



SAN FRANCISCO PLANNING DEPARTMENT

Memo to the Planning Commission

HEARING DATE: FEBRUARY 2, 2017

Date: January 26, 2017
Case No.: **2008.0586DVA**
Subject: **Academy of Art University (AAU)
Development Agreement Application**
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Recommendation: **Informational Hearing – No Action**

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DESCRIPTION

Please see attached abbreviated Term Sheet for Global Resolution between the City & County of San Francisco and the Academy of Art University (Term Sheet). On December 19, 2016, AAU submitted a Development Agreement (DA) Application (Case No. 2008.0586DVA), which included a copy of the Term Sheet. The Term Sheet is being provided for discussion and public comment at the February 2, 2017 Planning Commission hearing. This is the first of a planned series of informational hearings on Case No. 2008.0586DVA and is not an action item. The Term Sheet is being provided in an abbreviated format (28 pages) with the most relevant information. The complete Term Sheet (148 pages) is available upon request.

Attachment:
Abbreviated Term Sheet

TERM SHEET FOR GLOBAL RESOLUTION

City and County of San Francisco

and

Academy of Art University

November 15, 2016

This term sheet (this “Term Sheet”), dated for convenience of reference as of the above date, sets forth generally the terms on which the **City and County of San Francisco and the City Attorney, acting on behalf of the People of the State of California** (collectively, the “City”) and the **Stephens Institute, doing business as the Academy of Art University** (the “Academy”) (collectively, the “Parties”) intend to work together to resolve all of the outstanding issues now pending between them relating to land use matters for properties in San Francisco that the Academy uses or controls and establish appropriate principles and processes for Academy land use compliance for the future—a global resolution.

Background

This Term Sheet is informed by a number of preceding events, all of which together make this a particularly appropriate time to pursue a global resolution of the land use and planning issues involving the Academy.

1. The City has completed the Environmental Impact Report (the “EIR”) and Existing Sites Technical Memorandum (the “ESTM”) for the Academy of Art University Project (the “Project”). The Project analyzed in the EIR consists of four components: program-level growth, project-level growth, legalization approvals, and shuttle services.
2. On September 13, 2016, the Academy paid the Planning Department a total of \$430,991 for outstanding costs associated with the City’s preparation of the EIR and the ESTM as of the Planning Department’s May 23, 2016 invoice, which included all non-enforcement time and materials for environmental review and institutional master plan cases through April 30, 2016. On October 24, 2016, the Planning Department issued an invoice for \$332,151, which included project review time and materials through September 30, 2016, environmental review time and materials from May 1, 2016 through September 30, 2016, and enforcement time and materials from January 1, 2006 through September 30, 2016.
3. The Planning Department has issued tentative recommendations regarding approval or disapproval, conditions of approval, and improvement measures, and the Planning Commission has approved mitigation measures in the Final EIR, for entitlements addressing properties included in the Project.

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4. On May 6, 2016, the City Attorney, on behalf of the City and the People of the State of California, commenced litigation against the Academy and 23 limited liability companies in *People v. Stephens Institute, et. al*, San Francisco Superior Court Number CGC-16-551-832 (the "Lawsuit"), alleging violations of the City's Administrative Code, Planning Code, Building Code and the State Unfair Competition Law, Business and Professions Code Section 17200 et seq. ("UCL").
5. The Academy has expressed its commitment to the City Attorney and the Planning Department to: bring its existing uses into compliance with the Planning Code; relocate existing uses or change uses in buildings in accordance with applicable laws in those limited instances where the Planning Department has determined that legalization is not appropriate; compensate the City for alleged past violations, including providing affordable housing public benefits to the City; and work cooperatively with the City in planning for future growth in a manner that accounts for the urban nature of the Academy's campus, without adversely impacting the City's affordable or rent-controlled housing stock, or burdening its transportation system, including, as a part of that plan, building new housing for its students on property that is zoned for such use.
6. Based on the Academy's commitments as described above and the benefits to the City from the proposed global resolution, the City has expressed its willingness to the Academy to recommend approval of entitlements for most but not all of the Project and for relocation of certain uses, and to establish a process for growth of the Academy consistent with the generally applicable provisions of the Planning Code and with student housing metering requirements, all as further described below.
7. The Parties have agreed to a limited continuance of proceedings in the Lawsuit to facilitate a possible global resolution.
8. At the Academy's request, and with the recommendation of the Planning Director subject to certain conditions, the Planning Commission on September 22, 2016 and October 6, 2016 approved continuing initial hearings on elements of the Project in parallel with the litigation continuance, to facilitate a possible global resolution. Among the main conditions to the continuance in the matters before the Planning Commission are (a) the Parties' successful timely negotiation of a proposed term sheet for a global resolution and (b) the Academy's payment to the Planning Department by October 21, 2016 of all accrued administrative penalties for 460 Townsend Street and 2295 Taylor Street, which as of September 9, 2016, totaled \$528,250, and which the Academy paid in full on October 19, 2016.

Subject to the terms and conditions below, including the qualifications in Section 7C of this Term Sheet, the Parties believe that this Term Sheet, once agreed upon by the Parties, will provide a framework under which they can resolve all of the pending land use issues related to the Project and the Lawsuit through a global resolution, and establish appropriate land use principles and processes for Academy properties and future operations, in a timely and mutually satisfactory manner.

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Summary of Proposed Global Resolution

Through the global resolution described below in this Term Sheet and subject to all required approvals and the finalization of binding agreements, the Academy and the City will fully resolve the Litigation and the issues between them involving the Academy's land uses by addressing alleged past code violations and the requirements to legalize certain existing uses; charting a new path forward to ensure the Academy's compliance with the City's codes and provision of appropriate housing and transportation to meet its students' needs without adverse impacts to the City; and providing substantial, tangible affordable housing benefits to the City that the City could not otherwise obtain through the Litigation.

In particular, the Academy will provide, at no cost to the City, at least 160 new and rehabilitated units of affordable housing for low-income community members, on two adjacent properties that the Academy now controls on Pine Street located on Nob Hill near Chinatown. The Academy values these two properties at about \$36 million. The housing on these properties will be 100% affordable over a 66-year term to persons with income up to 50% of area median income. Working with a qualified community-based non-profit affordable housing organization, the Academy will vacate an existing building currently used for student housing on one site, and cause it to be converted it into affordable housing anticipated for low-income seniors, and on the other adjoining site the Academy will cause to be built a new 100% affordable housing project also anticipated for low-income seniors. The Academy will cause to be made the necessary capital improvements and repairs and operate the projects all without using City funds or competing with federal or state funding for other City-sponsored affordable housing projects. And the Academy will provide for a transition at the end of the 66-year term for the then residents to make sure that they have a place to live.

Also, the 37 limited liability companies that own the properties that are leased to and used by the Academy, which includes the 23 limited liability companies that are named in the Lawsuit and 14 other limited liability companies that are not named in the Lawsuit (the "LLC Parties"), will pay the City a total settlement payment of \$20 million that the City will allocate for various purposes. An estimated \$7 million of that amount will go into the City's Small Sites Fund to buy or rehabilitate small multi-tenant buildings to help low and moderate income renters who are particularly susceptible to evictions and rising rents. That payment will increase the total principal amount currently in the Small Sites Fund by about 70% and will significantly help the City's efforts to protect vulnerable tenants.

Another about \$1.3 million of the total settlement payment will reimburse the City for its enforcement costs in this case and will further go beyond this case to fund future code enforcement activities by the Planning Department and consumer protection by the City Attorney's Office. The LLC Parties will also pay about \$4.7 million, allocated from the total settlement payment, in development impact and fair share fees in connection with the legalization of the Academy's existing uses, which will fund transportation measures, as well as Eastern Neighborhoods benefits and child care. In addition to the settlement payment, the Academy has paid the City Planning Department for administrative penalties for two properties and environmental review costs for all its properties, and the Academy will pay the application and permit fees and costs all other property owners and developers must pay.

