

MEMORANDUM OF UNDERSTANDING BETWEEN
SAN FRANCISCO ARTS COMMISSION AND 500 PINE STREET COMPANY LLC

This Memorandum of Understanding (“MOU”) made and entered into as of _____, 2017, constitutes a mutual agreement between the San Francisco Arts Commission, a department of the City and County of San Francisco (“SFAC”), and 500 Pine Street Company LLC, a development corporation, regarding the application of Section 429 of the San Francisco Planning Code to the office development project located at Pine and Kearny streets (the “Project”), commonly known as 500 Pine Street.

RECITALS

This MOU is made with reference to the following facts and circumstances.

- A. 500 Pine Street Company LLC is the sponsor of an office development project located at the corner of Pine and Kearny streets in San Francisco involving the construction of a five-story office building with ground-floor retail (the “Project”). A portion of the Project’s rooftop will be improved as open space (“Rooftop Park”) and deeded to the Department of Recreation & Parks as an extension of St. Mary’s Square.
- B. The Project is subject to San Francisco Planning Code Section 429 (“Section 429”). 500 Pine Street Company LLC proposes to contribute \$145,604.79 to the Public Artwork Trust Fund established in Section 10.100-29 of the San Francisco Administrative Code for the purposes set forth therein and in Section 429.5(b) of the Planning Code, in fulfillment of Section 429 and Planning Commission Motions 16113 and 16114, subject to the terms and condition set forth in this MOU.
- C. The parties intend for the entirety of the \$145,604.79 contribution except for a \$5,000 administrative fee to be collected by the SFAC, and any fees imposed by the Department of Building Inspection upon collection of Public Art Fee from 500 Pine Street Company LLC, to be distributed by grant to the Chinese Culture Foundation, also known as the Chinese Culture Center (“CCC”), or to a similar 501(c)3 nonprofit arts organization in Chinatown that focuses on underserved communities through contemporary art and education (“other Grantee”), through a public competitive process in accordance with the requirements of Section 429.
- D. The purpose of the Public Artwork Trust Fund includes the creation and installation of public art and the reasonable administrative expenses of SFAC staff for such public art projects.
- E. The SFAC oversees the Public Artwork Trust Fund through its Public Art Trust Director.
- F. The Public Art Trust Director intends to present the above information to the Executive Committee of the Arts Commission and to request authorization from the Committee to designate the funds for distribution by grant to the CCC or to a similar 501(c)3 nonprofit arts organization in Chinatown that focuses on underserved communities through contemporary art and education, except for a \$5,000 administrative fee to be collected by the SFAC.
- G. In order to grant to CCC or other Grantee the \$145,604.79 contribution, less \$5,000 in administrative expenses, the SFAC Executive Committee and the full Arts Commission are required to pass motions of authorization. The SFAC expects this motion to be presented to the Executive Committee on April 24, 2017 and to the full Arts Commission on May 1, 2017.

H. The purpose of this MOU is to memorialize the intent of 500 Pine Street Company LLC and the SFAC that 500 Pine Street Company LLC's contribution to the Public Artwork Trust be distributed to the CCC or other Grantee in fulfillment of Section 429, and to define the rules that will govern the working relationship between SFAC and 500 Pine Street Company LLC concerning the proposed public art project to be defined in the future grant agreement between the SFAC and 500 Pine Street Company LLC.

NOW, THEREFORE, IN CONSIDERATION of the foregoing, SFAC and 500 Pine Street Company LLC hereby agree as follows:

1. **Term.** The term of this MOU begins on the date of the last signature set forth below and continues in effect until Project's Public Art Fee is expended for the purposes described herein. The parties may extend this MOU in a writing signed by both parties.
2. **Responsibilities.** SFAC and 500 Pine Street Company LLC agree to perform the following responsibilities relative to the development and implementation of the public art project to be defined in the future grant agreement between the SFAC and 500 Pine Street Company LLC.
 - a. **500 Pine Street Company LLC's Obligations:**
 - i. 500 Pine Street Company LLC shall inform the staff liaison from the Planning Department of its decision to contribute \$145,604.79 to the Public Art Trust in fulfillment of Section 429;
 - ii. 500 Pine Street Company LLC shall submit payment in full of \$145,604.79 to the Department of Building Inspection within 30 days of occurrence of all of the following: (a) passage of the full Arts Commission's motion of authorization for this MOU, as described in Recital G above; (b) written waiver by the Department of Recreation & Parks of any contractual terms or approval conditions requiring 500 Pine Street Company LLC to install art in the Rooftop Park; and (c) final authorization by the Planning Department to pay the fee in lieu of installing artwork onsite.
 - b. **The San Francisco Arts Commission's Obligations:**
 - i. SFAC shall present the MOU to the Executive Committee for a motion of approval which shall be voted upon by the full Arts Commission;
 - ii. Upon authorization and approval from the full Arts Commission, SFAC shall prepare the grant agreement and Scope of Work with CCC or other Grantee;
 - iii. SFAC shall distribute the \$145,604.79, by grant to CCC or other Grantee, except for an administrative fee of \$5,000;
 - iv. SFAC shall complete and/or procure all paperwork associated with project completion and shall secure the signature of the CCC or other Grantee, on any and all documents necessary to perfect the grant;
 - v. Upon request, SFAC shall provide documentation to 500 Pine Street Company LLC that all steps necessary to distribute the funds to CCC or other Grantee are complete.
3. **500 Pine Street LLC Payment to the Public Artwork Trust Fund.** In accordance with Section 429 of the Planning Code, payments to the Public Artwork Trust Fund from developers are made through the Department of Building Inspection and maintained by the Controller for use by the Arts

Commission. Transactions processed by the Department of Building Inspection may be subject to a fee assessed by the Department of Building Inspection. This fee will be subtracted from \$145,604.79 contributed to the Public Art Trust by the 500 Pine Street Company LLC.

4. **Payment of Administrative Fee to the SFAC.** The Arts Commission shall apply an administrative fee in the amount of \$5,000 to the \$145,604.79 payment made by 500 Pine Street Company LLC to the Public Art Trust with the \$140,604.79 balance of the Public Art Fee to be paid to CCC or other Grantee.

5. **Miscellaneous**

a. **Notices.** All notices, demands, requests or other communications given under this MOU shall be in writing to the following addresses:

If to SFAC:
Jill Manton
San Francisco Arts Commission
401 Van Ness Avenue, Suite 325
San Francisco, CA 94102

If to 500 Pine Street Company LLC:
Dan Frattin
Reubens, Junius and Rose
1 Bush Street, #600
San Francisco, CA 94104

b. **Entire Agreement.** All recitals set forth above are hereby incorporated into the body of this MOU. This MOU, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This MOU shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

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

IN WITNESS WHEREOF, the undersigned have indicated their approval.

Approved by:

Tom DeCaigny
Director of Cultural Affairs

Date

Name
500 Pine Street Company LLC

Date