



Real Estate Assets Department

SDC003

~~SCP Park Services, LLC~~

CITY-939-AQQ

SCP Park
Services LLC

Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



ORIGINAL

**CITY OF SAN DIEGO
LEASE**

BY AND BETWEEN

**THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL
CORPORATION**

AND

**SCP PARK SERVICES, LLC,
A DELAWARE LIMITED LIABILITY
COMPANY**

DOCUMENT NO 22314519-1

FILED DEC 06 2022

**OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA**

LEASE

THIS CITY OF SAN DIEGO LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY" or "Landlord") and SCP PARK SERVICES, LLC, a Delaware limited liability company ("LESSEE") (collectively, "Parties"), to be effective as of December 27, 2022 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

A. CITY is the owner of that certain real property (the "Premises") consisting of approximately 0.846 acres of land, located at 900 4th Avenue, San Diego, California 92101, which is further described in **Exhibit A1-A2: Description of Premises** and improved with an amphitheater, three food and beverage/retail pavilions, an interactive water feature, restrooms ("Plaza Improvements"). The Premises is adjacent to that certain improved property previously known as the Horton Plaza Retail Center; and

B. The Redevelopment Agency of the City of San Diego ("Former RDA") and Horton Land LLC, Horton Plaza Venture LLC, and Horton Plaza L.P. (collectively, "Horton") previously entered into that certain Owner Participation Agreement dated January 19, 2011 and filed with the Office of the Former RDA Agency on January 21, 2011 as Document Number D-04599a (the "OPA") for the development of the Horton Plaza Retail Center. Unless otherwise defined herein, capitalized terms as used herein shall have the same meaning as given thereto in the OPA. The Former RDA dissolved as of February 1, 2012, in accordance with Assembly Bill x1 26, and the City, in its capacity as the successor agency to the Former RDA (Successor Agency) became vested with all the Former RDA's interest in the OPA; and

C. On or about March 28, 2012, Horton transferred all rights, title, and interest under the OPA to Horton Plaza LLC, a Delaware limited liability company. Horton transferred all rights, title, and interest under the OPA to Stockdale Acquisitions, LLC ("Stockdale"), pursuant to that certain Sale, Purchase, and Escrow Agreement dated as of April 3, 2018 and amended thereafter. On August 22, 2018, Stockdale assigned the OPA to SCP Horton Owner 1, SCP Horton Owner 2, SCP Horton Owner 2, SCP Horton Owner 3, and SCP Horton Owner 4 (collectively, "Developer") and transferred fee interest in the land subject to the OPA, which Developer intends to convert from retail uses into a mixed-use technology office campus (the "Horton Plaza Complex"); and

D. Following the assignment of the OPA, Developer assigned the Horton Plaza Urban Park Maintenance and Operations Agreement, ("Maintenance Agreement") and the Park/Plaza Property Event Programming and Use Agreement ("Programming Agreement"), both dated

February 3, 2014, (referred to herein jointly as "Management Agreements") to Lessee, an affiliate of Developer and Stockdale; and

E. On June 15, 2018, the Oversight Board for the Successor Agency approved that certain Assignment and Assumption of Documents Related to Horton Plaza effective as of August 1, 2018, whereby the Successor Agency assigned and transferred to the CITY all rights, title, interest, and obligations relating to the OPA; and

F. The City and Developer entered into that certain First Implementation Agreement to the OPA, approved by the City Council on May 20, 2019, ("FIA") for the redevelopment of the Horton Plaza Complex. As a part of that FIA, the parties agreed to enter into a ground lease for the Premises based on the following terms: (i) consideration of the Developer's capital investment into the Premises and rate of return on the Developer's capital investment; and (ii) providing an appropriate percentage rent to the City; and

G. Pursuant to the FIA, the obligations set forth in the Management Agreements with respect to the Premises have also been incorporated into this Lease. Therefore, the Management Agreements have no further force and effect with respect to the Premises and are superseded by the provisions of this Lease. The obligations under the Management Agreements that pertain to the Historic Horton Park will remain as set forth in that certain First Amendment to Horton Plaza Urban Park Maintenance and Operations Agreement, approved by the City Council on
DEC 06 2022; and

H. By entering into this Lease, the LESSEE will be able to maximize activation of the Premises, and perform its maintenance and event programming obligations for the Premises under the provisions of this Lease, with increased efficiency and effectiveness for a period of time greater than the LESSEE's obligation under the superseded Management Agreements; and

I. CITY and LESSEE desire to enter into this Lease in furtherance of the terms set forth in the FIA and to facilitate LESSEE's investment of a minimum of five million Dollars (\$5,000,000) in rehabilitation and renovations, including enhancement and upgrades to existing improvements located on the Premises ("Capital Improvements") that will be selected by the LESSEE from the various improvements described on Exhibit B1: Redevelopment Plan Summary. The CITY and LESSEE seek to encourage an additional investment of four million dollars (\$4,000,000) in Capital Improvements, which will serve as consideration for an extension of lease duration, for a total investment of nine million dollars (\$9,000,000). It is expected that the future Capital Improvements will increase the value of the leasehold and contribute to the transformation of the site into a well-recognized and highly utilized resource for the downtown San Diego community; and

J. Nothing in this LESSEE shall permit LESSEE to initiate any improvements or alterations on the Premises involving demolition or development within the meaning of Section 102(h) of the California Department of Housing and Community Development's Surplus Land Act Guidelines ("Construction"). Notwithstanding the foregoing, if the Premises are damaged due to a casualty event, Lessee may engage in Construction with the City's prior written approval and only to the extent necessary to restore the Premises to a condition substantially equivalent to their condition before the casualty event, subject to any changes in law limiting such restoration. Use of the word "construction" in

this Lease refers to the act of undertaking routine repairs as well as rehabilitation, renovation, and other work to enhance existing structures on the Premises.

K. It is anticipated that this Lease will increase the value of the leasehold to the benefit of the CITY by the LESSEE: (i) investing in Capital Improvements, and upgrades to the Premises as provided herein; (ii) ensuring the ongoing maintenance of the Premises for the term of the Lease; (iii) activating the Premises as an urban plaza and contribute to economic vitality of Downtown area; (iv) providing the CITY with a percentage rent that substantially exceeds the market rate percentages received from similar properties within the Southern California area; and (iv) relieving the CITY of its monetary obligations to refurbish Major Capital Items (as defined in the Maintenance Agreement) for the Premises; and

L. This Lease is intended to provide appropriate consideration to CITY for LESSEE's use and possession of the Premises, to ensure the ongoing routine maintenance of the Premises, and to secure LESSEE's commitment to contribute to the economic viability of the Downtown San Diego community; and

M. At the Commencement Date, CITY owns the Premises (as defined herein); and

N. CITY desires to lease the Premises to LESSEE, and LESSEE desires to lease the Premises from CITY as more specifically set forth below.

FOR VALUABLE CONSIDERATION, the sufficiency of which is acknowledged, the parties agree as follows:

1. PREMISES; USES

1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property (the "Premises") located at 900 4th Avenue, San Diego, CA, 92101. The Premises is that certain real property that was acquired by the Landlord in satisfaction of the terms of the OPA and is commonly referred to therein as the "Sales Parcel," as described in the "Legal Description of Sales Parcel" (attached hereto and incorporated herein as Exhibit A1: Legal Description) and further depicted on the "Site Map" (attached hereto and incorporated herein as Exhibit A2: Aerial Map of the Premises).

1.2 Permitted Uses. Subject to all applicable laws, rules, regulations, policies and approvals and other applicable governmental authorities, LESSEE may use the Premises only for the following purposes (the "Permitted Uses"): to develop, rehabilitate, operate, lease, and maintain the Premises for active commercial activities that include, restaurants, alcoholic beverage services, and other retail activities; arts, promotional, educational and entertainment programs and events. and other uses allowed in accordance with the applicable Centre City Planned District Use Regulations. CITY may consent or approve a use (as defined in Section 1.8) that is not specifically listed as a permitted use which is found to be consistent with the intent and purpose of this Lease and the applicable Centre City Planned District Use Regulations. LESSEE may apply restrictions for the general use of the Premises in a manner that supports the Permitted Uses and as allowed by law. The Premises will be open for the Permitted Uses during LESSEE's general hours of operation,

as such hours are determined by Section 3.1 of this Lease. The Permitted Uses will be incorporated into a Redevelopment Plan for the Premises as provided by LESSEE.

- (a) "Redevelopment Plan" means the redevelopment plan to be approved by CITY in its reasonable discretion (as approval is defined in Section 1.8), a summary of the Redevelopment Plan has been provided in Exhibit B1: Redevelopment Plan Summary and as shown on Exhibit B2 Redevelopment Plan, attached hereto. The Parties acknowledge that reasonable modifications may be made to the Redevelopment Plan Summary and that LESSEE shall redevelop and rehabilitate the Premises in accordance with the approved Redevelopment Plan and according to the terms of this Lease. Some of the features of the proposed design include: (a) restaurant concepts with outdoor seating, (b) dining deck to service the adjacent Bradley Building and which converts into a stage/platform for events; (c) original artwork; (d) outdoor shaded seating; (e) activity space that may be used for programming events and outdoor seating and; and (f) other permanent and temporary improvements aimed at activating the Premises in a manner complementary to its operation as a resource that enhances the downtown community experience.
- (b) Alcohol Sales. Subject to LESSEE's compliance with all applicable laws and licensing requirements, LESSEE may offer alcoholic beverages for consumption on the Premises. Under no circumstances shall LESSEE open, or provide the tools to open, any bottled wine and beer sold to consumers for off-Premises consumption. Alcoholic beverages may be served in containers that reflect positively on the quality of the business conducted from the Premises.
- (c) Kiosks. "Kiosk" means a permanent structure which is designed for electrical, water, and other hook-ups and is otherwise consistent with the Preliminary Design Guidelines, Basic Plans and Schematic Drawings as set forth in the OPA, or Redevelopment Plan. The Landlord may approve changes in the square footage or design of the kiosks from time to time during the term of this Lease, provided however, the change does not result in a significant increase in the total number of Kiosks so as to diminish the quality of the Premises as a downtown community resource.
- (d) Temporary Structures. In addition to the areas in which commercial or retail uses are allowed or are currently located on the Premises, LESSEE may locate temporary structures as follows: (i) for the use and operation of retail sales (including food and beverage sales) in areas occupying no more than a total of 1,200 square feet of the Premises and located on the Premises for 15 consecutive days or less; or (ii) for a Permitted Use of the Premises in an area that occupies more than a total of 1,200 square feet, or exceeds 15 consecutive days with written pre-approval by the City. The location of the Kiosk Uses and temporary structures may change from time to time.

