. Notwithstanding the above, if the Additional Maintenance Obligations are such that the Premises would be unsafe or otherwise not in compliance with law, and neither Landlord nor Tenant elect to fund the Additional Maintenance Obligations, then this Lease shall terminate sixty (60) days after Tenant's election not to fund the Additional Maintenance Obligations.

D. [§304] Alterations

Tenant shall not make any alterations to the Premises without the prior written consent of Landlord, which consent shall be within the sole and absolute discretion of Landlord and shall include Landlord's requirements for making any alterations to the Premises, including, for example, any prevailing wage or additional insurance requirements. Notwithstanding the above, Tenant shall have the right, without Landlord's consent (but subject to all other provisions of this Lease), to perform any repair or maintenance work required hereunder.

E. [§305] Landlord Not Obligated to Repair

Except as otherwise expressly provided herein, Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under Sections 1941 and 1942 of the California Civil Code, as either or both may from time to time be amended, replaced or restated. Notwithstanding the above, to the extent any law (as defined in Section 401 below) would require any structural change to the Premises or any capital replacement of any portion of the Premises (such as the roof), such change or replacement shall be considered an Additional Maintenance Obligation and Landlord and Tenant shall comply with the process set forth in Section 303 (2) above.

F. [§306] Condition of Premises

Tenant acknowledges that as of the date of this Lease, Tenant has inspected the Premises and all improvements on the Premises and that the Premises and improvements are in good order, repair and condition. Except for the asphalt alleyway at the rear of Building 127, which is in poor condition, Landlord knows of no material defects in the Premises which would unreasonably interfere with Tenant's use and enjoyment of the Premises.

G. [§307] Entry

Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease. Notwithstanding anything to the contrary contained herein, Landlord shall provide Tenant with at least 24 hours prior actual notice before entering the Premises. In the event of an emergency, the determination of which shall require Landlord to be reasonable, Landlord shall use its best efforts to provide Tenant with notice reasonable in such situation. In the event of any entry by Landlord onto the Premises, Landlord shall use its best efforts not to interfere with the conduct of Tenant's business.

IV. [§400] LAWS, TAXES AND UTILITIES

A. [§401] Compliance with Laws

1. Tenant shall, at its sole cost and expense, comply with all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances (herein sometimes collectively referred to as "law") affecting the Premises or the improvements thereon, or any part thereof, or the use thereof, including those which require the making of any unforeseen or extraordinary changes to the Premises, excluding those which would require any structural change to the Premises or any capital replacement of any portion of the Premises (such as the roof), whether or not any such statutes, laws, rules, orders, regulations or ordinance which may be hereafter enacted were within the contemplation of the parties at the time of execution of this Lease, or involve a change of policy on the part of the governmental body enacting the same; in connection with the foregoing, Tenant acknowledges that Landlord, acting not as Landlord but in its governmental capacity, has certain governmental regulatory authority over the Premises and agrees that "law" as defined herein includes any

legal requirement imposed by Landlord acting not as Landlord but in its capacity as a governmental regulatory body.

2. Nothing in this Section shall be construed to prevent Tenant from contesting any law affecting the Premises, or any part thereof, or the use thereof so long as Tenant shall in good faith contest the same or the validity thereof by appropriate legal proceedings and shall give Landlord prompt notice in writing of such contest at least ten (10) days prior to the initiation of such legal proceedings, provided said legal proceedings shall operate to prevent the imposition of any fine, penalty, judgment, lien, title exception, or similar effect on or against the Premises or any part thereof. Any such proceedings to contest the validity of any law shall be brought by Tenant, at Tenant's sole expense, in the name of Tenant. If any such proceeding shall be brought by Tenant, Tenant shall indemnify and save harmless Landlord against any and all loss, cost or expense of any kind (including, but not limited to, reasonable attorneys' fees and expenses) which may be imposed upon or incurred by Landlord in connection therewith.

3. Tenant acknowledges that Landlord used federal funds to acquire the Premises and there may be federal requirements for operation or occupancy of the Premises that are not contained herein. To the extent Landlord and Tenant become aware of any such federal requirements, Tenant shall comply with any such requirements in connection with Tenant's use of the Premises hereunder.