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Going forward, the Academy will not promise new students more housing units than the number of lawful units that are its disposal, and the Academy will commit to a plan to increase the housing it provides to its full time on campus students to 50%. The plan will ensure that in doing so the Academy does not take housing off the market, by limiting any conversions to student housing only to existing non-residential, non-PDR structures and further requiring that the Academy satisfy half of the increase over time by building new housing on property that is zoned for such use. The Academy will comply with City codes for all future properties that it may use, and the Academy will keep its institutional master plan in step with the properties it uses or plans to use in the future, all in keeping with an urban campus that is concentrated geographically near transportation and fits appropriately in the City.

The Academy's (and the LLC Parties') obligations will be conditioned on the City's approval of certain existing uses and approval of other properties to relocate certain uses that would not be approved, as well the City's approval of definitive agreements consistent with this Term Sheet. Importantly, as a central component of the global resolution, the Academy's (and the LLC Parties') obligations, including those relating to payments, code compliance and delivery of affordable housing, will be enforced through an injunction and a consent judgment, with court oversight.

Terms

1. FRAMEWORK

The global resolution contemplated by this Term Sheet will be documented in a comprehensive consent judgment, which in turn will contain four main parts: (1) a settlement agreement; (2) a stipulated injunction; (3) a development agreement; and (4) real estate transaction agreements for affordable housing. For the global resolution to become effective, the Parties must each finally approve, execute, and deliver all of these documents and other conditions must be satisfied as outlined below.

A. Settlement Agreement

The settlement agreement (the "Settlement Agreement") between the Parties will provide initially for a provisional and then a final settlement of all claims raised in the Lawsuit, including the payment of civil penalties, legal fees, and costs, and agreement to a stipulated injunction. It will contemplate that, for purposes of dealing with Academy land use issues that are part of the Project, the Parties will enter into a development agreement (the "DA"), as more fully described below.

B. Stipulated Injunction

The Parties will stipulate to a permanent injunction substantially in the form attached to this Term Sheet as Exhibit A (the "Injunction"). The Injunction will form part of the Settlement Agreement.

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C. Development Agreement

The DA will address the content and process for agreed-upon Project entitlements, conditions of approval, and mitigation and improvement measures; a process for approval of future uses and expansion consistent with the process that applies generally for similar institutions and for other owners, operators and developers generally in the City; and the Academy's provision of substantial public benefits in the form of the provision of affordable housing units to the community through the lease of existing units, and the development and lease of new units, to a qualified non-profit affordable housing operator; and a payment to the City for its Small Sites Program to assist low-moderate income tenants; all as described more fully below. Within 10 days after its execution, the DA will be recorded in the Official Records of the City and County of San Francisco.

D. Real Estate Transaction Agreements: Ground Leases

The Academy will cause certain LLC Parties that currently own the affected properties to enter into long-term Ground Leases of an existing building and adjacent property to be developed into new affordable housing to a qualified non-profit affordable housing operator for an affordable housing program approved by the City, as described in more detail in Section 4 below and in the signed term sheet for affordable housing attached as Exhibit B to this Term Sheet.

E. Approval, Execution and Conditions to Effectiveness

i. The consent judgment, including the Settlement Agreement, Injunction, and the DA, will be presented to the Planning Commission for recommendation and then to the Board of Supervisors for approval by ordinance. The Project entitlements will be considered for approval by the Planning Commission as part of the Planning Commission's consideration of the DA, with such approvals being contingent on Board of Supervisors' approval of the DA and the DA becoming effective. The Parties intend for the Board of Supervisors to consider the consent judgment, Settlement Agreement, the DA and the related approvals contemplated by those agreements at the same meetings, and for the Academy matters to be consolidated into as few hearings as possible, to allow for meaningful, holistic review by the decision makers and the public. Other City bodies such as the Historic Preservation Commission may need to consider aspects of the proposed DA in advance of action by the Board of Supervisors. Before the City presents the DA to the Planning Commission for recommendation, the Academy must pay to the City the full balance of all costs then owing to the City to process the DA under Section 56.20 of the San Francisco Administrative Code.

ii. The Settlement Agreement will become effective when all of the following have occurred:

- the Academy will have updated its Institutional Master Plan consistent with the requirements of 3E(i) below;
- the Board of Supervisors' ordinances approving the consent judgment, including the Settlement Agreement, Injunction, and the DA, and any amendments to

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the Planning Code associated with the approval of the DA, become final following passage by the Board of Supervisors and signature by the Mayor;

- the Parties have fully executed and delivered the Settlement Agreement, including the Injunction, and the DA;
- the Guarantors as defined in Section 2A below have fully executed and delivered the Guaranty described in Section 2A below and they have also fully executed and delivered, as applicable, the Settlement Agreement, including the Injunction, and the DA; and
- the closing for the real estate transactions relating to the affordable housing public benefits provided for in the DA, including the delivery of possession under the Ground Leases to the Affordable Housing Operator (with the Academy having vacated all of its uses) has occurred.

The global resolution will become final upon the last to occur of the following:

- the Parties file the consent judgment (including the Settlement Agreement, the DA and the Injunction) in court, and the consent judgment (including the Settlement Agreement, DA and Injunction) is approved by the court and becomes effective;
- the LLC Parties timely pay to the City under the Settlement Agreement all attorneys' fees and enforcement costs as described in Section 2A(ii) below;
- the LLC Parties timely pay to the City under the DA all applicable development impact fees under Section 3H associated with the entitlements for the Approved Uses of the Project that are described in Section 3B below, and the Fair Share Fee for transit impacts as described in Section 3J below;
- the LLC Parties timely pay to the City all civil penalties owing under the Settlement Agreement as described in Section 2A(i) below;
- the LLC Parties timely furnish to the City under the DA the payment for the Small Sites Program to assist low-moderate income tenants as described in Section 4D below; and
- the real estate transactions for affordable housing, including the Ground Leases, both close, as provided in Section 4 below.

F. Obligations of the Academy

The obligations of the Academy under the definitive agreements described above will extend to and include the LLC Parties and the Guarantors as defined in Section 2A below, as appropriate. The signatory to this Term Sheet on behalf of the Academy represents that it has the authority to commit the LLC Parties to negotiate legally binding agreements consistent with the terms of this Term Sheet. The LLC Parties will work together with the Academy and the City to resolve all outstanding issues as provided in this Term Sheet and will execute the consent judgment,

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including Settlement Agreement, DA and Injunction as appropriate, agreeing to be bound by its terms.

2. SETTLEMENT AGREEMENT

The Settlement Agreement will provide for the provisional, and then final, settlement of all claims raised in the Lawsuit, on the following terms.

A. Payment

The LLC Parties will pay to the City in cash the total principal amount of \$20 million (with interest as described below, the "Settlement Payment") in relation to settling the Lawsuit and realizing the global resolution. As further provided below, the City will allocate the Settlement Payment for the following four uses: (1) payment of penalties for alleged past violations of the Administrative Code, Planning Code and UCL as provided in subsection (i) below; (2) reimbursement of City enforcement costs as provided in subsection (ii) below; (3) payment of the development impact fees as described in Section 3H and the Fair Share Fees described in Section 3J below; and (4) payment into the City's Small Sites Program to assist low-moderate income tenants as described in Section 4D below. The payment to the Small Sites Fund will consist of the balance of Settlement Payment, after the City makes the allocations as provided in clauses (1), (2) and (3) below.

The LLC Parties will pay the Settlement Payment on the following schedule:

The LLC Parties will pay to the City the Settlement Payment in five equal annual installments of principal (\$4 million each), plus accrued interest commencing on the date of the first installment payment at a fixed rate of 3%, and with the first installment due 30 days after the date the DA is fully executed and the Settlement Agreement becomes effective, but in no event earlier than September 30, 2017; provided, however, if any of the development impact fees or Fair Share Fees become due prior to or on the date of the second installment, those fees will be paid in full when due, and any such payment or payments above the amount of the annual installment will be credited in full against the amount of the subsequent installment payment. In no event will any such interim payment or payments of development impact fees or Fair Share Fees increase the total principal amount of the Settlement Payment. The City will have the discretion about how to allocate each installment payment for the purposes described in this Section. The City will not impose any prepayment penalty for any early payment of all or any part of the Settlement Payment. The LLC Parties' obligations to pay to the City the Settlement Payment will be secured by a guaranty (the "Guaranty") from the Stephens Family Trust, the Elisa Stephens Trust, the Scott Stephens Trust, Elisa Stephens, Scott Stephens, Richard A. Stephens, and Susanne Stephens (the "Guarantors"), which the City understands would be subject to existing indebtedness and prior approval by the lenders to the Guarantors, LLC Parties, and the Academy.

