

2550 VAN NESS AVENUE CHANGE OF USE INTERIM AGREEMENT

THIS 2550 VAN NESS AVENUE CHANGE OF USE INTERIM AGREEMENT (“**Agreement**”) is entered into as of _____, 2019, and is by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Planning Department (the “**City**”), 2550 VNPOOL, LLC, a Delaware limited liability company (“**Property Owner**”), and the STEPHENS INSTITUTE, a California corporation (“**Stephens Institute**,” and together with the Property Owner, the “**2550 Parties**”) with respect to the property commonly referred to as 2550 Van Ness Avenue in San Francisco, California and as more particularly described on **Exhibit A** attached hereto (the “**Property**”). The City and the 2550 Parties are also sometimes referred to individually as a “**Party**” and together as the “**Parties**.”

RECITALS

This Agreement is made with reference to the following facts:

A. On May 6, 2016, the City Attorney of the City and County of San Francisco (the “**City Attorney**”), on behalf of the People of the State of California and the City, commenced litigation against the Stephens Institute, and certain other limited liability companies associated with the Stephens Institute including Property Owner (collectively with Stephens Institute, the “**Academy**”), in *People v. Stephens Institute, et. al*, San Francisco Superior Court Number CGC-16-551-832 (the “**Lawsuit**”). In the Lawsuit, the People and the City alleged 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.*

B. The Academy has expressed its commitment to the City Attorney and the Planning Department, as well as to the San Francisco Superior Court (the “**Court**”) in the settlement discussions referenced below, to: (i) discontinue, relocate existing Stephens Institute uses or change Stephens Institute uses in buildings in accordance with applicable Laws; (ii) compensate the City for past violations, including providing affordable housing public benefits to the City; (iii) bring certain properties into compliance with the Planning Code including, where applicable, Articles 10 and 11; and (iv) work cooperatively with the City in planning for future Stephens Institute growth in a manner that accounts for the urban nature of the Stephens Institute’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, or converting existing buildings, for its students on property that is zoned for such use.

C. As a result of settlement discussions, and under the auspices of the Court, the Academy and the City entered into a non-binding Term Sheet for Global Resolution, dated November 15, 2016, (the “**Initial Term Sheet**”) as amended by that certain Supplement to Term Sheet for Global Resolution, dated July 10, 2019 (the “**Supplement**”, and together with the Initial Term Sheet, the “**Term Sheet**”). The Term Sheet was intended to provide a basis to resolve all of the outstanding issues relating to the Lawsuit and other land use matters and to establish appropriate principles and processes for land use compliance by the Academy.

D. As contemplated by the Term Sheet, the City, the Academy, and others have agreed to enter into a comprehensive consent judgment that they will file with the Court seeking the

Court's approval and entry of judgment (the "**Consent Judgment**"). The Consent Judgment contains three main parts: (1) a Settlement Agreement (the "**Settlement Agreement**"), which includes obligations of the LLC Parties, as that term is defined in the Settlement Agreement, to make payments to the City; (2) a Stipulated Injunction (the "**Injunction**"), which is an exhibit to the Settlement Agreement and provides a mechanism for judicial enforcement of the Academy's obligations under the Settlement Agreement; and (3) a Development Agreement, which is also an exhibit to the Settlement Agreement (the "**Development Agreement**," and collectively with the Consent Judgment, Settlement Agreement, and Injunction, the "**Settlement Documents**"). Also critical to the global resolution that the Consent Judgment would achieve is the instrument securing the LLC Parties financial obligations under the Settlement Agreement, the obligations of the LLC Parties to make the full settlement payments under the Settlement Agreement will be secured by a Guaranty (the "**Guaranty**") from the Stephens Family Revocable Trust, the Elisa Stephens Revocable Trust, the Scott Stephens Revocable Trust, Elisa Stephens, Scott Stephens, and Susanne Stephens.

E. As contemplated by the Term Sheet, the Academy and the City, among others, intend to enter into the Development Agreement which addresses, among other things, the entitlements for the Project, as defined in the Development Agreement, conditions of approval, requirements for withdrawal of Stephens Institute use from certain properties, mitigation and improvement measures, student enrollment and housing metering requirements, institutional master plan updates, and requirements for future approvals.