B. [§402] Taxes and Assessments

Tenant acknowledges and agrees that this Lease will create a possessory interest subject to property taxation. Tenant agrees to pay and discharge, as additional rent for the Premises during the term of this Lease, before delinquency, all taxes (including, without limitation, possessory interest taxes associated with the Premises, this Lease and any so-called value added tax), assessments (including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the term of this Lease), fees, levies, water and sewer rents, rates and charges, vault license fees or rentals, license and permit fees and other governmental charges of any kind or nature whatsoever, general and special, ordinary and extraordinary, foreseen and unforeseen, or hereinafter levied or assessed in lieu of or in substitution of any of the foregoing (all of the foregoing collectively called "taxes") which are or may be at any time or from time to time during the term of this Lease levied, charged, assessed or imposed upon or against the Premises or any improvements which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate

created hereby or which may be imposed upon any taxable interest of Tenant acquired pursuant to this Lease on account of any taxable possessory right which Tenant may have acquired pursuant to this Lease. Tenant shall pay or reimburse Landlord, as the case may be, for any fines, penalties, interest or costs which may be added by the collecting authority for the late payment or nonpayment of any taxes required to be paid by Tenant hereunder.

C. [§403] Services and Utilities

During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises, including any fees or costs imposed by the HOA. Notwithstanding the above, the Landlord shall pay any occupancy permit fee required for the Premises.

V. [§500] INSURANCE, INDEMNIFICATION, DAMAGE AND DESTRUCTION

A. [§501] Insurance and Indemnification

1. Required Insurance Policies

Tenant shall, at all times during the Term, maintain in full force and effect, at Tenant's sole cost and expense, the insurance set forth on Exhibit C attached hereto.

2. Hold Harmless and Indemnification

Tenant shall indemnify and hold Landlord and its respective officers, agents and employees harmless from and against all liabilities, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorneys' fees (collectively referred to in this Section as "claim") which may be imposed upon or incurred by or asserted against Landlord or its respective officers, agents and employees by reason of any of the following occurrences during the term of this Lease arising out of Tenant's operations (including, without limitation, operations of any subtenant); provided, however, that Tenant shall have no obligation to indemnify and hold Landlord, and its respective officers, agents and employees, harmless from and against any matter to the extent it arises from the active negligence or willful act of Landlord, or its respective officers, agents or employees or from conduct resulting in an award of punitive damages against Landlord:

a. Any work or thing done in, on or about the Premises, and the improvements thereon or any part thereof, including, without limitation, the construction of any improvements by or at the direction of Tenant or by any party whatsoever; or

b. Any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises and the improvements thereon or any part thereof; or

c. Any negligence on the part of Tenant or any of its agents, contractors, servants, employees, subtenants, operators, licensees or invitees; or

d. Any accident, injury or damage to any person or property occurring in, on or about the Premises and the improvements thereon or any part thereof; or

e. Any failure on the part of Tenant to perform or comply with any of the terms, provisions, covenants and conditions contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord or its respective officers, agents and employees by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, resist or defend such action or proceeding by counsel selected by Tenant or Tenant's insurance carrier.

B. [§502] Damage and Destruction

If any portion of the Buildings necessary for Tenant's use of the Premises is damaged or destroyed, then this Lease may be terminated by either Landlord or Tenant upon written notice to the other party within ninety (90) days after the date of the casualty. If, within ninety (90) days after the date of the casualty, either Landlord or Tenant elects to repair such damage, then the party electing to repair such damage shall promptly and diligently repair the damage (any insurance proceeds shall be made available to the electing party to repair such damage or destruction) and this Lease shall remain in full force and effect. If Tenant fails to maintain the insurance coverage required hereunder, Tenant shall be liable for any shortfall in actual insurance proceeds. In the event of termination, Tenant shall pay to Landlord all insurance proceeds, if any, received by Tenant as a result of the damage or destruction to the extent allocable to the Buildings or other improvements owned by Landlord.

C. [§503] Condemnation

1. If, during the Term, the Premises shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of the date that actual physical possession of the Premises is taken, and after that date, both Landlord and Tenant shall be released from all obligations under this Lease.