1.3 Required Activities.

- (a) Activation Principles. LESSEE shall provide Activities that activate the Premises, create events people want to attend, and generally provide an attractive asset to the downtown community. In order to establish the Premises as a well-recognized and highly utilized resource for the downtown San Diego community in this manner, and generate sufficient revenues to at least offset the operating expenses associated with such an amenity, the LESSEE shall program Activities on the Premises and Associated Venues that include a balanced calendar of recreational, cultural, educational and promotional Activities, including but not limited to live entertainment programs, farmers markets, live music, and yoga classes. Activities supplementing events and activities held at Associated Venues may be included in the programming of Activities on the Premises when such Activities are located on the Premises, or a portion thereof, and facilitates the community's use of the Premises. The Premises will be activated as reasonably feasible to facilitate community use, while not negatively impacting the uses of the surrounding properties, including the Horton Plaza Complex.

(i) "Activities" means any activity (whether requiring a permit or not), display, and/or temporary installation, in which LESSEE has issued a permit or granted permission for the use of a designated area(s) on the Premises, and which may include activities conducted in connection with events and activities held at the Associated Venues (as defined herein), for a minimum duration of one hour.

(ii) "Associated Venues" means the adjacent facilities commonly known as the Lyceum Theatre, Balboa Theatre, and Bradley Building, in which activities associated with such venues and held on the Premises may be included in the programming of Activities because of the sites' close proximity and physical association with the Premises.

- (b) Programming. The Management Agreements are of no further force and effect with respect to the Premises and in particular all provisions related to the activation and event programming of the Premises have been superseded by the provisions of this Lease. Thirty (30) days prior to opening the Premises for activation and thirty (30) days prior to the end of each calendar year, LESSEE shall provide CITY a workplan for Activities scheduled for the upcoming calendar year that will achieve the following the Activation Principles described in 1.3 (a) and activation goals described below (collectively "Activation Goals"):

(i) Facilitate the establishment of the Premises as a well-recognized and highly utilized resource for the downtown San Diego community with retail uses and scheduled Activities.

(ii) Balance Activities on the Premises with the uses of the surrounding properties, including the Horton Plaza Complex.

(iii) Allow no more than 25% of the Activities scheduled a single calendar year on Premises to require an admission fee.

(iv) Schedule regional, non-profit arts organizations or government at low-cost or at a cost of services only.

(v) Build a regular Activity schedule that focuses on attracting Family attendees.

(vi) Establish long-term capacity to organize continual improvement of the Premises through input from and interact with the Center City and Gaslamp Quarter Association BID's and the Downtown San Diego Partnership Clean and Safe Program.

(vii) Generate revenues as feasible from Activities and retail sales to offset the Operational Costs associated with the Premises.

(viii) Capitalize on the Premises' unique location adjacent to the Historic Horton Plaza Park, Lyceum Theatre, Brady Building and Balboa Theater to promote Activities.

- (c) **LESSEE Responsibilities.** LESSEE will have the sole right and duty to plan, develop, market, schedule, manage, support, and coordinate all Activities on the Premises. LESSEE shall submit to CITY a report of Activities conducted in the previous calendar year along with financial statements that detail cash flow, including income and expenses, that allow for CITY to understand the overall financial conditions relative to Activities on the Premises. LESSEE shall provide the report of Activities with the Annual Report (described further in Section 4 of this Lease). Notwithstanding the foregoing, such authority does not waive any requirement to obtain a City of San Diego Special Event Permit if applicable, pay any associated fees for such permit, or obtain any other required permit from agencies such as but not limited to the County of San Diego Health Department or California Alcoholic and Beverage Control. Where applicable, Activities that require a Special Event Permit from the City will be planned, developed, marketed, scheduled, managed, supported and coordinated in a manner consistent with the policies, permitting procedures, and requirements set out in the City Special Event Planning Guide, as produced by the Office of Special Events of the City of San Diego. If a Special Event Permit is not required, LESSEE shall consider the unique nature or risk associated with the special event, including the size of the special event relative to an increase in risk, to require its permittee or event host to obtain as may be appropriate, a policy of insurance with adequate coverage and limits relative to the event.

- (d) Use Fees. LESSEE will take into consideration the standard fees charged by the CITY for use of other similarly situated venues and the demand for, and cost of using comparable alternative venues in setting Use Fees for Activities on the Premises. To the extent possible, CITY and LESSEE desire that the Use Fees cover the LESSEE's costs to the maximum extent possible. The Use Fee schedule shall be reviewed and updated at least annually based on market conditions and past and expected future demand for Activities on the Premises. Notwithstanding the preceding, Use Fees for Activities may be adjusted by LESSEE for a particular Activity.

1.4 Prohibited Uses. The use of the Premises by LESSEE shall specifically exclude any offensive or incongruent uses including, but not limited to, the following:

- (a) Any public or private nuisance (as defined in California Civil Code Section 3479) connected with business operations conducted on the Leased Premises and/or Improvements;
- (b) Any noise or sound exceeding allowable levels under local law that is not specifically allowed pursuant to a Conditional Use Permit or allowed under Section 3.7 of this Lease;
- (c) Any noxious odor, materials, and any toxic or caustic, or corrosive fuel or gas in violation of applicable law;
- (d) Any unusual fire, explosion, or other damaging or dangerous hazard;
- (e) Any warehouse, other than that which is incidental to the primary commercial use or business operation, and any assembly, manufacturing, distillation, refining, smelting, agriculture, or mining operation;
- (f) Any dollar store, pawn shop, marijuana sales operation, adult business or facility as defined and regulated in the City of San Diego's Municipal Code (SDMC). Such uses include, without limitation, massage establishments (to the extent defined and regulated in SDMC as an adult business or facility), adult news racks, adult bookstores, adult motion picture theaters, and adult paraphernalia businesses;
- (g) Any sale of alcoholic beverages for off-site consumption; and
- (h) Any gun shop or retail sales operation for which the main commercial use or business operation is the sale of guns.

1.5 Center City Planned District. This Lease is subject to the Center City Planned District Ordinance, adopted on _____, and as it may be amended from time to time.

1.6 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way

pertaining to the Premises, whether or not of record; provided that the Lease shall be senior to any mortgage or deed of trust hereafter granted on CITY's fee interest in the Property. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow LESSEE's redevelopment and use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

- 1.7 Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals. CITY makes no representation or warranty regarding review or approval of LESSEE's renovation, repair or redevelopment plans for the Premises, and failure of the CITY or City Council to approve any plans or grant any required permits for renovation, repair or redevelopment shall not give rise to any claim, liability, obligation, or cause of action related to this Lease. The Parties understand and agree that the City's failure to grant such permits or approve the Redevelopment Plan shall not be considered a breach of this Lease by the LESSEE and would render any performance by LESSEE unfeasible, in which case the Parties may agree to terminate the Lease in accordance with Section 12.3, unless LESSEE determines it may reasonably cure the same by submitting a revised plan or permit application for the City's reasonable approval. LESSEE shall obtain and maintain throughout the term of this Lease all legally required permits and licenses for the reconstruction of improvements, including, but not limited to, California Coastal permits, and building permits ("Approvals"), and for the operation of its business on the Premises, including the San Diego County food operator license.
- 1.8 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.9 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If CITY for any reason cannot deliver possession of the Premises to LESSEE on the Effective Date, or if LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.10 Reservation of Rights.
 - (a) Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.

- (b) Easements. CITY reserves the right subject to 1.10(d), to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good at no cost or liability to CITY.
 - (c) Repairs. CITY may at all reasonable times enter the Premises, subject to 1.10(d), for the purpose of making repairs to or developing municipal resources and services.
 - (d) Noninterference. CITY shall not substantially or unreasonably interfere with LESSEE's use of the Premises and such non-interference covenant is an express condition to the CITY's exercise of its rights under Section 1.10. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.11 Competent Management. LESSEE shall provide competent management of the Permitted Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Permitted Uses and in compliance with all applicable local, state, and federal laws, rules, and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
- 1.12 Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan or for the adoption or defeat of any ballot measure; however, LESSEE may allow the use of the Premises as a forum for open public debate by two or more candidates, such as occurs at a candidate forum and similar events.
- 1.13 CITY Use. CITY may use the portions of the Premises for civic events and special programs, free of charge, and only at times when LESSEE has no scheduled event or program or during LESSEE's general hours of operation. After each such use, CITY shall leave the Premises in the same condition found.
- 1.14 Public Benefit. LESSEE shall use the Premises as allowed by this Lease to provide a public benefit to the CITY as described in the Recitals above.
- 1.15 Subleases for Permitted Uses.
- (a) LESSEE's Right. Subject to the other terms and conditions of this Lease, at any time when no Notice of Default to LESSEE is outstanding, LESSEE may enter into subleases for commercial space within the Premises or Modify any sublease, terminate any sublease or evict any Sublessee, and grant any consent under any sublease, all without Landlord's consent. No sublease shall affect any obligations of LESSEE or rights of Landlord under this Lease, all of which shall continue in full force and effect,

notwithstanding any sublease. Any sublease shall be subject and subordinate to this Lease and expire no later than one day before the Expiration Date. The fact that any sublessee causes any Default shall not relieve LESSEE of LESSEE's obligation to cure any and all such Defaults. LESSEE shall take all steps reasonable and necessary to prevent Defaults caused by sublessees.