(i) Penalties

The City will allocate \$1 million of the Settlement Payment as Planning Code civil penalties and \$6 million of the Settlement Payment as UCL civil penalties. The City may use these sums for any lawful purposes, including land use planning enforcement for the Planning Code civil

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penalties and consumer protection for the UCL civil penalties. These civil penalties (and the Settlement Payment) are in addition to the administrative penalties for 460 Townsend Street and 2295 Taylor Street that the Academy has paid to the Planning Department through and including September 9, 2016. Also, the Academy will pay to the Planning Department all accrued administrative penalties on those two properties between September 9, 2016 and November 10, 2016, provided that the Parties execute this Term Sheet by that date.

(ii) Planning Enforcement Costs and Attorney's Fees

The City will allocate a portion of the Settlement Payment up to \$1.3 million to reimburse the City for all administrative costs incurred by the Planning Department, all accrued City Attorney's Office fees and other City costs associated with permitting, enforcement and environmental review of the Project accrued up to the date of execution of this Term Sheet, for staff time, consultant fees and time and materials billed. On October 24, 2016, the Planning Department provided the Academy with an invoice that included \$261,788 for enforcement time and materials through September 30, 2016; the Academy's payment for that enforcement time will be credited against the Settlement Payment. In addition to those costs, and not as part of the Settlement Payment, the Academy will pay to the City the permit and entitlement processing fees described in Section 3G below and the costs payable in connection with negotiating the DA as described in Section 1E(i).

B. Releases

In the Settlement Agreement and contingent on the global resolution becoming final, the City will fully release the Academy and LLC Parties from any and all liabilities related to any of the land use violations and other matters alleged in the Lawsuit. The City will not release unknown claims or relinquish future enforcement discretion, including, without limitation, enforcement of the consent judgment, Injunction, Settlement Agreement, DA, or related documents. In the Settlement Agreement and contingent on the global resolution becoming final, the Academy and LLC Parties will fully release the City from any and all liabilities related to any of the land use violations and other matters alleged in the Lawsuit.

C. Injunction

As an essential part of the Settlement Agreement for the City, the Parties will stipulate to the Injunction as a mechanism to ensure compliance with the Settlement Agreement, DA, and related documents. To ensure compliance with City codes consistent with this Term Sheet, the Injunction will cover properties not covered in the EIR or ESTM that the Academy may use, directly or indirectly, in the future to ensure compliance with the Planning Code consistent with this Term Sheet.

D. Court's Retention of Jurisdiction—Consent Judgment

The Settlement Agreement, the DA and the Injunction will be filed with the San Francisco Superior Court as a consent judgment. Once the consent judgment is entered by the San Francisco Superior Court, the Court will retain jurisdiction to enforce the Settlement Agreement, the DA and the Injunction.

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3. DEVELOPMENT AGREEMENT

The Settlement Agreement will provide for the Parties to enter into a DA on the following terms.

A. Overall Approach to the Academy's Urban Campus

The DA will implement a mutually agreed overall approach to bringing the Academy's urban campus into compliance with the Planning Code, including a process for the approval, relocation, reconfiguration or transition of existing uses, and a mutually agreed upon plan for growth of the Academy that furthers sound urban planning principles, including approval of any future Academy uses of property in San Francisco.

B. Project Approvals

i. Approval of Certain Existing Uses

Consistent with the overall approach described in Section 3A above, the City would approve those existing uses and other Project elements for the ESTM sites and EIR sites as described in Exhibit D to this Term Sheet (the "Approved Uses"). The Academy will modify the application for 2801 Leavenworth Street to retain retail or other active uses on the ground floor that are physically accessible to members of the public during the normal retail hours of operation customary in the neighborhood, which uses may include Academy galleries, and limiting other uses to the mezzanine, second and third floors of the building. The entitlements for the Approved Uses will be authorized contemporaneously with and through the City's final approval of the DA.

ii. Withdrawal of Approval Applications

Contingent on the City's approval of the DA for the Approved Uses as provided in Section 3B(i) above, and as necessary to provide for the implementation of the DA, the Academy will withdraw: (a) its pending conditional use and building permit applications for 1055 Pine Street and 1069 Pine Street, to allow for those sites to be used for affordable housing under Section 4 below; (b) its pending conditional use application and building permit application for 2295 Taylor Street; (c) its conditional use application, building permit application and application for certificate of appropriateness for 700 Montgomery Street; and (d) its pending building permit application for 2340 Stockton Street. The Academy has revised its change of use application for 2225 Jerrold Avenue, to preserve PDR space at that location and provide a Community Facility for the neighborhood; before approval by the City of the revised use, the Academy must provide additional information about the operation of the Community Facility as requested by the City's Planning Department, to satisfy the Planning Department as to the permissibility of such use. If the Academy timely provides such information and the Planning Department finds that the use qualifies as a Community Facility, then this property would be added to the properties that would be approved on Exhibit D.

iii. Transition of Certain Existing Uses to Alternate Locations

The DA will provide a process and timing for the transition, relocation or reconfiguration of the existing uses for which applications will be withdrawn under Section 3B(ii) above. This will

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include, specifically, conversion of the tourist hotel at 2550 Van Ness Avenue, known as the Da Vinci Villa Hotel, to 136 units—or 272 beds—of student housing, including replacement housing for students vacated from the existing building at 1055 Pine Street; conversion of 1142 Van Ness Avenue to post-secondary educational institutional use; and conversion of 1946 Van Ness Avenue to post-secondary educational institutional use.

C. Affordable Housing Public Benefits

As consideration for the DA and as an essential part of the Settlement Agreement, the Academy will provide public benefits in the form of affordable housing for the community, as described in Section 4 below.

D. Student Housing and Metering Relationship to Enrollment

i. The Academy will meet all future housing needs for its students through new construction on property that is zoned for such use, or conversion of existing non-residential, non-PDR structures to student housing use, as further provided below. The Academy will undertake any such new construction or conversion only in accordance with then applicable laws and after first obtaining required permits or approvals.

ii. The Academy will not promise new students more housing units than the number of lawful units that are at its disposal, and will not temporarily house its students in non-Academy facilities, including temporarily housing students in group housing or other dwelling units, but the Academy may, upon written notice to the City, occasionally and temporarily house students in hotels for fewer than thirty (30) days. The Academy will provide housing to students only in properties that have been approved in advance by the City or other applicable governmental regulatory authorities for student housing use.

iii. The Academy currently provides housing in San Francisco for about 39% of all of its on-site, full-time undergraduate and graduate students (“On Campus Students”). The Academy will increase the percentage of housing it provides to On Campus Students as follows, subject to the process described below for deferring these otherwise required increases if occupancy rates do not support them:

- By July 1, 2019, the Academy will house in San Francisco at least 45% of its On Campus Students; and
- By July 1, 2022, the Academy will house in San Francisco at least 50% of its On Campus Students.