2. If, during the Term, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which Tenant was using the Premises prior to the taking, then this Lease shall, as to the part so taken, terminate as of the date that actual physical possession of such portion of the Premises is taken, and after that date, both Landlord and Tenant shall be released from all obligations under this Lease with respect to such portion of the Premises taken. In the event of a partial taking, Landlord shall be entitled to the entirety of any condemnation award, and Landlord shall restore the remainder of the Premises to a tenantable condition at Landlord's sole cost and expense.

3. If the whole or any part of the Premises is taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to any personal property of Tenant. Nothing herein contained shall be deemed or construed to prevent Tenant from interposing and prosecuting in any condemnation proceedings a claim for the value of any fixtures or improvements installed in or made to the Premises by Tenant, or for its costs of moving or loss of business by reason of such condemnation. Notwithstanding anything to the contrary contained herein, if Tenant's leasehold estate only shall be taken or appropriated and the taking or appropriation shall be for a period less than the balance of the term of this Lease, this Lease shall continue in full force and effect. In such event, as long as Tenant receives relocation benefits compensating Tenant for costs associated with such relocation, including any moving costs and increased rental costs, any award or consideration paid by the condemning or appropriating entity shall belong to Landlord. If Tenant does not receive relocation benefits in connection with any such condemnation or appropriation, Tenant shall receive that portion of any award for such condemnation or appropriation to compensate Tenant for costs associated with such relocation, including any moving costs and increased rental costs. The remainder of any such award shall belong to Landlord.

VI. [§600] ASSIGNMENT AND SUBLETTING

1. Without the written consent of Landlord, which shall be within Landlord's sole and absolute discretion, Tenant shall not sublease any portion of the Premises except to Occupants meeting the income and other

requirements contained herein. It is expressly understood, however, that Tenant shall, during any period of subletting, remain primarily liable for the performance of all terms and conditions of this Lease.

2. Tenant shall not assign this Lease without the prior written consent of Landlord, which consent shall be within Landlord's sole and absolute discretion.

VII. [§700] SURRENDER; HOLDING OVER

A. [§701] Surrender of Premises

On the Termination Date, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they are now at the date of this Lease, reasonable wear and tear excepted.

B. [§702] Holding Over

At the end of the Term, should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be month-to-month only and not a renewal of this Lease, nor an extension for any further term. Tenant shall pay Rent in an amount equal to the then fair market rental value of the Premises unless otherwise agreed in writing with Landlord and the Tenant's month-to-month tenancy shall be subject to every term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy. The Director of Housing shall have the authority on behalf of Landlord to agree to the terms of any hold over period, provided that the hold over period shall not exceed one (1) year.

VIII. [§800] DEFAULT

Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an Event of Default):

1. The failure by Tenant to pay any amount in full within three (3) business days following notice of delinquency;

2. The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of five (5) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within five (5) days, Tenant may have a longer period as

is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the five (5) day period and thereafter diligently completing the cure. Tenant shall indemnify and defend Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

4. Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary or involuntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Premises (other than by Landlord) by process of law or otherwise;

5. The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within sixty (60) days.

6. The failure to comply with any of the income, occupancy or rental requirements set forth in Section 301 above.

#### IX. [§900] REMEDIES

1. Upon the occurrence of an Event of Default, Landlord, in addition to any other rights or remedies available to Landlord at law or in equity, shall have the right to terminate this Lease and all rights of Tenant under this Lease by giving Tenant written notice that this Lease is terminated;

2. Upon the occurrence of an Event of Default, Landlord shall also have the right, with or without terminating this Lease, to re-enter the Premises and remove all persons and property from the Premises. Landlord may store the property removed from the Premises in a public warehouse or elsewhere at the expense and for the account of Tenant.

3. Except where this is inconsistent with or contrary to any provisions of this Lease, no right or remedy conferred upon or reserved to either party is intended to be exclusive of any other right or remedy, or any right or remedy given or now or later existing at law or in equity or by statute. Except to the extent that either party may have otherwise agreed in writing, no waiver by a party of any violation or nonperformance by the other party of any obligations, agreements, or covenants under this Lease shall be deemed to be a waiver of any subsequent violation or nonperformance of the same or any other covenant, agreement, or obligation, nor shall any forbearance by either party to exercise a

remedy for any violation or nonperformance by the other party be deemed a waiver by that party of the rights or remedies with respect to that violation or nonperformance.