F. On _____, 2020, the City's Board of Supervisors is scheduled to vote on an ordinance approving the Development Agreement, authorizing the City's Planning Director to execute the Development Agreement on behalf of the City, granting certain waivers, findings of consistency and exemptions from the Planning and Administrative Codes, and adopting amendments to the Planning Code (the "**Enacting Ordinance**"). If approved, the Enacting Ordinance will become operative and effective on _____, 2020.

G. As a result of the settlement discussions described in Recital C, upon: (i) the payment by the LLC Parties of the first installment of the Settlement Payment, as that term is defined in the Settlement Agreement, (ii) the execution of the Settlement Documents; (iii) delivery of a declaration, under oath, executed by the President of the Stephens Institute that the Stephens Institute and 1055 Pine Street, LLC, a Delaware limited liability company, has vacated the property commonly known as 1055 Pine Street; (iv) the submission by the 2550 Parties of a complete and properly submitted building permit application for a change of use of the Property to Group Housing with Student Housing characteristic ("**Change of Use Application**"); and (v) compliance by the Property Owner with all applicable portions of Building Code Section 102A, the City agrees that it will not initiate any enforcement action against the Stephens Institute or the Property Owner for a change of use, under the City's Planning Code, of the Property from Tourist Hotel with ground floor Restaurant to Group Housing with Student Housing use characteristic with ground floor Restaurant or Limited Restaurant, prior to the Effective Date of the Development Agreement or March 1, 2020, whichever is later. ("Abatement Date")

H. The 2550 Parties have requested that the City enter into this Agreement to effectuate the interim occupation by the Academy at the Property in advance of the Da Vinci Change of Use on the terms and conditions agreed to during the settlement discussion.

I. The City is willing to enter into this Agreement, on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

ARTICLE 1 EFFECTIVE DATE AND TERM

1.1 This Agreement shall take effect upon the (i) full execution and delivery of this Agreement by the Parties; (ii) the payment by the LLC Parties of the first installment of the Settlement Payment; and (iii) the date the City’s Mayor signs the Enacting Ordinance (the “**Effective Date**”).

1.2 The term of this Agreement (the “**Term**”) shall commence upon the Effective Date and shall continue in full force and effect until the Abatement Date. Provided, however the Abatement Date shall be extended for such period of time as the effective date of the Development Agreement is delayed so long as there has been no final adjudication determining the Development Agreement is unlawful.

ARTICLE 2 2550 PARTIES REPRESENTATIONS AND COVENANTS

2.1 The Stephens Institute is a California corporation, in good standing under the Laws of the State of California, with the right and authority to enter into this Agreement. The Stephens Institute has all requisite power to own or lease the Property and authority to conduct its business and to enter into and to carry out and consummate the transactions contemplated by this Agreement.

2.2 The Property Owner is in good standing under the Laws of the State of California and under the Laws of the state in which it was formed, with the right and authority to enter into this Agreement. The Property Owner has all requisite power to own or lease the Property and authority to conduct its business and to enter into and to carry out and consummate the transactions contemplated by this Agreement.

2.3 To the knowledge of the 2550 Parties, the 2550 Parties represent and warrant that: (i) it is not a party to any other agreement that would conflict with its obligations under this Agreement and the 2550 Parties have no knowledge of any inability to perform its obligations under this Agreement; (ii) the execution and delivery of this Agreement and the agreements it contemplates by the 2550 Parties have been duly and validly authorized by all necessary action; and (iii) this Agreement is a legal, valid and binding obligation of the 2550 Parties, enforceable against the 2550 Parties in accordance with its terms.

2.4 Through its execution of this Agreement, the 2550 Parties acknowledge that they are familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the California Government Code, and certifies that it does not know of any facts that constitute a violation of such provisions and agrees that it will promptly notify the City if it becomes aware of any such fact during the Term.