Required Provisions. Each sublease shall contain provisions in form and substance substantially as set forth below in this Section 1.15 provided, however, defined terms may be modified, as appropriate, to reflect the definitions in the sublease. The sublease shall include the substance of the following provision: All terms, covenants, and provisions of this sublease and all rights, remedies, and options of subtenant under this sublease are and shall at all times remain fully subject and subordinate in all respects to the Lease. If the Lease terminates, then this sublease shall automatically and concurrently terminate. In that event, subtenant, at the option and request of Landlord shall attorn to Landlord and recognize Landlord as subtenant's direct landlord under this sublease, subtenant, for the express benefit of Landlord, waives its rights under any Law that may allow Subtenant to terminate this sublease or surrender possession of the demised sub-premises, if the Lease terminates. By executing its sublease, each subtenant shall be deemed to have agreed to these provisions.

- (b) Delivery of Subleases. LESSEE shall deliver to Landlord a copy of each executed sublease and all associated agreements, all certified as accurate by both LESSEE and sublessee; within fifteen (15) days following LESSEE entering into the particular sublease.
- (c) LESSEE's Obligations Regarding Subleases. LESSEE shall, upon request (no more frequently than once every twelve (12) months) give Landlord a current list of all subleases. LESSEE shall perform its obligations under all subleases and LESSEE shall enforce all its rights under subleases in a commercially reasonable manner.

1.16 City Council Action Required. LESSEE acknowledges that this Lease is expressly conditioned on the San Diego City Council's (the "City Council") prior authorization to enter into and execute this Lease ("Council Authorization"), which may or may not be granted in the City Council's sole discretion. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of the City Council's modification of the final terms and conditions of this Lease, or the City Council's failure to grant the Council Authorization.

1.17 Restroom Availability. LESSEE agrees to make a restroom available within the Premises to be located at its existing location as of the Effective Date for use by paying and non-paying visitors of the Premises during the hours of operation as set forth in Exhibit C: Hours of Operation for the Term of the Lease, including any extension. The identified

restroom shall be made available and open upon the City's issuance of the first certificate of occupancy for the Premises, which shall be no later than the conclusion of the Redevelopment period (as defined in Section 2.1(a) below). The CITY understands that LESSEE may need to close the restroom on a temporary basis for repairs, refurbishment, and non-routine maintenance. To adequately meet LESSEE's requirement to provide a restroom during periods of temporary closure of restroom, the LESSEE must provide, within twenty-four (24) hours of the closure, portable restrooms on the Premises if reasonably feasible as approved in advance and in writing by the CITY in its sole and absolute discretion, for the duration of the restroom closure if such closure will be longer than a 24- hour period.

2. TERM

- 2.1 Term. The term of this Lease shall be twenty-five (25) years commencing on the Effective Date which consists of a Redevelopment Period, as defined below, and the remaining years of the Term upon completion of the Redevelopment Period ("Active Term"). (Collectively, the Redevelopment Period and Active Term is referred to as the "Term"). The Term may be extended up to an additional seventeen (17) years if a total of nine million dollars (\$9,000,000) in Capital Improvements are completed, verified and approved by the CITY in accordance with the terms set forth in paragraph 2.1(a) below. For purposes of this Section, the Capital Improvements shall be deemed to be completed upon the date on which the certificate of occupancy is issued by the City. If the Effective Date is other than the first day of a calendar month, the partial month after the Effective Date shall be included in the following full calendar month to comprise the first month of the term so that the second month of the term will start on the first day of a calendar month.

(a) Capital Improvement Investment. A minimum of five million dollars (\$5,000,000) of Capital Improvements must be completed during the Redevelopment Period. If a remaining four million dollars (\$4,000,000) in Capital Improvements are completed during the Active Term, the Term shall be extended an additional seventeen (17) years as described above in paragraph 2.1. The nine million dollars (\$9,000,000) in Capital Improvements shall be improvements that are reasonably consistent with the Redevelopment Plan Summary, Exhibit B1. The total Capital Improvements shall be based on actual costs, including twenty percent (20%) of the Actual Costs (as defined in Section 4.1(c) below), incurred in completing the Capital Improvements.

(b) Redevelopment Period. "Redevelopment Period" means a maximum of the first twenty-four (24) months of the Term, subject to force majeure events (as defined in Section 12.4 below), during which LESSEE shall complete a minimum of five million dollars (\$5,000,000) of the Capital Improvements identified with the Redevelopment Plan. Upon at least 60-days advance written request by LESSEE, CITY, in its reasonable discretion, may approve an extension of the Redevelopment Period for up to one (1) additional year without further CITY Council approval. LESSEE shall apply all commercially reasonable efforts to complete the amount of five million dollars (\$5,000,000) of Capital Improvements during the Redevelopment Period and be open on the Occupancy Date, as defined below.

- (a) Occupancy Date. "Occupancy Date" means the first day of the month following the date the Certificate of Occupancy is issued for the Premises.
 - (b) Active Term. "Active Term" shall mean that portion of the Term commencing on the Occupancy Date.
 - (c) Extended Term. "Extended Term" shall mean the seventeen (17) years that will be added to the Term upon the LESSEE completion and approval by the CITY of a total of nine million dollars (\$9,000,000) of Capital Improvements to the Premises in accordance with the terms set forth in paragraph 2.1 above.
 - (d) Lease Year. "Lease Year" shall mean each twelve-month period during the Term and any extension thereof.
- 2.2. Right to Extend. Provided that LESSEE is not in default of this Lease, LESSEE may extend the Term of this Lease or the Extended Term for two (2) additional terms of ten (10) years each (Extension Term), subject to all original agreements, considerations, covenants, and conditions of this Lease. To exercise this right to extend, LESSEE must provide CITY with six (6) months written notice prior to the expiration date of this Lease. If an Existing Lender exercises any rights of LESSEE under this Lease to extend this Lease, the CITY will accept the exercise of such rights by Approved Lender as if they had been exercised by LESSEE.
- 2.3. Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to one hundred fifty percent (150%) of the then market rent for the Premises, as determined by competent CITY staff, which rent shall be effective as of the first day of the holdover period, retroactively applied as necessary.
- 2.4. Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender the Premises to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

3. OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. Subject to force majeure events (as defined in Section 12.4 below) or reasonable closures for remodeling that are approved by CITY in advance, LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Active Term. A regular schedule of days and hours of operation established by LESSEE is attached as **Exhibit C: Schedule of Days and Hours of Operation**. LESSEE shall not materially change the Schedule of Days and Hours of Operation without CITY's prior written approval, which will not be unreasonably withheld. LESSEE may however, make reasonable modifications of limited duration to the Schedule of Days and Hours of Operation during seasonal periods (for example, to reduce hours on a holiday) without CITY's prior written approval. LESSEE shall provide written notice of any modifications to the Schedule of Days and Hours of Operation prior to the effective change. LESSEE shall diligently furnish services in a creditable manner in conformity with all applicable laws, rules, and regulations. LESSEE shall ensure that the type and quality of all food-handling services furnished by LESSEE, at all times shall satisfy the conditions and requirements of the "A" Card issued by the San Diego County Health Department to operators of food-handling establishments.
- 3.2 Assignment of Operations. LESSEE shall have the right to designate a Premises Operator from time to time (outside of the context of a Transfer or Equity Interest Transfer) with Landlord's prior written consent, which shall not be unreasonably withheld ("Approved Premises Operator"). If LESSEE wants to change the Approved Premises Operator, then LESSEE shall comply with the provisions of this Section. LESSEE shall request any such change of the Approved Premises Operator by Notice to Landlord identifying the proposed Approved Premises Operator and providing the proposed term sheet for the proposed Approved Premises Operator to operate the Premises and any other information reasonably requested by Landlord regarding the proposed change, including Approved Premises Operator's proof of insurance as per sections 8.2 Insurance and 8.3 Types of Insurance. Landlord shall approve or disapprove by written Notice the proposed Approved Premises Operator within forty-five (45) days following Landlord's receipt of LESSEE's request accompanied by the reasons if such operator is not approved by the Landlord. If Landlord fails to approve or disapprove any such requested change to the Approved Premises Operator within the forty-five (45) day period provided, then Landlord shall be deemed to have approved such change to the Approved Premises Operator. Any contract with a Premises Operator shall be subject to the terms of this Lease and allow LESSEE to terminate the contact with no more than 60 days' notice for default. LESSEE shall provide proof of Approved Premises Operator's insurance as per sections 8.2 Insurance and 8.3 Types of Insurance in place of LESSEE's Insurance obligations to the extent that LESSEE has assigned to Approved Premises Operator any operations, rights, or obligations as permitted under this Lease, and provided that 1) Premises Operator and LESSEE have a fully executed contract requiring Approved Premises Operator to insure, defend, and indemnify LESSEE and CITY under the same terms as this Lease as applicable; and 2) LESSEE and CITY are named as Additional Insured by endorsement to Approved Premises Operator's policies of insurance relative to its operations of the Premises.
- 3.3 Required Activities and Activation Goals. LESSEE shall ensure that that LESSEE, or its Approved Premises Operator, meets the Activation Principles and Goals described in this Lease, or any amendments or substitutions thereto. If the CITY, in its reasonable discretion,

determines that such Activation Goals are not met to CITY's satisfaction, the CITY Council shall have the right to solicit and select a Premises Operator for the purpose of meeting the Activation Goals in accordance with the following process.