X. [§1000] NOTICES

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Tenant at:

Downtown Streets, Inc  
480 Lytton Avenue, Suite 2A  
Palo Alto, CA 94301

or to Landlord at:

Director of Housing  
City of San Jose  
200 East Santa Clara Street, Tower 12<sup>th</sup> Fl.  
San Jose, CA 95113

with a copy to:

Office of City Attorney  
City of San Jose  
200 East Santa Clara Street, Tower 16<sup>th</sup> Fl.  
San Jose, CA 95113

or to such other address as either party may designate by notice in accordance with this Section.

XI [§1100] NONDISCRIMINATION

Tenant hereby covenants by and for itself, its successors and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions, that there shall be no discrimination against or segregation of any person or group of persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the

Premises nor shall the Tenant, or any person claiming under or through Tenant, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Premises.

## XII [§1200] RELOCATION ASSISTANCE

Landlord and Tenant acknowledge that Tenant is a post-acquisition tenant as described in California Government Code Section 6034 (b) (1) and is not eligible for relocation assistance or benefits and no relocation assistance or benefits will be paid to Tenant or any Occupants or claimed in any form by Tenant or any Occupant as a result of the expiration or termination of this Lease. Tenant shall notify and obtain a written acknowledgment from any Occupant that relocation assistance or benefits is not available and that Occupants are not eligible for such assistance or benefits under the provisions of Government Code Section 6034 (b) (1).

## XIII [§1300] MISCELLANEOUS

1. Each party hereby agrees to indemnify the other party from and against any real estate brokerage commissions or similar obligations incurred as the result of the negotiation or execution of this Lease.

2. Approvals required of Landlord or Tenant hereunder (excepting approvals specified to be in the "discretion" or "sole discretion" of a party, or words of like import) shall not be unreasonably withheld and, where a time period, is not specified, shall not be unreasonably delayed. All approvals and reviews required of Landlord under this Lease may be undertaken and/or given by Landlord's Director of Housing.

3. Tenant shall not pay any money or provide any other consideration of any kind whatsoever or employ, contract with or sublease to or with any person or entity if such payment of money or provision of other consideration would violate or would have a reasonable likelihood of violating any law, statute, ordinance, directive, regulation, decision or opinion now or hereafter enacted or promulgated by Landlord, the State of California or any governmental, public or judicial body, agency or department relating in any manner to conflicts of interest or if such payment or provision of consideration is to a person or entity which has discretionary authority or power of any kind over the development, use or occupancy of the Premises or the improvements thereon or any part thereof or with respect to the enforcement or interpretation of this Lease.

4. Nothing in this Lease shall be construed to create any duty to, any standard of care with reference to or any liability to anyone not a party except as otherwise expressly provided herein, and no rights, privileges or immunities of any party hereto shall incur to the benefit of any third party, nor shall any third party be deemed a third party beneficiary of any of the provisions herein, except as herein expressly provided.

5. The words "Landlord" and "Tenant" as used herein shall include a corporation and include the plural as well as the singular. Words used in the masculine gender include the feminine and neuter. If there be more than one Landlord and Tenant, the obligations hereunder imposed upon Landlord and Tenant shall be joint and several.

6. The captions used herein are for convenience of reference only and are not a part of this Lease and do not in any way limit or amplify the terms and provisions hereof.

7. Time is of the essence of each and all of the agreements, covenants and conditions of this Lease.

8. This Lease shall be interpreted in accordance with and governed by the laws of the State of California. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against Landlord or Tenant.

9. This Lease and its attachments constitute the entire agreement between Landlord and Tenant with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Landlord and Tenant.

10. Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

12. Tenant acknowledges that Landlord, as the City of San Jose, has certain governmental regulatory authority over the Premises. Tenant agrees and expressly acknowledges that any approval or consent required or permitted hereunder by Landlord, acting in its capacity as Landlord under this Lease, (1) is distinct from any approval or consent of such entity acting in the capacity of governmental regulatory authority, whether or not related to the same matter, and (2) shall not compromise, diminish or in any way limit the authority of such entity to give, deny or condition its approval or consent when acting as a governmental regulatory authority.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease by proper persons thereunto duly authorized as of the date first hereinabove written.