Beginning on July 1, 2017 and every year after, the Academy will submit to the City’s Planning Director an annual report of campus housing occupancy rates, on a form mutually agreed to by the Planning Director and the Academy. The report will specify the combined occupancy rate for On Campus Students for housing units made available to them among all of the Academy’s campus housing buildings in San Francisco (the “Combined Occupancy Rate”) for the immediately prior two academic years. The Combined Occupancy Rate will exclude housing units used for or made available to Academy faculty, staff or part-time students. Upon request

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by the Planning Director, the Academy will provide any additional information to verify the reported Combined Occupancy Rate. If in any year before either of the benchmark increases in housing as designated above is scheduled to occur, the verified Combined Occupancy Rate falls below an average of 90% for those two prior academic years, then the Academy may defer that benchmark increase in housing (and any later benchmark increase), for one year, subject again to the same annual process, on a continuing basis. That is, in any particular year the Academy will not have to satisfy its next housing benchmark unless the verified Combined Occupancy Rate for the reporting period of the immediately prior two academic years is an average of 90% or more. After a housing benchmark has been satisfied, if the verified Combined Occupancy Rate falls below 90% in the subsequent academic semester, the benchmark previously reached will again be deferred such that the Academy will not be required to maintain surplus housing units for which there is no longer demand. But under no circumstances will any deferral in a benchmark allow the Academy to reduce its housing below its current percentage of 39%. And in no event may more than one half of any additional housing for On Campus Students that is provided to meet these benchmarks be located in converted tourist hotels, provided that the Academy may satisfy the first benchmark through the conversion of one or more tourist hotels.

iv. The City will provide the Academy with written notice of any non-compliance with the requirements described in Section 3D(iii) within 60 days of the City's discovery of the alleged violation. The Academy and the City will then meet and confer for up to 30 days and attempt to resolve any disagreement about whether the Academy is in compliance and to try to develop a mutually acceptable plan to cure any non-compliance. The Academy will cure any event of non-compliance within 90 days from the end of the meet and confer period by doing one or more of the following: (a) acquiring the right to use units to house On Campus Students in an existing student housing building; (b) filing one or more applications with the City for the required permits and approvals to acquire or convert an existing building for campus housing (subject to the limitations in Section 3D(i) above) and making that housing available within a reasonable period as approved by the Planning Director but no longer than 18 months, subject to unavoidable delays outside of the Academy's reasonable control; (c) filing one or more applications with the City for the required permits and approvals to build a campus housing project (subject to the limitations in Section 3D(i) above), and completing the project within a reasonable period as approved by the Planning Director but no longer than five years, subject to unavoidable delays outside of the Academy's reasonable control; or (d) limiting the number of incoming On Campus Students in the subsequent two academic semesters, and providing the City with a report of the Combined Occupancy Rate that shows occupancy of no more than 90% for both of those two semesters.

v. The Academy provides housing in San Francisco only to On Campus Students who are full time, not part time, and the Academy does not anticipate changing its policy or practice to provide housing to part time students. The Academy defines full time as undergraduate students who take 12 or more credits per semester, and graduate students who take nine or more credits per semester. If in the future the Academy either changes its policy or practice to provide housing to part time students, or redefines full time students to encompass a significantly broader class of students (e.g. by lowering the minimum required credits per semester), then the Academy and the City will agree to make appropriate readjustments to the metering benchmarks and percentages set forth in subsection (iii) above, provided that the

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Academy may, upon written notice to the Planning Director, fill any unoccupied housing units designated for full time students, with part time students, on a temporary, semester-by-semester basis. The Academy will describe any such temporary use for part time students in its annual reports to the City's Planning Director.

E. Future Academy Expansion and Operation

i. Institutional Master Plan

The Academy prepared its Institutional Master Plan ("IMP") in 2011 and updated it in 2013 and 2015. Before the Planning Commission considers recommending the DA for approval, and in any event, no later than May 1, 2017, the Academy will further update its IMP consistent with this Term Sheet and the DA, and the City will timely review the updated IMP for consistency with this Term Sheet, the DA and Planning Code section 304.5 and accept it if the City determines the update fulfills that requirement. After that update, the Academy will at all times maintain an IMP accepted by the City, as required by Planning Code section 304.5, including required updates. The Academy and the City will work together on an appropriate form for the future IMP updates. The City will timely review any IMP or IMP update filed by the Academy in accordance with the DA and will not disapprove any update based on items that are consistent with the DA. The Academy will further update its IMP within 90 days of acquiring new property where the Academy plans to use such property to construct new facilities that were not previously discussed in the IMP, when the Academy plans to demolish existing facilities that were not discussed in the Academy's most recent IMP or update, an increase in the Academy's size by 10,000 square feet or 25% of the Academy's total square footage (whichever is less), or significant changes in use of existing Academy facilities that were not discussed in the IMP.

ii. Compliance with All Then Applicable Laws

(a) The Academy will ensure that all future construction, alterations and changes in use to all properties it may own, control, operate or use will timely comply with all then applicable laws. The DA will not freeze any generally applicable City code requirements, fees or exactions that may apply to any future land uses by the Academy, including, without limitation, the Academy's future expansion or operation, and requirements to provide for student housing or to prepare or update an IMP.

(b) The Academy will not occupy or use any property in the City without first obtaining all required permits and approvals from the City and any other regulatory authority with jurisdiction, after completion of any required environmental review under the California Environmental Quality Act ("CEQA"). The Academy and the City will cooperate with each other in good faith in timely preparing any additional environmental review that may be required under CEQA.

iii. No Conversion of Existing Housing

The Academy will not convert for any purpose any structures currently used or occupied as housing or for which the last legal use was residential.

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iv. Advance Notification and Consultation

(a) The Academy will notify in writing and consult with the Planning Department at least 30 days before it or any of its affiliates intends to submit an application for any permit for a change of use, new construction or demolition for any building in San Francisco that the Academy may own, control, operate or use. The Planning Department will timely respond to requests by the Academy for information about the required City land use permits, process and fees, consistent with its general practices in responding to information requests from other developers, which may include the provision of a Zoning Administrator's determination letter within a reasonable period after the Academy makes a request, so long as the Academy provides sufficient information to allow for such a determination. The 30-day requirement for the Academy will not apply to building permits required to address imminent threats to public health, safety or the environment, provided that the Academy will notify the Planning Department as soon as practicable of any such emergency needs.

(b) The Academy will timely comply with applicable City processing and permitting requirements for all future uses.

F. Environmental Review

i. To the extent possible in accordance with CEQA and other applicable laws, the City will rely on the EIR, as certified by the Planning Commission on July 28, 2016, to satisfy its CEQA obligations to approve the DA.

ii. To the extent consistent with CEQA and other applicable laws, the City will tier from the EIR for any approvals addressed by the DA that were not part of the Project analyzed in the EIR and for future Academy construction or changes in use, provided that nothing will limit the City's discretion to conduct additional environmental review in connection with subsequent discretionary approvals if, in the City's sole discretion, such additional review is legally required, including, without limitation, any additional review required for future construction of new student housing.

G. Permit and Entitlement Processing Fees

The Academy will pay all required City processing fees (including time and materials) when due (at the time of permit application or issuance, as applicable), and at the rates then in effect, including, but not limited to, Planning and Building Department fees associated with the Project.

H. Development Impact Fees

The LLC Parties will pay all development impact fees applicable to the legalization approvals under the DA, which fees will be due on or before the City's issuance of a building or site permit in accordance with the Schedule of Performance provided for in Section 3K below, which will be within a reasonable period after the DA becomes effective. The Planning Department has provided the Academy with its estimate of the applicable development impact fees for the Approved Uses, as shown in Exhibit C attached to this Term Sheet, and the Academy has agreed with the estimate of those fees. The rates for those impact fees will be adjusted by index at the

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beginning of 2017.

I. Mitigation Measures, Improvement Measures and Conditions of Approval

i. The Academy will, at its expense, implement all the EIR mitigation measures in accordance with the approved Mitigation Monitoring and Reporting Program (the “MMRP”) attached as Exhibit E to this Term Sheet.

ii. The Academy will, at its expense, implement all of the improvement measures described in Exhibit F attached to this Term Sheet.

iii. The Academy will, at its expense, implement all the Conditions of Approval identified in the ESTM described in the attached Exhibit G-1, provided that as part of the DA the Parties will mutually agree to the application of those specific Conditions of Approval for those specific properties described in Exhibit G-2 attached to this Term Sheet, (the “Conditions of Approval”). The Parties will use their best efforts to reach agreement on the application of the specific Conditions of Approval set forth in Exhibit G on or before May 1, 2016.