2.5 By executing this Agreement, the 2550 Parties acknowledge their obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of the 2550 Parties' board of directors; the 2550 Parties' chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the 2550 Parties; any sub-contractor listed in the bid or contract; and any committee that is sponsored or controlled by the 2550 Parties. The 2550 Parties certify that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2.6 To the knowledge of the 2550 Parties, no document furnished by the 2550 Parties to the City in connection with this Agreement contains any untrue statement of material fact, or omits a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

2.7 The 2550 Parties represent and warrant to the City that the neither Stephens Institute nor the Property Owner has filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or Laws for composition of indebtedness or for the reorganization of debtors, and no such filing is threatened.

2.8 By all necessary action, the 2550 Parties have duly authorized and approved the execution and delivery of the Agreement and the performance of its obligations contemplated by this Agreement.

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ARTICLE 3
GROUP HOUSING WITH STUDENT HOUSING USE CHARACTERISTIC CHANGE OF USE

3.1 The City agrees that it will not initiate any enforcement action against the Stephens Institute or the Property Owner for the Change of Use of the Property from Tourist Hotel with ground floor Restaurant to Group Housing with Student Housing use characteristic with ground floor Restaurant or Limited Restaurant, under the City's Planning Code, during the term of this Agreement. The City's agreement to forbear from enforcing for such Change of Use shall be conditioned on the occurrence of the following: (i) the payment by the LLC Parties of the first installment of the Settlement Payment; (ii) the execution of the Settlement Documents; (iii) delivery of a declaration, under oath, executed by the President of the Stephens Institute that the Stephens Institute and 1055 Pine Street, LLC, a Delaware limited liability company, have vacated the property commonly known as 1055 Pine Street; and (iv) the submission by the 2550 Parties of a complete and properly submitted Change of Use Application, which, for purposes of clarity, is a building permit application denoting a change of use under the Planning Code from Tourist Hotel to Group Housing with Student Housing use characteristic with ground floor Restaurant or Limited Restaurant. In addition, the City's agreement is conditioned on the Property Owner, or Stephens Institute, complying with all applicable portions of Building Code Section 102A.

3.2 Nothing in this Agreement shall preclude the City from taking any enforcement action against the Academy for the Academy's failure to meet any Building or Planning Code regulation, or any other applicable municipal regulation, not addressed in the Development Agreement or herein. This Article 3 shall survive the expiration or sooner termination of this Agreement. The terms and conditions governing the Academy's continued right to occupy the Property shall be governed by the Development Agreement and Approvals, as defined in the Development Agreement, upon the Development Agreement's effective date.

ARTICLE 4
GENERAL

4.1 Nothing in this Agreement is intended to or shall be read to conflict with or supersede the terms of the Settlement Documents.

4.2 The Property Owner shall indemnify the City and its officers, agents and employees (collectively, the "**City Parties**") from and against any and all loss, cost, damage, injury, liability, and claims (collectively, "**Losses**") arising or resulting directly or indirectly from any third party claim against any City Party arising from: (i) any accident, injury to or death of a person, or loss of or damage to property occurring in connection with the construction by the 2550 Parties or its agents or contractors of any improvements under this Agreement; (ii) the failure of any improvements constructed under this Agreement to comply with any local, Federal or State law; (iii) any default by the 2550 Parties under this Agreement; (iv) any dispute between the 2550 Parties, on the one hand, and their contractors or subcontractors, on the other hand, relating to the construction of any improvements under this Agreement; or (v) any dispute between or among the 2550 Parties relating to any assignment of this Agreement or the obligations that run with the portion of the transferred portion of the Property, including any dispute relating to which such

person is responsible for performing certain obligations under this Agreement, in any case except to the extent that any of the foregoing indemnification obligations is void or otherwise unenforceable under law or is caused by the willful misconduct of any of the City Parties.