- (a) CITY and LESSEE shall meet during the 2nd Lease Year but no later than thirty (30) days prior to the beginning of the Lease year for the purpose of review, coordination, and providing assistance to LESSEE to ensure that LESSEE meets, or is on track to meet, the Activation Principles and Goals identified in this Lease, or any amendments or substitutions thereto, during the 3rd Lease Year and each year thereafter. CITY shall not seek to replace a Premises Operator or install a CITY-selected Premises Operator for purposes of meeting such Activation Goals prior to the first day of the 4th Lease Year.
- (b) Prior to commencing rights pursuant to this Section, CITY shall provide written Notice to LESSEE detailing the failure(s) to meet obligations relative to such Activation Principles and Goals and provide the LESSEE no less than 60 days to provide a plan and time frames in which to cure such defects ("Reactivation Plan").
- (c) If the Premises Operator fails to provide a Reactivation Plan reasonably acceptable to the City or is not diligently proceeding to cure the failures described in the Notice, the CITY may request that the City Council determine whether it is appropriate to select a new Premises Operator or take such other actions deemed reasonably appropriate by the City Council to satisfy the Activation Principles and Goals set forth herein. If the City Council decides to select a new Premises Operator, such selection by the CITY shall be conducted by Request for Proposal or other procurement method appropriate and allowable under the SDMC with the reasonable input of the LESSEE and consideration of costs associated with achieving such activation. The full amount owed to a Premises Operator in connection with the resulting contract shall be added to RENT as of the first day of the next month and shall be applied in a manner that does not reduce amounts due to CITY under Section 4 RENT.

3.4 Security. LESSEE shall provide security services to the Premises with the goal of encouraging order and discouraging unwelcomed activity including but not limited to loitering theft, and vandalism. Security services will maintain open communications with police department to report any ongoing issues. LESSEE shall maintain detailed records of security-related incidents, which shall be made available for inspection by the CITY upon request.

3.5 Trash and Refuse. LESSEE shall remove trash and debris from the Premises and the adjoining sidewalk and maintain them in a reasonably clean condition. LESSEE shall, at its sole cost and expense, provide covered containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Refuse containers shall be placed in a manner and location that prevents the use

of City refuse containers for trash and refuse generated on the Premises. LESSEE shall ensure that refuse containers are emptied on a regular basis and shall prevent refuse containers from overflowing or creating unhealthful, unsightly, or unsanitary conditions. LESSEE shall ensure that the contents of all refuse containers on the Premises are disposed of at authorized landfills or other garbage reception areas, as provided under applicable law at the time of refuse collection.

- 3.6 Restriction on Food Containers. LESSEE shall not provide to its customers any prepared, takeout or supplied/resale food in polystyrene foam packaging, nor shall LESSEE obtain or keep any such customer food packaging at or on the Premises. LESSEE's food packaging for all food shall be recyclable plastic or recyclable paper, and LESSEE shall deliver to CITY, upon request, evidence of such in the form of paid invoices for the purchase of recyclable plastic or recyclable paper containers in amounts sufficient to indicate compliance with this section. Post-consumer recycled plastic or recycled paper is preferred for all customer food packing related to the use and operation of the Premises. No biodegradable or compostable packaging is to be used by the LESSEE in lieu of recyclable plastic or recyclable paper unless with the prior written approval of the CITY's Environmental Services Department. "Prepared food" means all food or beverage prepared on the Premises for immediate consumption at the Premises or elsewhere in the Premises. "Takeout food" means all food or beverage to be consumed off the Premises or elsewhere in the Premises. "Supplied/Resale food" means foods or beverages which are supplied by a third party to the LESSEE for either preparing food or beverages onsite or direct sell. "Food packaging" means all bags, sacks, wrapping, containers, bowls, plates, trays, cartons, cups, straws, and lids which are not intended for reuse, and on or in which any prepared food or takeout food is provided on or from the Premises. LESSEE shall also limit its distribution of plastic bags to its customers.

3.7 Noise.

- (a) Standards. LESSEE shall not use or permit the use of the Premises in any manner that creates or maintains any noise or sound that, when measured at any place along the boundary line of the Premises, exceeds the noise level standard of or violates the CITY's Noise Abatement and Control Ordinance (Chapter 5, Article 9.5 of the San Diego Municipal Code, as amended from time to time).
- (b) Exceptions. The noise standards established in Section 3.7(a) shall not be applicable to any construction on the Premises and Activities; however, LESSEE shall use reasonable efforts to mitigate or cause to be mitigated all noise related to any such construction that exceeds said standards and, in all events, in accordance with such Laws and Approvals applicable to any such construction.

- 3.8 Signs. LESSEE shall not erect or display any permanent banners, pennants, flags, posters, signs, decorations, temporary or permanent digital displays or signage, marquees, awnings, or similar devices, or advertising, (collectively, "Signs"), without CITY's prior written consent, which will not to be unreasonably withheld or conditioned. Signs on the interior

of the Premises that are not visible from the exterior of the Premises shall not require CITY's consent. Any such unauthorized item found on the Premises, shall not be considered a breach or default with respect to this Lease, but the LESSEE shall be responsible for removing the item at its expense within twenty-four (24) hours of receiving written notice from the City to do so. All Signs shall comply with all applicable laws, including Article 2, Division 12 of the San Diego Municipal Code, including enforcement provisions.

4. RENT

- 4.1. Rent. LESSEE shall pay to CITY rent on a Lease-Year basis beginning on fifteenth (15th) day of the first calendar month on the second year of the Active Term and the fifteenth (15th) day of each calendar year during the Active Term thereafter, based on the following formula. The CITY and LESSEE agree that all Gross Revenues derived from the Premises on a yearly basis shall be used to first offset the Operating Expenses of the Premises incurred in that same year, in order to ensure the ongoing maintenance and activation of the Premises. Any remaining amount of Gross Revenues after all Operating Expenses have been paid and the Rent Credit (as defined below) has been applied against such amount shall be distributed Fifty Percent (50%) to the LESSEE for the performance of its services under this Lease and Fifty Percent (50%) to the CITY as Rent.

(a) Gross Revenue. Gross Revenue for purposes of this Section shall mean all revenue derived from the Permitted Uses for the Premises, whether earned directly or through sublessees or licensees during a Lease Year. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; (b) refunds for goods returned for resale on the Premises or refunds of deposits; and (c) gratuities. LESSEE shall clearly indicate the amount of all such excluded items on its books and records so that the CITY can validate these costs have been excluded.

(b) Operating Expenses. For purposes of this Section Operating Expenses includes all costs and expenses associated with (i) the maintenance obligations for the Premises, that do not include security costs which are a specified expense as stated herein, real estate taxes and capital reserves, after deducting the amount listed in Exhibit F: Maintenance Agreement Rent Credit each year until May 3, 2041 of the Lease with the exception of the Redevelopment Period (said amount equal to the Agreed Value (as defined in Section 9.6 below prorated over the remaining term of the Maintenance Agreement which concludes May 3, 2041); (ii) the cost of all utility services supplied to the Premises including water, power, electric, utility (including phone, cable and other forms of digital communications) and other utility expenses associated with the use, operation or maintenance of the Premises, (iii) security services in connection with the Premises; (iv) a rate of return equal to eight and half percent (8.5%) annually on the total amount of the Actual Costs of all Capital Improvements completed (as referenced in Section 2.1 above; and (v)

costs associated with programming, managing and other associated costs related to providing Activities on the Premises.

(c) Rent Credit. CITY acknowledges that LESSEE will invest a minimum of five million dollars (\$5,000,000) in Capital Improvements to the Premises, selected by the LESSEE from the various improvements described on the Redevelopment Plan Summary, Exhibit B1. Notwithstanding the foregoing, the LESSEE may invest, in its sole discretion, additional money during the Redevelopment Period, as such period may be extended in accordance with Section 2.1(b), or during the Active Term in capital improvements that are reasonably consistent with the LESSEE's Redevelopment Plan Summary, Exhibit B1 ("Additional Capital Improvements") as allowed in Section 10.1. As consideration for LESSEE's investment in such improvements to the Premises, CITY shall grant LESSEE a rent credit ("Rent Credit") equal to the Actual Cost (as defined in Section 2.1(a)) incurred by LESSEE for the Capital Improvements and any Additional Capital Improvements completed during the Redevelopment Period or during the Active Term. The actual cost of the Capital Improvements and the Additional Capital Improvements shall be based on the costs (both soft (not to exceed 20%) and hard) expended in completing such improvements, except for any fines, or penalties ("Actual Costs"), as evidenced by invoices reasonably approved by the CITY within sixty (60) days of submittal of the same by LESSEE, which approval shall not be unreasonably withheld, conditioned, or delayed. The CITY shall receive on a quarterly basis during the Redevelopment Period, submittals of Actual Costs expended by the LESSEE for the Capital Improvements during the preceding quarter on a quarterly basis during the Redevelopment Period. All submittals shall be in a mutually agreed upon format. The CITY may require an independent audit of the Actual Costs submitted to verify the accuracy and appropriateness of invoice submittals, which audit shall be at the cost of LESSEE not to exceed fifteen thousand dollars (\$15,000.00), which may be adjusted based on changes in the Consumer Price Index for the San Diego metropolitan statistical area or any applicable successor index. Upon completion of the Capital Improvements during the Redevelopment Period and any Additional Capital Improvements, independent audit and reasonable approval of such invoices by CITY, the Rent Credit shall be applied against each year's Rent to be paid by LESSEE equal to the total Actual Cost of the Capital Improvements and any Additional Capital Improvements. The remaining amount of the Rent Credit shall be applied continuously on a yearly basis until the Rent Credit is fully applied. No fees, interest charges, or adjustment based on financing shall be applied to any of the Rent Credit calculations. CITY shall not be liable for any unused portion of Rent Credit. For purposes of this Section, the Capital Improvements and any Additional Capital Improvements shall be deemed to be completed upon the date in which the certificates of occupancy is issued by the City.