J. Transportation

As required by the EIR (Mitigation Measure C-M-TR-2.1a-AAU Fair Share Contribution to Cumulative Transit Impact), the LLC Parties will pay to the City a fair share contribution (a “Fair Share Fee”) to mitigate the cumulative transit demand in transit ridership on the Kearny/Stockton and Geary corridors due to the Academy’s growth. The Fair Share Fee is as shown on the attached Exhibit C, which amount will become due in accordance with the Schedule of Performance provided for in Section 3K below, meaning within a reasonable period after the DA becomes effective (generally when the impact fees are due under Section 3H above). Also, a Fair Share Fee may apply to any future projects in the 12 Study Areas covered by the EIR and will become due before the City’s issuance of a building or site permit relating to that project. The City will deposit all payments of the Fair Share Fee into its Transportation Sustainability Fund and use the proceeds to maintain and expand the City’s transportation system, including funding for projects that help reduce crowding on buses and trains and create safer streets, all consistent with the uses required of the monies that fund.

The Academy will implement the Transportation Management Plan described in Exhibit H attached to this Term Sheet.

K. Schedule of Performance

The Parties will establish a mutually acceptable schedule of performance to be included as an exhibit to the DA (including, without limitation, for the legalization approvals). Some of those deadlines may be incorporated in the Settlement Agreement and the Injunction.

L. Term

The Parties will establish a mutually acceptable term for the DA, which will be parallel with the term of the Injunction.

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4. AFFORDABLE HOUSING PUBLIC BENEFITS

As a key part of the global resolution, the Academy will provide affordable housing benefits to the community as follows.

A. Long-Term Affordable Housing

The Academy currently controls and operates, and the LLC Parties own and have the authority to enter into the transactions described below for these two properties:

- 1055 Pine Street, currently operated as a student housing building with a commercial kitchen and group dining facilities; and
- 1069 Pine Street, an adjacent underdeveloped site that is zoned for residential use and is currently operated as a gym for Academy students and storage for the Academy.

The Academy will make available these two properties, providing a total of at least 142-174 units of affordable housing over the long-term, as follows:

The Academy will vacate and the LLC Parties (as applicable) will enter into ground leases for each property (together, the “Ground Leases” and each a “Ground Lease”) with a reputable non-profit affordable housing operator, having experience in developing and operating affordable housing projects in the community in which the property is located, as mutually agreed upon by the Academy and the Director of the Mayor’s Office of Housing (or successor position) (the “Affordable Housing Operator”). Each Ground Lease will provide for use of the property for long-term affordable housing serving a population (excluding the Academy’s students) and under a program agreed to by the Affordable Housing Operator and the City, through its Director of the Mayor’s Office of Housing and Community Development or successor agency (“MOHCD”) (the “Affordable Housing Program”).

The 1055 Pine Street building, which was formerly used as a convalescent home, is particularly well suited for seniors. The parties anticipate that the building on this site, once appropriate improvements are made, will provide 79-81 affordable units.

The Academy will cause to be developed the 1069 Pine Street site for new affordable housing. The 1069 Pine Street site may accommodate the development of at least 63-93 new affordable units for seniors.

B. Ground Lease Terms for Existing Building at 1055 Pine Street

The terms of the Ground Lease for 1055 Pine Street will be agreed to by the Academy, the LLC Parties and the Affordable Housing Operator, and will be consistent with the signed term sheet substantially in the form attached as Exhibit B. Those terms must include:

- i. The Academy will deliver the property vacant and in a condition ready for occupancy for the Affordable Housing Program, subject to the City’s acceptance of the transaction with the Affordable Housing Operator as meeting the City’s requirements for

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affordable housing in the global resolution, including review and approval by the City of the final Ground Lease between the Academy and the Affordable Housing Operator (with provisions consistent with MOHCD's standard loan agreement for affordable projects in the areas of marketing, affordability and other leasing restrictions, and project monitoring, reports, books, and records) and an initial five year operating project budget for the Affordable Housing Program.

ii. On a date agreed to by the Academy and the Affordable Housing Operator but no later than June 30, 2017, the Academy will vacate the property and relocate its students to lawfully permitted housing consistent with this Term Sheet, provided that the City has issued all required permits and approvals for the Academy's use of 2550 Van Ness Avenue as student housing consistent with Section 3(B)(iii) of this Term Sheet.

iii. The LLC Parties will make, or cause to be made, all capital improvements, at no cost to the City, needed to place the building in a condition suitable for occupancy under the Affordable Housing Program, no later than one year following its vacation of the property as required under subsection (i) above. The plan and cost estimate for the required improvements will be prepared by a qualified third party, subject to approval by both the Affordable Housing Operator and the LLC Parties, and consented to by the Director of MOHCD. Those improvements will include, without limitation, any required disabled access and life safety improvements. The LLC Parties will make or cause to be made such improvements, with any material modifications agreed to in advance by the Affordable Housing Developer and consented to by the Director of MOHCD. Before occupancy by the tenants under the Affordable Housing Program, the LLC Parties will represent and warrant to the City and the Affordable Housing Operator that the building is ready for residential occupancy under the Affordable Housing Program in compliance with all applicable laws.

iv. The closing of the Ground Lease will occur no later than 30 days after the LLC Parties complete, or cause to be completed, the initial improvements as provided in clause (iii) above and the building is ready for occupancy under the Affordable Housing Program. At the closing, the LLC Parties will cause a memorandum of lease, which refers to the affordability restrictions, to be recorded in the Official Records of the City and County of San Francisco. Before the closing, the LLC Parties may enter into a lease disposition and development agreement or other instrument with the Affordable Housing Developer to help enable the Affordable Housing Developer to construct the improvements and obtain financing, subject to reasonable approval by the Director of MOHCD of such instrument as consistent with this Term Sheet.

v. The term of the Ground Lease will be 66 years from the closing of the Ground Lease.

vi. The LLC Parties and the Affordable Housing Operator will mutually agree to the amount of any Ground Lease rent, consistent with the initial operating budget and cash flow projection requirements described in Section 4B(vii) below. Any Ground Lease rent will be allocated to the LLC Parties' obligations under Section 4B(ix) below and if any the end of the term of the Ground Lease there is any remaining unspent rent, that amount will be used to satisfy the LLC Parties' obligations under Section 4B(x) below.

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vii. Beginning on June 30, of the year in which the Settlement Agreement, DA and Injunction become effective, and every year after, the Academy and Affordable Housing Operator will provide for City approval an annual operating budget and projected 20-year cash flow that conform to City standards for affordable housing operations and demonstrate that project income and expenses (including payment of Ground Lease rent) are sufficient to provide safe, decent housing for residents.

viii. The Academy will ensure that 100% of the units remain affordable to residents earning up to 50% of area median income (San Francisco only) under the Affordable Housing Program, for the entire 66-year Ground Lease term after the building is ready for occupancy (other than one unit, which may be made available to a resident manager). Rents charged to tenants in the building must not exceed rents published annually by MOHCD for a single room occupancy (SRO) units. The LLC Parties will provide, or will cause the Affordable Housing Operator to provide, annual documentation to MOHCD (on a form provided by MOHCD that is consistent with the form MOHCD requires for its other affordable housing projects) that the rents charged to tenants and the income of tenants are consistent with the affordability requirements set forth in this Term Sheet for the Affordable Housing Program and that the Affordable Housing Operator is managing the building in a manner consistent with City standards for affordable housing, including, among other things, staffing levels necessary to maintain safe, decent housing, annual deposits to a replacement reserve, maintenance of an operating reserve, and timely re-leasing of units at turnover to ensure vacancy rates below 5%. Beginning with the first year the building is occupied for the Affordable Housing Program, and every five years after during the term, the LLC Parties will provide, or cause the Affordable Housing Operator to provide, the City with a Comprehensive Needs Assessment to demonstrate adequate maintenance.