4.3 All notices, demands, approvals, consents and other formal communications between the Parties required or permitted under this Agreement shall be in writing and shall be deemed given and effective upon the date of receipt (i) if given by personal delivery on a business day (or the next business day if delivered personally on a day that is not a business day), (ii) if sent for next-business-day delivery (with all expenses prepaid) by a reliable overnight delivery service, with receipt upon delivery, (iii) if mailed by United States registered or certified mail, first class postage prepaid, to the Party at their respective addresses for notice designated below, or (iv) if by electronic mail, on the day of sending such electronic mail if sent before 5:00 p.m. California time on a business day (and, otherwise, on the next business day), in each case to the respective address(es) (or email address(es)) of the Party to whom such notice is to be given as set forth below.

To the City:

John Rahaim
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102
Email: john.rahaim@sfgov.org

with a copy to:

Dennis J. Herrera
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Chief Deputy City Attorney, Academy of Art 2550 Van Ness Agreement
Email: ronald.flynn@sfcityatty.org

with a copy to:

Attn: Chief Assistant City Attorney (Academy)
email: jesse.smith@sfcityatty.org

with a copy to:

Attn: Deputy City Attorney, Land Use Team (Academy)
email: kristen.jensen@sfcityatty.org

To the 2550 Parties:

Academy of Art University
79 New Montgomery Street
San Francisco, CA 94105
Attn: Office of the President
Email: Estephens@Academyart.edu

with a copy to:

J. Abrams Law, P.C.
One Maritime Plaza
Suite 1900
San Francisco, CA 94111
Attn: Jim Abrams, Esq.
Email: jabrams@jabramslaw.com

4.4 The Parties understand and agree that this Agreement shall run with the land, and shall burden and benefit every successor owner of the Property.

4.5 This Agreement may be effectively amended, changed, modified, altered or terminated only by written instrument executed by the parties hereto.

4.6 This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. Venue for any proceeding related to this Agreement shall be solely in the courts for the State of California located in the City and County of San Francisco. Each Party consents to the jurisdiction of the State or Federal courts located in the City. Each Party expressly waives any and all rights that it may have to make any objections based on jurisdiction or venue to any suit brought to enforce this Agreement in accordance with the foregoing provisions.

4.7 The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. Time is of the essence in all matters relating to this Agreement.

4.8 This Agreement does not create a partnership or joint venture between the City and the 2550 Parties as to any activity conducted by the 2550 Parties relating to this Agreement or otherwise. The 2550 Parties is not a state of governmental actor with respect to any activity conducted by the 2550 Parties hereunder. This Agreement does not create any rights in or for any member of the public, and there are no third party beneficiaries.

4.9 This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

[Signature Page Follows]

NOW THEREFORE, the parties hereto have executed this Agreement as of the Date set forth above.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Rahaim
Director of Planning

Approved as to form:

DENNIS J. HERRERA, City Attorney,

By: _____
Kristen A. Jensen
Deputy City Attorney

STEPHENS INSTITUTE:

STEPHENS INSTITUTE,
a California corporation

By: _____
Dr. Elisa Stephens
President

PROPERTY OWNER:

2550 VNPOOL, LLC300 STOCKTON
STREET, LLC,
a Delaware limited liability company

By: _____
Dr. Elisa Stephens
Manager

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

PARCEL 1:

Beginning at the point of intersection of the Easterly line of Van Ness Avenue with the Southerly line of Filbert Street; and running thence Easterly along said Southerly line of Filbert Street 223 feet 3 inches; thence at a right angle Southerly 137 feet 6 inches; thence at a right angle Westerly 223 feet 3 inches to the said Easterly line of Van Ness Avenue; thence Northerly along last named line 137 feet 6 inches to the point of beginning.
Being a portion of Western addition Block No. 45.

PARCEL 2:

An easement for driveway purposes over and along the following described parcel of land:
Beginning at a point on the Southerly line of Filbert Street, distant thereon 223 feet 3 inches Easterly from the Easterly line of Van Ness Avenue; running thence Easterly along said line of Filbert Street 20 feet; thence at a right angle Southerly 137 feet 6 inches; thence at a right angle Westerly 20 feet; and thence at right angle Northerly 137 feet 6 inches to the point of beginning.

The aforesaid easement is not to include any portion of the existing building now situated on said easement.

Assessor's Lot 021; Block 0526