(d) Annual Report. LESSEE shall provide an Annual Report that includes all items as described in Section 4 of this Lease, including related cash flow, actual income and operating expenses, and all other information necessary to facilitate CITY's verification of rent and rent credits. The Annual Report shall follow generally accepted accounting principles (GAAP), and shall be delivered to CITY

nomore than sixty (60) days after the end of the calendar year. The Annual Report may be subject to independent audit at the expense of the City, unless the Annual Report is not provided in a format that follows GAAP in which case LESSEE shall reimburse CITY for all costs of such Audit.

- 4.2 Unauthorized-Use Charge. LESSEE shall pay CITY the net proceeds from any income that was received from any intentional violation of the use regulations of the Center City Planned District Ordinance, regardless of any related penalties charged LESSEE by competent governmental authorities. The City shall provide the LESSEE with written notice of such violation within sixty (60) days of the occurrence, along with other pertinent information regarding such activities. If after considering any pertinent information from the LESSEE, the City determines there has been a willful violation of the use regulations of the of the Center City Planned District Ordinance, the LESSEE shall pay the CITY the net proceeds from any income received from such activities within thirty (30) days after LESSEE receives notice to pay. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.

- 4.3 Time and Place of Payment. All rent payments shall be made payable to the City Treasurer and mailed to:

The Office of the City Treasurer
City of San Diego
P.O. Box 129030
San Diego, California 92112-9030

or hand-delivered to

The Office of the City Treasurer
Civic Center Plaza
1200 Third Avenue, First Floor
San Diego, California 92101

CITY may change the place of payment at any time upon thirty (30) days written notice to LESSEE. Mailed payments shall be deemed paid upon the date the payment is postmarked by the postal authorities. If postmarks are illegible, the payment shall be deemed received only upon actual receipt.

- 4.4 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after thirty (30) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the CITY's City Treasurer for collection,

and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the CITY's City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

5. ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 5.1 Leasehold Encumbrances. LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts to any one or more lenders (a) that are Qualified Persons or (b) consented to by CITY, such consent to not be unreasonably withheld or conditioned, to secure debt which secured amount shall not exceed the greater of (1) Actual Costs of constructing the Capital Improvements on the Premises, plus financing costs (which may be adjusted from time to time to reflect any changes in the Consumer Price Index for the San Diego metropolitan statistical area or any applicable successor index), and (2) \$9,000,000.00 (any such debt is referred to herein as a "Loan"); provided that following completion of the Capital Improvements and any Additional Capital Improvements on the Premises, the secured amount may be increased to an amount no greater than the as-is fair market value of the leasehold interest in such Capital Improvements and any Additional Capital Improvements as determined by an appraisal reasonably satisfactory to the City. Any direct and/or indirect lenders, together with their respective successors and assigns, provided that such lender (i) is subject to the jurisdiction of the courts of the State, not immune from suit, and cannot elect to be immune from suit, and (ii) has completed all disclosures required under City Charter Section 225, are referred to herein individually and/or collectively as "Approved Lender." CITY hereby approves AB COMMERCIAL REAL ESTATE DEBT FUND III, SICAV-SIF S.C.SP. and its affiliates, successors and assigns (individually and/or collectively, "Existing Lender") as an Approved Lender. An Approved Lender may directly and/or indirectly, without CITY's consent, acquire the LESSEE's leasehold estate through foreclosure or assignment in lieu of foreclosure. Any entity whose title derives directly or indirectly from an Approved Lender, including a third party purchaser at a judicial or non-judicial foreclosure sale, must first comply with City Charter Section 225 and receive written approval of the City, which approval shall not be unreasonably withheld unless such entity is a Qualified Person that owns all or a portion of the nearby Horton Plaza Retail Center in which case such approval shall not be required. Approved Lender may directly and/or indirectly transfer or assign the LESSEE's leasehold estate, either in its own name or through a nominee, provided that every person or entity which will have an interest in this Lease has complied with City Charter Section 225.
- 5.2 Assignment and Subletting. Except as specifically authorized in Section 1.15 of this Lease (Subleases for Permitted Uses), LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises in its entirety ("Sublease of the Premises"), or grant any license, agreement, or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, subtenants as excepted

above, and guests, to use or occupy the Premises or any part of the Premises, except (a) to a Qualified Person that owns all or a portion of the nearby Horton Plaza Retail Center or (b) otherwise with CITY's prior written consent, which consent shall not be unreasonably withheld or conditioned. Any such consent shall not be deemed consent to any subsequent assignment, such subletting, occupation, or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" for the purposes of this Section shall include the transfer of any interest in this Lease, except as provided in Sections 1.15 (Subleases for Permitted Uses) and 5.1 (Leasehold Encumbrances), and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders.

- 5.3 Consent Conditions. Except as specifically authorized in Sections 1.15, 5.1 and 5.2 of this Lease, CITY may require, as a condition to consenting to an assignment or Sublease of the Premises or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions to the extent that such then-current CITY lease provisions would not increase the obligations or LESSEE or decrease the rights of LESSEE under this Lease, and that the Sublease be subject and subordinate to each and every provision of this Lease. Approval of any assignment, Sublease of the Premises, license agreement, management agreement, or operating agreement shall be conditioned upon the assignee, sublessee, licensee, manager, or operator agreeing in writing that it will assume the rights and obligations thereby assigned or subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired.
- 5.4 Charter Section 225. Pursuant to San Diego City Charter Section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY, in its sole discretion.
- 5.5 Qualified Person. The following party are "Qualified Persons": (a) LESSEE and any affiliate of LESSEE; (b) the Existing Lender; and (c) any institutional owner or developer regularly engaged in the business of developing and/or owning and operating commercial real property, and any institutional lender which is regularly engaged in the business of making loans secured directly and/or indirectly commercial real property, that is not a Disqualified Person, and that has sufficient financial wherewithal to satisfy the obligations of LESSEE under this Lease, and any affiliate of the foregoing parties described in this clause (c), provided that the entity has first made all disclosures required under City Charter Section 225. A "Disqualified Person" is a person or entity that: (i) has been convicted of or is under indictment for a felony; (ii) is a Prohibited Person; or (iii) is the subject of a bankruptcy or similar proceeding. A "Prohibited Person" is (i) any Person or country who or which is listed in the annex to, or who is otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order"); (ii) any Person or country who or which is named as a "specially designated national and blocked person" under U.S. law

and any executive orders or regulations promulgated thereunder, including on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website or at any replacement website or other replacement official publication of such list; (iii) any Person that is owned or controlled by, or acting for or on behalf of, any Person that is described in the foregoing clauses (i) or (ii) of this sentence or is otherwise subject to the provisions of the Executive Order; (iv) any Person or country with whom another Person is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order; (v) any Person who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (vi) any Person who is an Affiliate of a Person listed in clauses (i) through (v) of this sentence.

6. DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) LESSEE breaches any of its obligations, unless otherwise specifically stated as not a breach of this Lease, and other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, (1) a written "Three Day Notice to Pay or Quit" for failure to make required payments or (2) a "Notice of Termination" for defaults not requiring payment to CITY, in order that CITY may seek to terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE proves could have been reasonably avoided;

- (c) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2(a) and 6.2(b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2(c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this Section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

6.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the Approved Lender written notice of LESSEE's default under this Lease, and the Approved Lender shall have thirty (30) days from the notice to cure the default, or, if the default is not reasonably curable within thirty (30) days, to commence to cure the default and diligently pursue the cure to completion. CITY may extend the cure period if the Approved Lender uses reasonable diligence to pursue a cure. For any default that cannot be cured without possession of the Property, CITY shall allow for such additional time as Approved Lender shall reasonably require to prosecute and complete a foreclosure or equivalent proceeding and obtain possession and diligently pursue the cure to completion. If the Approved Lender chooses to cure the default through litigation or foreclosure, then the CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and Approved Lender, which costs shall be subordinate to any Loan held by Approved Lender. The Approved Lender shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to cure within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the Approved Lender in the time periods required herein, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the Approved Lender to perform under this Lease with all the rights, privileges, and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary, and CITY shall waive any non-curable defaults. If this Lease terminates for any reason, or is rejected by LESSEE in bankruptcy, then CITY shall reinstate the Lease, on the same terms and priority, as a lease between CITY and Approved Lender if so requested by Approved Lender unless such Approved Lender has defaulted in its obligations under the Lease.

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its

rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

- 6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises is property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

7. EMINENT DOMAIN

- 7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:

- (a) Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- (b) Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises is unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- (c) Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- (d) Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE, and any awards to which LESSEE shall be

entitled shall be remitted to Approved Lender, if any, to the extent required by the loan documents governing a Loan. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

- (e) Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any improvements placed by LESSEE on the Premises in accordance with this Lease.
- (f) No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

8. INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's occupancy, use, redevelopment, maintenance, restoration, or improvement of the Premises, acts or omissions in the performance of its obligations under this Lease, and all expenses of investigating and defending against same, including without limitation, reasonable attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives, and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.
- 8.2 Insurance. LESSEE shall not begin any work under Lease until it has: (a) obtained, and upon the CITY's request provided to the CITY, insurance certificates reflecting evidence of all insurance required in below; however, the CITY reserves the right to request, and the LESSEE shall submit, copies of any policy upon reasonable request by the CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by the CITY. The LESSEE shall not modify any policy or endorsement thereto which increases the CITY's exposure to loss for the duration of this Lease.