ix. The LLC Parties' obligation to ensure that the units remain affordable for the Ground Lease term will include paying from time to time any maintenance, repair, improvement or other capital or operating costs for the property that the Affordable Housing Operator cannot cover with revenues from the Affordable Housing Program. Neither the LLC Parties nor the Affordable Housing Operator may agree to materially change the Affordable Housing Program at any time before or during the term of the Ground Lease, without first obtaining the City's consent in writing. Beginning with the first year the building is occupied for the Affordable Housing Program, and every five years after during the term, the LLC Parties will provide, or cause the Affordable Housing Operator to provide, the City with a Comprehensive Needs Assessment.

x. If at the end of the 66-year term (or any time after), the LLC Parties and the Affordable Housing Operator, in conjunction with the Director of MOHCD, are not able to mutually agree (in their sole discretion) on an extension of the term that continues the Affordable Housing Program, or if upon any other termination of the Ground Lease any tenants are required to move from the premises due to the removal of rent restrictions, then, in any such instance, the LLC Parties will (a) pay for relocation assistance consistent with federal and state relocation laws to the then tenants in good standing of the building; (b) provide life-time leases (or the equivalent) to the then tenants in good standing of the building (as named on the leases); or (c) provide for an alternative arrangement mutually agreed by the LLC Parties and the then tenants in good standing of the building, subject to the prior approval by the Director of

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MOHCD of such an agreement as providing a reasonable alternative to the options described in clauses (a) and (b) above, which approval the Director will give or withhold within 10 days of receiving a request for approval and if the Director fails to approve or disapprove the agreement within that 10-day period the agreement will be deemed approved. Alternatively, the LLC Parties and the City may agree (in their respective sole discretion) on a sale of the property to the City that would preserve the affordability of the units on the property and avoid the relocation of the tenants.

xi. During the term of the Ground Lease, neither the LLC Parties nor the Affordable Housing Operator will seek or obtain any source of federal, state or local funding that could compete with other affordable housing projects in San Francisco seeking such funding, nor will the LLC Parties or the Affordable Housing Operator seek or obtain any funding from the City to improve, maintain or operate the property, including, but not limited to, funds administered through MOHCD.

xii. If before the end of its 66-year term the Ground Lease terminates for any reason, including, but not limited to, an uncured default by the Affordable Housing Operator, then the LLC Parties will either promptly enter into a new Ground Lease for the remaining term on the same terms as provided in this Term Sheet, with (a) another Affordable Housing Operator meeting the same qualifications for the initial operator, or (b) with the City, through its Director of MOHCD.

xiii. The Ground Lease will expressly provide that the City is an intended third party beneficiary of the Ground Leases, with the right to enforce its terms and conditions for the benefit of the residents, throughout the Ground Lease's entire term. Before the LLC Parties and the Affordable Housing Developer execute the Ground Lease, the form and substance of the final Ground Lease will be subject to the review and approval of the Director of MOHCD and City Attorney's Office for consistency with this Term Sheet and the DA.

xiv. If the LLC Parties fails to timely deliver possession to the Affordable Housing Operator under Section 4B(vi), then the LLC Parties will replace 81 residential hotel units no later than June 30, 2020 by either: (a) making the payment to the City provided for in Section 41.13(a)(4) of the Administrative Code, except that the payment will go into the City's Affordable Housing Fund (or other successor fund); or (b) entering into a new 66-year Ground Lease with a qualified Affordable Housing Operator for an Affordable Housing Program and otherwise on the same terms and conditions as provided above, for a building that the LLC Parties identified consistent with the process described in Section 41.13(a)(2) of the Administrative Code, subject to approval by the Planning Commission of the comparability of the proposed replacement building, including location, size and other physical characteristics.

xv. All of the LLC Parties' obligations described above will be subject to enforcement by the City through the consent judgment.

C. Development of New Affordable Housing at 1069 Pine Street

The development of new affordable housing units at 1069 Pine Street and the terms of the Ground Lease for that property will be agreed to by the Academy, the LLC Parties and the

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Affordable Housing Operator, consistent with the signed term sheet substantially in the form attached as Exhibit B. Those terms must include:

i. On a date agreed to by the Academy and the Affordable Housing Operator but no later than the date that the Academy vacates 1055 Pine Street, the Academy will vacate the property and relocate any of its uses to lawfully permitted locations consistent with this Term Sheet.

ii. The existing one-story building on the site will initially be leased on an interim basis to the Affordable Housing Operator for a term of five years, commencing on the date that the Ground Lease for 1055 Pine Street closes, to provide support space for the Affordable Housing Program at 1055 Pine Street, with a provision for early termination upon commencement of construction of the new development project at this site. The closing of the interim lease will occur on a date agreed to by the Academy and the Affordable Housing Developer but no later than 30 days after the Academy vacates the property as provided above.

iii. The closing of the Ground Lease will occur on a date agreed to by the LLC Parties and the Affordable Housing Developer but no later than 60 days after completion of construction, subject to the City's acceptance of the transaction with the Affordable Housing Operator as meeting the City's requirements for affordable housing in the global resolution, including review and approval by the City of the final Ground Lease between the LLC Parties and the Affordable Housing Operator (with provisions consistent with MOHCD's standard loan agreement for affordable projects in the areas of marketing, affordability and other leasing restrictions, and project monitoring, reports, books, and records). At the closing, the LLC Parties will cause a memorandum of lease, which refers to the affordability restrictions, to be recorded in the Official Records of the City and County of San Francisco. Before the closing, the LLC Parties may enter into a lease disposition and development agreement or other instrument with the Affordable Housing Developer to help enable the Affordable Housing Developer to construct the improvements and obtain financing, subject to reasonable approval by the Director of MOHCD of such instrument as consistent with this Term Sheet.

iv. The LLC Parties will construct or cause to be constructed, at no cost to the City, a new development project on the site under the Affordable Housing Program and in accordance with a scope of development, leasing and marketing plan, and schedule of performance for completion of the development project agreed to be the LLC Parties and the Affordable Housing Developer, as approved by the Director of MOHCD (the "Development Plan"). The DA will include the Development Plan as an attachment.

v. In no event will the schedule for commencement of construction of the new development project extend beyond three years after the DA becomes effective nor will the schedule for completion of construction extend beyond three years after the commencement of construction, subject to excusable delay for causes reasonably outside the control of the LLC Parties, including receipt of all required governmental approvals (after timely submission of applications and payment of fees) and the final resolution of any appeals or legal challenges. Within the three years required for commencement of construction of the development project, the LLC Parties will provide to the Director of MOHCD a financing plan and budget showing that there will be adequate funds to build and operate the project consistent with the Affordable

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Housing Program, provided that the Director of MOHCD will complete any review of such financing plan and budget within 10 days of receipt, any approval or disapproval will be limited to whether the financing plan and budget conflicts with the funding source limitations set forth in subsection (xiii) below, and any failure to approve or disapprove the plan and budget within such 10-day period will be deemed approval. As to any suggestions that the Director of MOHCD may make regarding the financing plan or budget about matters other than consistency with subsection (xiii) below, the LLC Parties will have the right to accept or not accept the suggestions from the Director of MOHCD, and Parties intend that the ability of the Director of MOHCD to review or provide input as to such other matters will not delay or have the effect of delaying the issuance of any required governmental approvals or the commencement of construction beyond the deadline provided for in this section.

vi. After completion of construction, the property will be vacant and in a condition ready for occupancy by tenants under the Affordable Housing Program. Before such occupancy, the LLC Parties will represent and warrant to the City and the Affordable Housing Operator that the building is ready for residential occupancy under the Affordable Housing Program in compliance with all applicable laws.

vii. The term of the Ground Lease will be 66 years from completion of construction of the new development on the site, meaning when the new building is ready for occupancy for tenants under the Affordable Housing Program.

viii. The LLC Parties and the Affordable Housing Operator will mutually agree to the amount of any Ground Lease rent, consistent with the initial operating budget and cash flow projection requirements described in Section 4C(ix) below. Any Ground Lease rent will be allocated first to the LLC Parties' obligations under Section 4C(xi) below and if any the end of the term of the Ground Lease there is any remaining unspent rent, that amount will be used to satisfy the LLC Parties' obligations under Section 4C(xii) below.