LANDLORD:

Approved as to form:

THE CITY OF SAN JOSE

\_\_\_\_\_  
Thomas Murtha  
Senior Deputy City Attorney

\_\_\_\_\_  
Leslye Corsiglia  
Director of Housing

TENANT:

DOWNTOWN STREETS, INC.,  
A California non profit corporation

By:\_\_\_\_\_  
Eileen Richardson  
Its Executive Director

**EXHIBIT A**

**LEGAL DESCRIPTION FOR PROPERTY**

**127 Roundtable**

DESCRIPTION: THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SANTA CLARA, CITY OF SAN JOSE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL "G", AS SHOWN ON THE MAP OF AMENDED RECORD OF SURVEY OF LAND OF RUBY J. NERICH, BEING LOTS 8, 9,10,11,12 AND 13, OF TRACT NO. 2652 GREAT OAKS ADDITION, SAID AMENDED RECORD OF SURVEY FILED MAY 3, 1962, BOOK 146, PAGE 31, OF MAPS, RECORDS OF THE RECORDER OF SANTA CLARA COUNTY.

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**110 Roundtable #22**

DESCRIPTION: THE LAND REFERRED TO HEREIN IS SITUATED IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOT 22 AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT NO. 6885", IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY, ON FEBRUARY 26, 1981 IN BOOK 480 AT PAGES 21 AND 22 OF MAPS.

PARCEL NO.: 684-30-106

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**EXHIBIT B**

Property Address:  
 Property Owner:  
 Management:

{Name of Project} Rent Roll  
 As of : {Month Day, 20\_\_}

# of Occupied Units: \_\_\_\_  
 # of Vacant Units: \_\_\_\_  
 Total Units: \_\_\_\_

UNIT INFORMATION	RENTAL INFORMATION	HOUSEHOLD INFORMATION
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Unit	Name of Tenants	# of BdRm	Sq Ft	OCC VAC	Unit Type	Income Level	Utility Allow.	Sec. 8 Subsidy	Tenant's Paid Rent	Monthly Rent	Lease Beg. Date	Lease Exp. Date	HH Size	Annual Income	% of AMI	HH Size	Annual Income	Date Last Certified	Current % of AMI	2008 Median Inc





## EXHIBIT C

### INSURANCE REQUIREMENTS

Tenant, at Tenant's sole cost and expense, shall procure and maintain for the duration of this Lease, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the Lease by the Tenant, its agents, representatives, employees, subcontractors, suppliers or any third party.

#### **I. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage "occurrence" form CG 0001; and
2. Property insurance against loss by fire or hazards included within the term "extended coverage," (excluding earthquake coverage) which insurance shall be "all risk" insurance in form and substance. If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance is also required. The City is to be named loss payee on the policy.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

There shall be no endorsements reducing the scope of coverage required above unless approved by the City's Risk Manager.

#### **II. Minimum Limits of Insurance**

Tenant shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Property insurance shall be in an amount at least equal to the full replacement value of the buildings, improvements, furniture, furnishings,

fixtures, equipment and other items (whether personality or fixtures). If the Property is situated in an area now or subsequently designated as having special flood hazards, as defined by the Flood Disaster Protection Act of 1973, as amended, flood insurance's limit shall be in an amount equal to 100% of the appraised value of the Property.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

### **III. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Tenant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City.

### **IV. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
  - a. The City, its officials, employees, agents and contractors are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, the Tenant; products and completed operations of the Tenant; premises owned, leased or used by the Tenant; or automobiles owned, leased, hired or borrowed by the Tenant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
  - b. The Tenant's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents or contractors shall be excess of the Tenant's insurance and shall not contribute with it.
  - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents, or contractors.

- d. Coverage shall state that the Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, agents and contractors.
2. Workers' Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, agents and contractors.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to the City; except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

**V. Acceptability of Insurance**

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

**VI. Verification of Coverage**

Tenant shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required endorsements shall be attached to the certificate of insurance which shall be provided by the Tenant's insurance company as evidence of the stipulated coverages.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department  
Risk & Insurance  
200 East Santa Clara St., 14th Floor  
San Jose, CA 95113-1905