8.3 Types of Insurance. At all times during the term of this Lease, the LESSEE shall maintain insurance coverage as follows:

- (a) Commercial General Liability (CGL). Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability, including Liquor Liability, arising from any and all personal injury or property damage in the amount of Two Million Dollars (\$2,00,000) per occurrence and subject to an annual aggregate of Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- (b) Commercial Automobile Liability. For all of the LESSEE's automobiles including owned, hired and non-owned automobiles, the LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of One Million Dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile (any auto).
- (c) Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Permitted Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.
- (d) Workers' Compensation. For all of the LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, the LESSEE shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of One Million Dollars (\$1,000,000) of employers' liability coverage, and the LESSEE shall provide an endorsement that the insurer waives the right of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives.
- (e) Cyber Liability Insurance. LESSEE shall provide, or provide for through its agents or sublessees, at its sole cost and expense, evidence of CyberLiability insurance with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. Such coverage is required only if any products and/or services related to information technology (including hardware and/or software) are provided to LESSEE and for claims involving any professional services for which the

LESSEE's contractor is engaged with LESSEE for such length of time as necessary to cover any and all claims.

- (f) Crime Insurance. LESSEE shall keep in full force and effect a crime insurance policy which shall include employee dishonesty/fidelity coverage for a minimum of twenty-five thousand dollars (\$25,000.00) per employee or one hundred thousand dollars (\$100,000.00) blanket limit.
- 8.4 Deductibles. All deductibles on any policy shall be the responsibility of the LESSEE and shall be disclosed to the CITY at the time the evidence of insurance is provided.
- 8.5 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 8.6 Modification. To assure protection from and against the kind and extent of risk existing with the Permitted Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permitted Uses.
- 8.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Permitted Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, photographs or video, if any, and other pertinent information.
- 8.8 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.
- 8.9 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.
- 8.10 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to the CITY before any work is initiated under this Lease.

Commercial General Liability Insurance Endorsements:

- (i) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to

liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, and (d) premises owned, leased, controlled or used by LESSEE.

(ii) PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents, and representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents, and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

(iii) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Automobile Liability Insurance Endorsements:

(iv) ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents, and representatives with respect to liability arising out of automobile owned, leased, hired, or borrowed by or on behalf of the LESSEE.

(v) SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

Worker's Compensation Insurance Endorsements:

(vi) WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against the CITY and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for the CITY.

9. MAINTENANCE, ALTERATIONS AND REPAIRS

- 9.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner reasonably satisfactory to CITY. If the Premises are damaged by any cause which

puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises, at LESSEE's sole cost and expense, to its prior condition within a reasonable time and to CITY's reasonable satisfaction; or, if the damage to the Premises cannot be repaired or restored to a safe and decent condition, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the proceeds from the insurance required by this Lease. LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter. Any insurance proceeds to which LESSEE shall be entitled shall be remitted to Approved Lender, if any, to the extent required by the loan documents governing a Loan, and shall be disbursed by Approved Lender to LESSEE for payment of costs of such required repairs, restoration or replacement. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage.

9.2 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined in this Lease. LESSEE acknowledges and agrees that unless set forth in this Lease, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Premises at any time either prior to, on, or after the Effective Date.

9.3 Asbestos Disclosure. Portions of the structural components of the Premises may contain asbestos, LESSEE acknowledges receipt of notice from CITY of the presence of such asbestos in accordance with California Health and Safety Code Section 25915. LESSEE shall disclose to all appropriate parties the existence of asbestos on the Premises, as required by California Health and Safety Code Section 25915. LESSEE shall protect, defend, indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises.

9.4 Asbestos. If LESSEE makes improvements, alterations, or repairs to the Premises, LESSEE shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management, or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations, or repairs to the Premises made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this Section are fulfilled. Each party shall coordinate with the other any improvement, alteration, or repair, and except in the event of

an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.

- 9.5 **Entry and Inspection.** Upon reasonable prior notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, reserves and shall always have the right, but not the obligations, to enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not unreasonably interfere with LESSEE's use of the Premises.

- (a) Notwithstanding any provision of this Lease allowing LESSEE an opportunity to correct a breach, if the Premises are not in a clean, decent, safe, healthy and sanitary condition, CITY shall have the right but not the obligation, after thirty (30) days prior written notice to LESSEE, to have any maintenance work done that is reasonably deemed by CITY in its sole discretion to be necessary, and all at LESSEE's sole cost and expense, to keep the Premises in a decent, safe, healthy, and sanitary condition. LESSEE shall promptly pay CITY for all costs incurred for such work immediately upon receipt of an invoice therefor.
- (b) If at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may, at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to ensure the prompt correction of any condition which is not clean, decent, safe, healthy, and sanitary. The bond shall be in an amount reasonably determined by CITY to be adequate to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.

- 9.6 **Maintenance.** The Maintenance Agreement is of no further force and effect with respect to the Premises and in particular all provisions related to the maintenance and operation of the Premises have been superseded by the provisions of this Lease with the exception of the calculation for Maintenance Agreement Rent Credit. The Maintenance Agreement obligations to be performed for a term of twenty-five years had an agreed upon present value of \$6,580,000 under the OPA, as prorated for the Premise ("Agreed Value"), and as provided in further detail in Exhibit F: **Maintenance Agreement Rent Credit**. In addition to extending the performance of the maintenance and operational obligations under the Maintenance Agreement for the Term of this Lease, LESSEE shall also assume the CITY's obligation under the Maintenance Agreement to repair and refurbish the structural components of the Premises. CITY and SCP, as the respective successors to the original parties under the OPA, acknowledge that the obligations of this Lease shall be deemed to modify and replace the obligations of the Maintenance Agreement in excess of the Agreed Value. Nothing contained herein, relative to the Premises shall modify or otherwise affect LESSEE's obligations relative to real property outside the Premises.

- (a) Existing Facilities. Except to the extent that: (a) this Lease otherwise expressly provides or allows or (b) LESSEE is performing construction in

compliance with this Lease, LESSEE shall during the Term of the Lease keep and maintain the Premises in good order, condition, and repair, in accordance with the standards and obligations set forth in Exhibit D: Maintenance Standard, subject to reasonable wear and tear, and any other condition that this Lease or Exhibit D does not require LESSEE to repair or restore. LESSEE's obligation to maintain the Premises includes an obligation to make all repairs (including without limitation performing all major maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems, and site improvements, curb cuts, fences and signs located in, on or at the Premises) that the Premises may require under applicable Law. If needed based on Premises use, LESSEE shall be responsible for installation and maintenance of the grease interceptor and connection to basement sewer lines. LESSEE hereby expressly waives all right to make repairs at Landlord's expense pursuant to California Civil Code Section 1941 or 1942. LESSEE may contract with a maintenance contractor for performance of all or part of the duties and obligations of LESSEE with respect to the maintenance of the Premises; provided, however, that LESSEE shall remain responsible and liable for the maintenance of the Premises in accordance with the Maintenance Standard, at all times during the Term. LESSEE shall deliver to City a copy of all contracts for maintenance services provided on the Premises.

- (b) **Maintenance Agreement Rent Credit.** Under the terms of the OPA, LESSEE is obligated to maintain the Premises until May 3, 2041, the value of which was calculated by a third-party independent analysis in October 2020 and provided as Exhibit F: Maintenance Agreement Rent Credit, to this Lease. The Parties agree that the annual Maintenance Agreement Rent Credit shall be valued as stated in Exhibit F, and shall be offset against actual operating expenses and added back to the net operating income prior to any reduction by the repayment of Capital Investment, plus preferred rate of return, before calculating the ground rent to the City as Fifty Percent (50%) of remaining cash flow, as demonstrated in Exhibit F. The Management Agreement Rent Credit replaces LESSEE's obligation under the OPA, subtracting therefrom the monetary value relative to LESSEE's continuing maintenance obligation of the adjacent Historic Horton Park.

- 9.7 **Utilities.** LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises.

10. IMPROVEMENTS AND CONSTRUCTION

- 10.1 **Improvements.** LESSEE may rehabilitate, renovate, restore, repair, and otherwise enhance existing structures subject to any Approvals that may be required for such work. Any proposed Capital Improvements on the Premises shall be reasonably consistent with the LESSEE's defined design concepts, criteria, or draft plans that have been vetted through the public workshop process and have been conceptually approved by the City Manager or designee as described on Exhibit B1. Prior to commencement of construction of the Capital

Improvements and after permits have been obtained, the City as Landlord will review the final proposed scope of redevelopment and estimated costs for the intended Capital Improvements.

- (a) Exterior of Premises. No improvements, structures, or installations shall be constructed on the exterior of the Premises, and the Premises may not be altered, by LESSEE without CITY's prior written approval, not to be unreasonably withheld or conditioned. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures, or installations on the exterior of the Premises without CITY's prior written approval, including applicable building permits, which should not be unreasonably withheld. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.

10.2 Prosecution and Completion. To the extent such work is permitted by this Lease, if LESSEE commences rehabilitation, renovation, restoration, repair, or other work to improvements located on the Premises, then LESSEE shall prosecute such work with reasonable diligence to completion. LESSEE shall with reasonable promptness and reasonable diligence commence, prosecute, and complete work undertaken in a good and workmanlike manner in compliance with Law, any Approvals, and this Lease.

10.3 Notification of construction work. Except as set forth in this Section 10.3(a), LESSEE shall not commence construction or materially alter any improvements on the Premises, without prior written notification of the Landlord.

- (a) CITY's prior consent, as lessor, shall not be required with respect to the following: (a) minor construction; (b) reasonable and customary alterations to the interior spaces of any buildings on the Premises; (c) alterations required by applicable Laws; (d) alterations reasonably required to restore or repair improvements on the Premises after a Casualty or Condemnation; or (e) alterations or modifications which cost less than Fifteen Thousand Dollars (\$15,000.00) and are non-structural in nature. All alterations or improvements on the Premises by LESSEE shall comply with all applicable Laws, and shall be performed by State licensed contractors, not an Affiliate of LESSEE. LESSEE shall deliver to CITY advance written notice and a copy of any final plans, specifications, and working drawings for any such alterations or modifications.