ix. Beginning on June 30 after the year construction commences, and every year after, the LLC Parties and Affordable Housing Operator will provide for City approval an annual operating budget and projected 20-year cash flow that conform to City standards for affordable housing operations and demonstrate that project income and expenses (including payment of Ground Lease rent) are sufficient to provide safe, decent housing for residents.

x. The LLC Parties will ensure that 100% of the units remain affordable to residents earning up to 50% of area median income (San Francisco only) under the Affordable Housing Program, for the entire 66-year Ground Lease term (other than one unit, which may be made available to a resident manager). Rents charged to tenants in the building must not exceed rents published annually by MOHCD for a SRO unit. The LLC Parties will provide, or will cause the Affordable Housing Operator to provide, annual documentation to MOHCD (on a form provided by MOHCD that is consistent with the form MOHCD requires for its other affordable housing projects) that the rents charged to tenants and the income of tenants are consistent with the affordability requirements set forth in this Term Sheet for the Affordable Housing Program and that the Affordable Housing Operator is managing the building in a manner consistent with City standards for affordable housing, including, among other things, staffing levels necessary to maintain safe, decent housing, annual deposits to a replacement reserve, maintenance of an

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operating reserve, and timely re-leasing of units at turnover to ensure vacancy rates below 5%. Beginning with the first year the building is occupied for the Affordable Housing Program, and every 5 years after during the term, the LLC Parties will provide, or cause the Affordable Housing Operator to provide, the City with a Comprehensive Needs Assessment to demonstrate adequate maintenance.

xi. The LLC Parties' obligation to ensure that the units remain affordable for the Ground Lease term will include paying from time to time any maintenance, repair, improvement or other capital or operating costs for the property that the Affordable Housing Operator cannot cover with revenues from the Affordable Housing Program. Neither the LLC Parties nor the Affordable Housing Operator may agree to materially change the Affordable Housing Program at any time before or during the term of the Ground Lease, without first obtaining the City's consent in writing.

xii. If at the end of the 66-year term (or any time after), the LLC Parties and the Affordable Housing Operator, in conjunction with the Director of MOHCD, are not able to mutually agree (in their sole discretion) on an extension of the term that continues the Affordable Housing Program, or if upon any other termination of the Ground Lease any tenants are required to move from the premises due to the removal of rent restrictions, then, in any such instance, the LLC Parties will either (a) pay for relocation assistance consistent with federal and state relocation laws to the then tenants in good standing of the building; (b) provide life-time leases (or the equivalent) to the then tenants in good standing of the building (as named on the leases); or (c) provide for an alternative arrangement mutually agreed by the LLC Parties and the then tenants in good standing of the building, subject to the prior approval by the Director of MOHCD of such an agreement as providing a reasonable alternative to the options described in clauses (a) and (b) above, which approval the Director will give or withhold within 10 days of receiving a request for approval and if the Director fails to approve or disapprove the agreement within that 10-day period the agreement will be deemed approved. Alternatively, the LLC Parties and the City may agree (in their respective sole discretion) on a sale of the property to the City that would preserve the affordability of the units on the property and avoid the relocation of the tenants.

xiii. To finance the development of the units, and during the term of the Ground Lease, neither the LLC Parties nor the Affordable Housing Operator will seek or obtain any source of federal, state or local funding that could compete with other affordable housing projects in San Francisco seeking such funding, nor will the LLC Parties or the Affordable Housing Operator seek or obtain any funding from the City to improve, maintain or operate the property, including, but not limited to, funds administered through MOHCD.

xiv. If before the end of its 66-year term the Ground Lease terminates for any reason, including, but not limited to, an uncured default by the Affordable Housing Operator, then the LLC Parties will either promptly enter into a new Ground Lease for the remaining term on the same terms as provided in this Term Sheet, with (a) another Affordable Housing Operator meeting the same qualifications for the initial operator, or (b) with the City, through its Director of MOHCD.

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xv. The Ground Lease will expressly provide that the City is an intended third party beneficiary of the Ground Leases, with the right to enforce its terms and conditions for the benefit of the residents, throughout the Ground Lease's entire term. Before the LLC Parties and the Affordable Housing Developer execute the Ground Lease, the form and substance of the final Ground Lease will be subject to the review and approval of the Director of MOHCD and City Attorney's Office for consistency with this Term Sheet and the DA.

xvi. If the LLC Parties fails to commence construction or complete construction in accordance with the schedule of performance, then the LLC Parties shall replace 79 residential hotel units no later than two years after the failure to meet the deadline by either: (a) making the payment to the City provided for in Section 41.13(a)(4) of the Administrative Code, except that the payment will go into the City's Affordable Housing Fund (or other successor fund); or (b) entering into a new 66-year Ground Lease with a qualified Affordable Housing Operator for an Affordable Housing Program and otherwise on the same terms and conditions as provided above, for a building that the LLC Parties identified consistent with the process described in Section 41.13(a)(2) of the Administrative Code, subject to approval by the Planning Commission of the comparability of the proposed replacement building, including location, size and other physical characteristics.

xvii. All of the LLC Parties' obligations described above will be subject to enforcement by the City through the consent judgment.

D. Payment to Stabilize Rental Units for Low-to-Moderate Income Tenants

The City will allocate the balance of the Settlement Payment by the Academy described in Section 2A(i) above (after providing for civil penalties, reimbursement of enforcement costs and payment of development impact fees and the Fair Share Fee) to the City's Small Sites Program currently administered by MOHCD to acquire and rehabilitate multi-family rental buildings of between five and 25 units in the City to help stabilize rental units for low-to-moderate income tenants throughout the City who are particularly susceptible to evictions and rising rents. The Parties anticipate that the total amount of the payment to the Small Sites Fund will be about \$7 million, provided the final allocation will be made by the City consistent with this Term Sheet.

5. PUBLIC COMMUNICATION AND CONFIDENTIALITY

This Term Sheet and the related negotiations between the Parties will remain confidential until such time as the law requires (*e.g.*, the filing of a DA application or a required filing with the court).

6. MILESTONES

The Parties' commitment to continue negotiating in good faith is conditioned upon the sequential achievement of each of the following milestones, which may be modified by mutual agreement in writing:

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- September 13, 2016: The Academy paid in full the accrued costs of staff time and materials related to the Planning Department's review of the EIR, ESTM and IMP as of April 30, 2016, as outlined in a Planning Department invoice dated May 25, 2016.
- September 22, 2016: The Planning Commission approved a continuance to November 17 of all Academy matters that previously were noticed for hearing on September 22.
- September 28, 2016: The City provided the Academy with an estimate of the development impact fees applicable to the Project approvals, including the rate and manner of calculation for each fee (subject to adjustment by index at the beginning of 2017).
- October 6, 2016: The Planning Commission approved a continuance to November 17 of all Academy matters that previously were noticed for hearing on October 6.
- October 19, 2016: The Academy paid to the City all accrued administrative penalties for 460 Townsend Street and 2295 Taylor Street as of September 9, 2016 under the invoice the Planning Department submitted to the Academy on September 27, 2016.
- November 3, 2016: The Planning Department and City Attorney present the proposed Term Sheet to the Planning Commission in a closed session.
- November 15, 2016: A final proposed Term Sheet is executed by the Parties.
- November 17, 2016: The Planning Commission continues the Academy matters that were originally scheduled to be heard on September 22 and October 6 (the "Continued Matters") for an additional period, including incremental additional periods, sufficient to allow for negotiations of definitive agreements consistent with this Term Sheet.
- December 16, 2016: As soon as possible after the execution of the Term Sheet, the Academy provides or causes to be provided to the City, information about the financial condition of the LLC Parties and the Guarantors, under a mutually agreed upon process, including judicial supervision if appropriate, to protect the confidentiality of proprietary and personal financial information, and the City determines, in its reasonable discretion, that the LLC Parties have the financial capacity to satisfy their obligations to make the Settlement Payment and provide the affordable housing benefits as contemplated by the Term Sheet and that the Guarantors have the financial wherewithal to backstop those obligations.
- December 19, 2016: The Academy files an application for a DA consistent with the Term Sheet, and pays the application fee to the Planning Department.
- June 30, 2017: The Parties agree to the definitive terms of the Settlement Agreement, including the consent judgment, Injunction, DA and Guaranty, all in form and substance proposed for final City approval. The Academy causes the Settlement Agreement, including the Injunction, the DA, including the Ground Leases, and the Guaranty to be signed by appropriate parties on behalf of the Academy, Guarantors, LLC Parties and the

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Affordable Housing Operator. Before consideration of the definitive agreements by the Planning Commission, the Academy will have updated its IMP consistent with this Term Sheet.

