

M E M O R A N D U M O F U N D E R S T A N D I N G
BETWEEN

San Francisco Arts Commission and Mid-Market Center LLC

This Memorandum of Understanding (“MOU”) made and entered into as of August 8, 2017, constitutes a mutual agreement between the San Francisco Arts Commission, a department of the City and County of San Francisco (“SFAC”), and Mid-Market Center LLC, a California limited liability company (“MMC”) regarding application of Section 429 of the San Francisco Planning Code to the MMC residential development project located at 950-974 Market Street (the “Project”).

RECITALS

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

- A. Whereas, MMC, as the Project Developer, elected to fulfill the public art fee requirements of Section 429 *et seq.* generated by the Project by paying a portion of the 1% Public Art Fee, totaling \$525,000, 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, which purposes include the creation, installation, and exhibition of temporary and permanent public art in the public realm, distribution of funds to San Francisco nonprofit entities and artists to fund temporary public art projects, performance, film, and video screenings, and capital improvements for publicly accessible cultural facilities, and reasonable administrative expenses of SFAC staff for managing projects funded through the Public Artwork Trust, not to exceed 20% of the costs for any one project; and
- B. Whereas, MMC, as the Project Developer, wishes to contribute \$525,000 of the Public Art Fee generated by the Project to the Public Artwork Trust for the following purposes:
 - 1. \$100,000 minus \$2,500 for SFAC’s administrative fee for a total grant of \$97,500 to be distributed to CounterPulse for temporary public art programming at Turk and Taylor Streets to ensure positive activity during construction of the Project;
 - 2. \$150,000 minus \$2,500 for SFAC’s administrative fee for a total grant of \$147,500, to be distributed to Magic Theater to be used for a theatrical production and a youth and adult theatrical arts program to take place in a space within two blocks of Turk and Taylor Streets;
 - 3. \$75,000 minus \$2,500 for SFAC’s administrative fee for a total grant of \$72,500 to be distributed to the Tenderloin Equitable Development Project to support honoring the history of the LGBTQ movement in the Tenderloin through an interpretive art program that will be publicly displayed and accessible; and
 - 4. \$200,000 minus \$2,500 for SFAC’s administrative fee for a total grant of \$197,500, to be distributed to Wildflowers Institute to be used to identify Tenderloin artists whose artworks reflect the Tenderloin, its stories and culture, and illuminate the neighborhood’s unique characteristics. These artworks shall be publicly displayed and honorariums shall be paid to the artists.

- C. Whereas, the MOU was authorized by a vote of the full Arts Commission on August 7, 2017 by Resolution number _____ and:
- D. Whereas, the purpose of this MOU is to memorialize MMC's elections under Planning Code Section 429 and to define the terms that will govern the working relationship between SFAC and MMC concerning the proposed public art projects;

NOW, THEREFORE, IN CONSIDERATION of the foregoing, SFAC and MMC 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 completion of all of the public art projects outlined above. The parties may extend this MOU in a writing signed by both parties.
- 2. **Responsibilities.** SFAC and MMC agree to perform the following responsibilities relative to the development and implementation of the public art projects contemplated herein. If for any reason one or more of the public art projects cannot be performed, SFAC and MMC shall work together to decide upon an alternate project or alternate projects, subject to the approval of the Executive Committee and the full Arts Commission.

a. MMC's Obligations:

- i. Upon signing this MOU, inform the staff liaison from the Planning Department of its decision to contribute to the Public Artwork Trust Fund as fulfillment of Section 429.

b. SFAC's Obligations:

- 1. Obtain the necessary approvals for all grant awards from SFAC as required.
- 2. Maintain the project budgets and track expenditures.
- 3. Execute grants for all opportunities named in B1, B2, B3 and B4 with the specified parties, after receipt of Public Artwork Trust funds and upon authorization and approval of grant agreements by the full Arts Commission.
- 4. Complete and/or procure all paperwork associated with project completion for all four grant projects.

3. MMC Payments to the Public Artwork Trust Fund

- a. 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 prior to issuance of the Project's first construction document and maintained by the City's Controller for use by the SFAC. MMC may elect to pre-pay to the Department of Building Inspection the sum of \$100,000 on or after September 1, 2017, to enable the SFAC to initiate the temporary public art programming at Turk and Taylor Streets during construction of the Project as set forth in Recital B1 above. Transactions processed by the Department of Building Inspection may be subject to a fee.

- b. Per Planning Code Section 429 of the Public Artwork Trust Fund monies shall also be used to fund the reasonable administrative expenses of the SFAC for managing the projects outlined herein through the Public Artwork Trust, not to exceed 20% of the costs of any one project.
- c. The SFAC shall apply administrative fees according to the following fee schedule, which fees shall be paid from MMC's \$525,000 contribution to the Public Art Trust:
- 0-\$25,000: 10%
 - \$25,000-\$250,000: \$5,000
 - \$250,000 and above: \$10,000

Accordingly, the SFAC will charge a one-time administrative fee of \$10,000 for the management of the four grants associated with MMC's contribution to the Public Artwork Trust. This fee shall be equally distributed among the four grant projects, thereby reducing each grant award by the sum of \$2,500 for a collective total of \$10,000 in administrative fees to be paid to the SFAC from the Public Artwork Trust Fund.

4. Miscellaneous

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

If to SFAC:

Jill Manton

San Francisco Arts Commission

401 Van Ness Avenue, Suite 325

San Francisco, CA 94102

jill.manton@sfgov.org

If to MMC:

Joy Ou

Mid-Market Center, LLC

500 Sansome Street, Suite 750

San Francisco, CA 94111

joy@groupi.com

- 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:

San Francisco Arts Commission

Tom DeCaigny
Director of Cultural Affairs

Date

Mid-Market Center LLC

Joy Ou
Principal

Date