10.4 Approvals; Cooperation. LESSEE shall be responsible for obtaining all applicable Approvals as may be required by Law for any work of construction performed by the LESSEE. Landlord shall reasonably cooperate with LESSEE in obtaining such permits and approvals. LESSEE shall pay all Government fees (including those of City) necessary to obtain such permits and approvals. Landlord shall otherwise cooperate with LESSEE's construction, as LESSEE shall reasonably request. Landlord assumes no liability by cooperating with any construction.

- 10.5 Reservations. The approval of this Lease by the City or Landlord shall not be binding on the City Council of the City, the City Planning Commission, Landlord's Redevelopment Advisory Committee, Landlord's Redevelopment Design Review Committee, the City Design Review Committee, Landlord's governing body or any other commission, committee, board or body of the City or Landlord regarding any Approvals required by such bodies for Construction of improvements on the Premises. No action by the City or Landlord with reference to this Lease or any related documents shall be deemed to constitute issuance or waiver of any required City or Landlord approval regarding the Premises. LESSEE obtains no Government Approval regarding any such improvements on all or any portion of the Premises by virtue of this Lease.
- 10.6 Lessee's Attendance at Landlord Meetings. LESSEE agrees to have one or more of its employees or consultants who are knowledgeable regarding this Lease, such that such Person(s) can meaningfully respond to Landlord or Landlord staff questions regarding the progress of construction of the Capital Improvements, attend meetings with Landlord's staff or meetings of Landlord's governing body, when requested to do so by Landlord's staff, with reasonable advance Notice to LESSEE; provided, however, that the reasonable failure of any such Person to attend any such meeting shall not constitute a Default by LESSEE.
- 10.7 Lessee Designation of Construction Representative. LESSEE hereby designates the following Person as its representative for all construction-related matters regarding the Premises: Greg Williams. LESSEE may, from time to time, designate a different Person as its representative for all construction-related matters regarding the Premises by Notice to Landlord.
- 10.8 Construction Bond. If LESSEE develops or constructs improvements on the Premises, including LESSEE's rehabilitation of the Premises in accordance with the approved Redevelopment Plan, LESSEE, shall deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash, letter of credit, or may be a corporate surety bond or other security satisfactory to CITY, and may be provided by LESSEE's agent if approved in writing by CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. LESSEE or its contractor agrees to deposit with the City any additional bonds that may be required by State law, including Cal.Civ.Code §§9550 and 9554, or City requirements. In the event LESSEE defaults in its obligation to develop or construct such improvements on the Premises after applicable notice and cure periods, the CITY may correct the default and pay the costs from the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY.

- 10.9 Prevailing Wages. Prevailing wage rates apply to the Project. LESSEE shall comply with State prevailing wage laws, including, but not limited to, those requirements set forth in Exhibit E, attached hereto and incorporated herein by this reference.
- 10.10 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

11. OWNERSHIP OF IMPROVEMENTS AND PERSONAL PROPERTY

- 11.1 Improvements. LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.
- 11.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.
- (a) Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market

rental rate as determined by an appraisal prepared by qualified CITY staff, in its sole discretion.

- (b) CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

12. REDEVELOPMENT PLAN

- 12.1 Redevelopment Plan. LESSEE shall develop the Premises in accordance with the Redevelopment Plan reasonably approved by CITY (as described in Section 1.8 herein) and with all applicable permits and approvals by competent governmental authorities. A summary of the Redevelopment Plan requirements as of the Effective Date are set forth in Exhibit B1: Redevelopment Plan Summary, attached hereto, and made a part hereof. CITY and LESSEE understand, acknowledge, and agree that reasonable modifications of the Redevelopment Plan may be necessary in connection with the processing of building permits and other approvals from the CITY acting in its regulatory capacity, and any modification to the principal components as defined in the approved Redevelopment Plan shall be subject to the prior approval of the CITY (as described in Section 1.8 herein). Documentation evidencing any approved changes shall be filed in the Office of the San Diego City Clerk. LESSEE shall notify CITY if construction is stopped for thirty (30) days or more, and again when construction resumes. Failure by LESSEE to substantially conform with the approved Redevelopment Plan as reasonably determined by the CITY shall constitute a major default unless so cured by approval of the CITY of the modification to the Redevelopment Plan.

12.2 Permits and Approvals.

- (a) Prior to commencing any work on the Premises, in accordance with the Redevelopment Plan, LESSEE shall (1) submit all documents required by the applicable CITY departments (e.g., Development Services Department); and (2) secure all required permits and approvals from competent governmental authorities for all work, including final review pursuant to the California Environmental Quality Act ("CEQA") if required. For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives, or mitigation measures for purposes of CEQA.
- (b) Permits. By entering into this Lease, neither City nor the City Council is Obligor itself to LESSEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, redevelopment, maintenance or restoration of the Premises or improvements thereon. Discretionary action may include without limitation development plans, re-zonings, variances, environmental clearances and all other required governmental approvals. Notwithstanding the foregoing, the City will expedite any permits or approvals that may be

required for a Permitted Use on the Premises or for any permits needed to facilitate a Permitted Use of the Premises.

12.3 Termination for Failure to Meet Schedules.

- (a) Failure to Complete Redevelopment Plan. The CITY may, in its reasonable discretion, terminate this Lease if any of the following events occur, unless caused by a *force majeure* event, as defined in Section 12.4 of this Lease:
 - (i) LESSEE fails to commence construction of the Capital Improvements identified in the Redevelopment Plan within twelve (12) month after the Effective Date; or
 - (ii) LESSEE fails to complete at least five million (\$5,000,000) in Capital Improvements identified in the Redevelopment Plan within twenty-four (24) months after the Effective Date plus any extension granted; or
 - (iii) After commencement of construction of the Capital Improvements identified in the Redevelopment Plan, the construction is stopped for more than three (3) months; or
 - (iv) If LESSEE fails to secure all required permits and approvals from the competent governmental authorities to commence work on the Capital Improvements in accordance with the Redevelopment Plan within the completion dates set forth in Section 12.3(a) (i).
- (b) For the reasons described above, the parties shall terminate this Lease pursuant to a lease termination agreement in a form approved by the San Diego City Attorney, without the need for further City Council resolution.

12.4 Force Majeure. For purposes of Section 12 of this Lease, "*force majeure* event" shall mean an event beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, earthquake or other natural disaster, epidemic or pandemic (including COVID-19 and residual effects thereof), or emergency governmental actions, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God, or delays in the issuance of any governmental approvals or authorizations from government agencies necessary to proceed with construction (provided that LESSEE has timely and properly filed all applications, submitted all required documents and fees and taken all other actions necessary to obtain such governmental approvals or authorizations). Performance by either party shall not be deemed to be in default where delays or defaults are due to a force majeure event. Any extension of time to perform or cure shall be for the period of the delay and shall commence to run from the time of commencement of the cause; provided, however, that if notice by the party claiming such extension is sent to the other party more than 60 days after the commencement of the cause, the period shall commence to run only upon the giving of such notice.

- 12.5 Contractor Requirements. All work shall be performed only by competent and qualified contractors duly licensed under the laws of the State of California pursuant to written contracts with such contractors. LESSEE further warrants and represents that it will require any contractor or subcontractor to maintain his or her license in an active status and in good standing for the term of any contract related to work subject to this Lease. CITY shall have the right to demand production of and to inspect the contractor's or subcontractor's license, and LESSEE agrees to produce said documentation within 48 hours of such a request. LESSEE shall notify CITY immediately upon determining that a contractor or subcontractor is unlicensed, or that said license has been suspended or revoked, and LESSEE further represents and warrants that it will not allow said contractor or subcontractor to enter onto the Premises or perform work subject to the Lease until LESSEE has demonstrated to CITY's satisfaction that the license is active and in good standing.

13. PROHIBITED LIENS

- 13.1 LESSEE's Covenant. LESSEE shall Notify Landlord of each Prohibited Lien within twenty (20) days following LESSEE's receipt of notice of such Prohibited Lien. LESSEE shall, within thirty (30) days after receiving notice of a Prohibited Lien (but in any case within fifteen (15) days after LESSEE receives notice of commencement of foreclosure proceedings regarding any Prohibited Lien, cause such Prohibited Lien to be paid, discharged, and cleared from title to the Leasehold Estate; provided, however, that if LESSEE disputes such Prohibited Lien in good faith, LESSEE may maintain an appropriate dispute of such Prohibited Lien without payment, if LESSEE records a bond complying with the provisions of California Civil Code Section 3143 and releasing the Premises from the disputed Prohibited Lien. LESSEE shall, thereafter, prosecute such action with reasonable diligence and continuity. If Landlord receives notice of any Prohibited Lien, then Landlord shall promptly Notify LESSEE.
- 13.2 Protection of Landlord. NOTICE IS HEREBY GIVEN THAT LANDLORD SHALL NOT BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO LESSEE OR ANY SUBLESSEE UPON CREDIT AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE LANDLORD'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, NOR AS GIVING LESSEE ANY RIGHT, POWER OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES, OR THE FURNISHING OF ANY MATERIALS THAT WOULD GIVE RISE TO THE FILING OF ANY LIENS AGAINST THE FEE ESTATE. LESSEE SHALL INDEMNIFY LANDLORD AGAINST ANY CONSTRUCTION UNDERTAKEN BY LESSEE OR ANYONE CLAIMING THROUGH LESSEE, AND AGAINST ALL PROHIBITED LIENS.