- July 30, 2017: The proposed Settlement Agreement, including the Injunction, the DA, and the Guaranty, are recommended by the Planning Commission for approval.
- September 30, 2017: The Settlement Agreement, DA and the Guaranty are approved by one or more Board of Supervisors ordinances.
- October 31, 2017: The ordinances approving the Settlement Agreement, DA and Guaranty become effective, and the Academy makes or causes to be made all payments to the City then due.
- November 15, 2017: The consent judgement, including the Settlement Agreement, the DA, the Guaranty and the Injunction, is filed with the court.
- January 1, 2018: The real estate transactions for the Ground Leases close.

Time is of the essence with regard to each of these milestones. The Parties may extend or modify any of these milestones only if they both agree in writing to do so, in their respective sole discretion. The Parties may agree on future milestones in the final definitive agreements.

7. COOPERATION

A. Good Faith

The Parties agree to negotiate in good faith to complete negotiation of a DA, Settlement Agreement, and Injunction, consistent with this Term Sheet, to be presented for approval by the relevant City bodies. The Academy agrees to negotiate in good faith to complete negotiation of the Ground Leases with the Affordable Housing Operator.

B. Deferral of NOVPs

So long as the Parties are meeting the milestones provided for in this Term Sheet, the City will defer the issuance of any new notices of violations ("NOVPs") or administrative penalties for past violations addressed in the EIR and ESTM. The City may, in its sole discretion, issue new NOVPs if it discovers new violations of the Planning Code that are not the subject of the EIR and the ESTM.

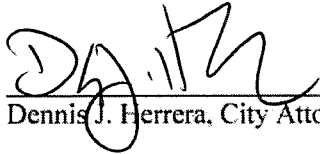
C. Term Sheet Is Nonbinding

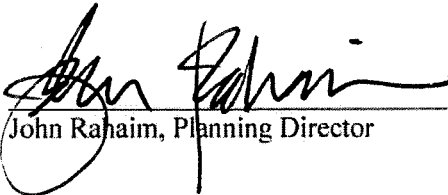
This Term Sheet represents a general statement of the intent of the City and the Academy regarding a global resolution of outstanding issues. This Term Sheet is not intended to be, and will not become, contractually binding on the Parties and no legal obligation will exist unless and until the Parties have executed, following appropriate City approvals and the expiration of applicable appeal periods, a final DA, and Settlement Agreement including the Injunction. Until those agreements are finalized, approved, and executed, neither the Academy nor the City will


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have any obligation to the other party or to any other person or entity under the terms set forth in this Term Sheet, other than to negotiate in good faith with each another subject to the milestones set forth above. The signatory for the Academy below has authority to make the commitments on behalf of the Academy and the LLC Parties to negotiate the legally binding agreements contemplated by the Parties under this Term Sheet.

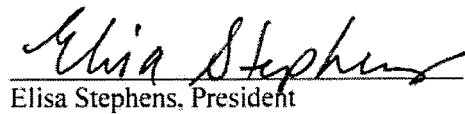
CITY AND COUNTY OF SAN FRANCISCO


Dennis J. Herrera, City Attorney


John Rahaim, Planning Director


Olson Lee, Director, Mayor's Office of Housing

**STEPHENS INSTITUTE,
dba ACADEMY OF ART UNIVERSITY**


Elisa Stephens, President

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LIST OF EXHIBITS:

EXHIBIT A – FORM OF STIPULATED PERMANENT INJUNCTION

EXHIBIT B – SUMMARY OF TERMS OF GROUND LEASES WITH AFFORDABLE
HOUSING OPERATOR FOR AFFORDABLE HOUSING

EXHIBIT C – DEVELOPMENT IMPACT FEES

EXHIBIT D – LIST OF EXISTING PROPERTIES AND ASSOCIATED USES TO BE
APPROVED UNDER THE DA

EXHIBIT E – MMRP

EXHIBIT F – IMPROVEMENT MEASURES

EXHIBIT G-1 – CONDITIONS OF APPROVAL FROM THE ESTM

EXHIBIT G-2 – SPECIFIC CONDITIONS OF APPROVAL TO BE AGREED UPON
BEFORE DA APPROVAL

EXHIBIT H – TRANSPORTATION MANAGEMENT PLAN

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EXHIBIT D

APPROVED USES

The following 34 properties would be approved by the City for existing Academy uses under the DA, as provided in Section 3 of the Term Sheet:

- 1) 168 Bluxome Street
- 2) 601 Brannan Street
- 3) 410 Bush Street
- 4) 1080 Bush Street
- 5) 1153 Bush Street
- 6) 58-60 Federal Street*
- 7) 575 Harrison Street
- 8) 150 Hayes Street
- 9) 1900 Jackson Street
- 10) 736 Jones Street
- 11) 2801 Leavenworth Street
- 12) 1727 Lombard Street
- 13) 77-79 New Montgomery Street
- 14) 180 New Montgomery Street
- 15) 1916 Octavia Street
- 16) 625 Polk Street
- 17) 491 Post Street
- 18) 540 Powell Street
- 19) 560 Powell Street
- 20) 620 Sutter Street
- 21) 625-629 Sutter Street
- 22) 655 Sutter Street
- 23) 680-688 Sutter Street
- 24) 817-831 Sutter Street
- 25) 860 Sutter Street
- 26) 740 Taylor Street
- 27) 460 Townsend Street
- 28) 466 Townsend Street
- 29) 950 Van Ness Avenue/963 O'Farrell Street
- 30) 1849 Van Ness Avenue
- 31) 2151 Van Ness Avenue
- 32) 2209 Van Ness Avenue
- 33) 2211 Van Ness Avenue
- 34) 121 Wisconsin Street

*Conditions for City approval for 58-60 Federal Street include the Academy's agreement with all of the following transportation measures, which apply institution-wide:

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- Academy providing MUNI passes to student and staff to utilize transit where transit can readily provide access between Academy sites (such as Van Ness Ave. and other areas to be identified) and limiting shuttle access to fill in the gaps where MUNI does not provide frequent service to link sites to meet timing constraints of classes.
- Academy developing a shuttle-stop criteria for approving or removing Academy shuttle stops (i.e. if within four or five blocks, no shuttle stop permitted) and cannot be a location that interferes with MUNI.
- Academy developing a bicycle parking manual to assist the Academy in locating parking in an accessible location for both Class I and 2 and developing a minimum number of spaces per site, or potentially supplementing this with bikeshare.

Note: Consistent with Section 3 of the Term Sheet, this list of properties to be approved excludes existing Academy uses for the following properties:

- 1055 Pine Street, which will be improved and used for affordable housing under the Term Sheet;
- 1069 Pine Street, which will be used and developed for affordable housing under the Term Sheet;
- 2340 Stockton Street;
- 2295 Taylor Street;
- 700 Montgomery Street;
- 2225 Jerrold Street (subject to review by the Planning Department, based on information to be provided by the Academy, about the proposed Community Facility to see if this can be moved to the to be approved list); and
- The following properties would be approved by the City for future Academy uses under the DA as provided in Section 3 of the Term Sheet: 1142, 1946 and 2550 Van Ness Avenue, which are not existing Academy uses with applications on file but would be approved under the DA to allow the Academy to relocate certain of its existing uses in the buildings identified above that the City would not approve, as provided in the Term Sheet.