- 13.3 No Liens Against Public Property. LESSEE ACKNOWLEDGES AND AGREES THAT ON THE COMMENCEMENT DATE THE FEE ESTATE IS OWNED BY LANDLORD, WHICH IS A PUBLIC ENTITY, AND THAT THE FEE ESTATE IS NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF LABOR, MATERIAL OR SERVICES ON OR TO THE PREMISES. LESSEE FURTHER AGREES TO INFORM EACH OF THE PROVIDERS OF LABOR, MATERIAL OR SERVICES ON OR TO THE PREMISES OF SUCH FACT AND THAT LANDLORD AND THE FEE ESTATE ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF LABOR, MATERIAL OR SERVICES. LANDLORD SHALL HAVE THE RIGHT AT ALL REASONABLE TIMES TO POST AND KEEP POSTED ON THE PREMISES ANY NOTICES THAT LANDLORD MAY DEEM NECESSARY FOR THE PROTECTION OF LANDLORD OR THE FEE ESTATE FROM MECHANIC'S LIENS OR OTHER CLAIMS. LESSEE SHALL GIVE LANDLORD TEN (10) DAYS PRIOR WRITTEN NOTICE OF THE COMMENCEMENT OF ANY CONSTRUCTION OR OTHER WORK TO BE DONE ON THE PREMISES TO ENABLE LANDLORD TO POST ANY SUCH NOTICES.
- 13.4 Notices of Non-responsibility. CITY shall, at any and all times during the Term, have the right to post and maintain on the Premises and to record as required by law any notice or notices of non-responsibility provided for by the mechanics' lien laws of the State of California. LESSEE shall give CITY not less than thirty (30) days' written notice prior to the commencement of any work (including site preparation work) or the delivery of building materials to the Premises.

14. GENERAL PROVISIONS

- 14.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

c/o Stockdale Capital Partners
10850 Wilshire Boulevard, Suite #1050
Los Angeles, California 90025
Attention: General Counsel
Tel: 310-693-4400
Fax: 310-474-0640

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Economic Development
1200 Third Avenue, Suite 1400

San Diego, California 92101
(619) 236-6700

- 14.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration, and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises). In addition, LESSEE shall comply with any and all notices issued by CITY under the authority of any law, statute, ordinance, or regulation.
- 14.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE is or is not a public record subject to disclosure under the California Public Records Act (CPRA). If LESSEE notifies CITY that it objects to the disclosure of certain information to a third party, LESSEE shall deliver to CITY, with such notice, specific and detailed legal grounds, including any applicable case law, upon which CITY may rely for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by LESSEE, LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives, and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at LESSEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay all costs related thereto, including without limitation reasonable attorney fees and costs.
- 14.3.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by LESSEE as a result of CITY's disclosure or non-disclosure of LESSEE information requested pursuant to the CPRA.
- 14.3.2 LESSEE's Waiver. LESSEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS THAT LESSEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF LESSEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
- 14.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender identity, gender expression, sexual orientation, disability, medical condition, or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered

by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

14.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

14.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use, and occupancy thereof, comply with the California Government Code Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); California Building Code (CBC) Title 24; and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. When a conflict exists between any federal or state accessibility requirements, LESSEE will follow the most restrictive accessibility requirement (i.e., that which provides the most access). LESSEE's compliance shall include but not necessarily be limited to the following:

- (a) LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- (b) No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of LESSEE.
- (c) LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- (d) Where required by law, any improvements, fixtures, structures, or installations on the Premises shall comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at the sole cost of LESSEE.
- (i) LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and each of its sublessees shall be individually responsible for their own ADA employment programs.

- (ii) LESSEE understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Lease.

14.7 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises have not been inspected by a Certified Access Specialist (CASP). Further pursuant to California Civil Code section 1938(e), CITY is required to state: "A Certified Access Specialist (CASP) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises."

14.8 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition.
- (b) Establish a drug-free awareness program to inform employees about all of the following:
 - (i) The dangers of drug abuse in the workplace;
 - (ii) LESSEE's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations.
- (c) LESSEE shall include in each of its subleases and contracts related to this Lease language obligating each sublessee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sublessees and contractors, shall be individually responsible for their own drug-free workplace program.

14.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months

immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

- 14.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 14.11 Water Quality Assurances. The CITY and LESSEE are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the premises in a manner which aids in the protection of the City of San Diego's precious water resources. It is the LESSEE's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code Sections 43.0301 to 43.0312). Therefore, LESSEE shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code Section 43.0307(a). It is ultimately the LESSEE's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the LESSEE will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.
- 14.12 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, and occupancy of the Premises or in the selection, location, number, use, or occupancy of tenants, subtenants, or vendees in the Premises.
- 14.13 Cumulative Remedies. CITY's and LESSEE's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's or LESSEE's rights or remedies at law or in equity.
- 14.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 14.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 14.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture, or other affiliation between CITY and LESSEE or between

CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

- 14.17 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease and LESSEE's occupancy, use, redevelopment, maintenance, and restoration of the Premises. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Lease itself. Each of the parties in the Lease agrees that no other party, agent, or attorney of any other party has made any promise, representation, or warranty whatsoever which is not contained in this Lease. The failure or refusal of any party to read the Lease or other documents, inspect the Premises, and obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on these actions. If any Loan of which CITY has received written notice remains outstanding, the Lease may not be further amended, modified, surrendered or terminated, without the consent of the Approved Lender, which consent shall not be unreasonably withheld.
- 14.18 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
- 14.19 Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation taxes upon licenses and permits, and including taxes upon the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE alone shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees, and assessments shall not reduce any rent due to the CITY. CITY shall not incur or assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
- 14.20 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale, or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of

container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

- (a) Release. A release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material or waste substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- (b) Remediation. If LESSEE's occupancy, use, renovation, repair, redevelopment, maintenance, or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- (c) Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove or cause to be removed all Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- (d) Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- (e) Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from, or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies

as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- (f) Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, redevelopment, maintenance, or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authorities or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all associated costs and expenses.

14.21 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

14.22 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company,

partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

14.23 Controlling Law/Venue. This Lease and all Lease documents shall be deemed to be made under, and shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. The venue for any suit or proceeding concerning this Lease, including the interpretation or application of any of its terms or any related disputes, shall be in the County of San Diego, State of California.

14.24 City Required Provisions.

(a) Equal Pay Ordinance. Unless an exception applies, LESSEE shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.

(i) LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.

(ii) Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

(b) Nondiscrimination.

(a) LESSEE shall not discriminate against any employee or applicant for employment on any basis prohibited by law. LESSEE shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

(ii) LESSEE shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. LESSEE shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. LESSEE understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. LESSEE shall ensure that it includes this 14.24(b) in all contracts, subcontracts, and subleases in connection with the Premises.

(iii) This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender expression, gender identity, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use, or occupancy of the Premises or in the selection, location, number, use, or occupancy of tenants, subtenants, or vendees in the Premises.

- 14.26 Single Use Plastic Reduction Ordinance. Unless an exception applies, LESSEE will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Lease, LESSEE certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.
- 14.27 Standard of Employees. LESSEE and its employees shall at all times conduct themselves and the operations on the Premises in a creditable manner, as determined by CITY in its reasonable discretion.
- 14.28 Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
- 14.29 Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
- 14.30 Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of CITY-owned properties like the Premises.
- 14.31 Lease Senior to Fee Mortgages; No Merger. This Lease shall be senior to any mortgage hereinafter granted on CITY's fee interest in the Property. This Lease will not merge with the CITY's fee interest in the Property if the fee estate and leasehold estate are everowned by the same party.
- 14.32 Competitive Bidding. If LESSEE seeks certification for a sole source contract pursuant to San Diego Municipal Code § 22.3016, and should the City fail to approve such sole source request for any reason, LESSEE reserves the right to terminate this Lease as set forth in Section 12.3 (b) and such an event will not be considered a default under this Lease. If LESSEE terminates in accordance with this provision, CITY and LESSEE agree that both parties will be subject to all rights and obligations under the terms of the Maintenance Agreement and hereby agree to take all necessary actions to reinstate the Management Agreements in the form as agreed to on February 3, 2014 contemporaneously with the termination of this Lease LESSEE understands that the City reserves the right to reject any sole source certification request.

14.33 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Remainder of page intentionally left blank

IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: _____

SCP PARK SERVICES, LLC,
A DELAWARE LIMITED LIABILITY
COMPANY

By: [Signature]
Name: STEVEN VONI
Title: AUTHORIZED SIGNATORY

Date: 12/13/2022

THE CITY OF SAN DIEGO, a California municipal
corporation

By: Matthew Vespi
Name: [Signature]
Title: CFO

Approved as to form this 22nd day of December, 2022:

MARA W. ELLIOTT, CITY ATTORNEY

By: Daphne Z. Skogen
Name: Daphne Z. Skogen
Title: Deputy City Attorney

R-314519

Exhibit A1: Legal Description

Exhibit A2: Aerial Map of the Premises

Exhibit B1: Redevelopment Plan Summary

Exhibit B2: Redevelopment Plan

Exhibit C: Schedule of Days and Hours of Operation

Exhibit D: Maintenance Standard

Exhibit E: Prevailing Wage Requirements

Exhibit F: Maintenance Agreement Rent Credit

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

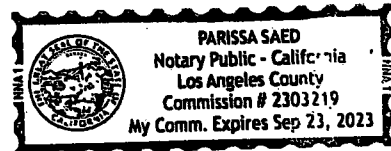
On December 5th, 2022 before me, Parissa Saed Notary Public
(insert name and title of the officer)

personally appeared Steven Yari
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Parissa Saed (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

On DEC 13, 2022, before me, CYNTHIA BAGOS, Notary Public in and for said State, personally appeared MATTHEW FRANK VESPI who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

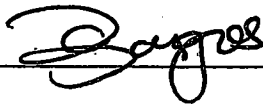
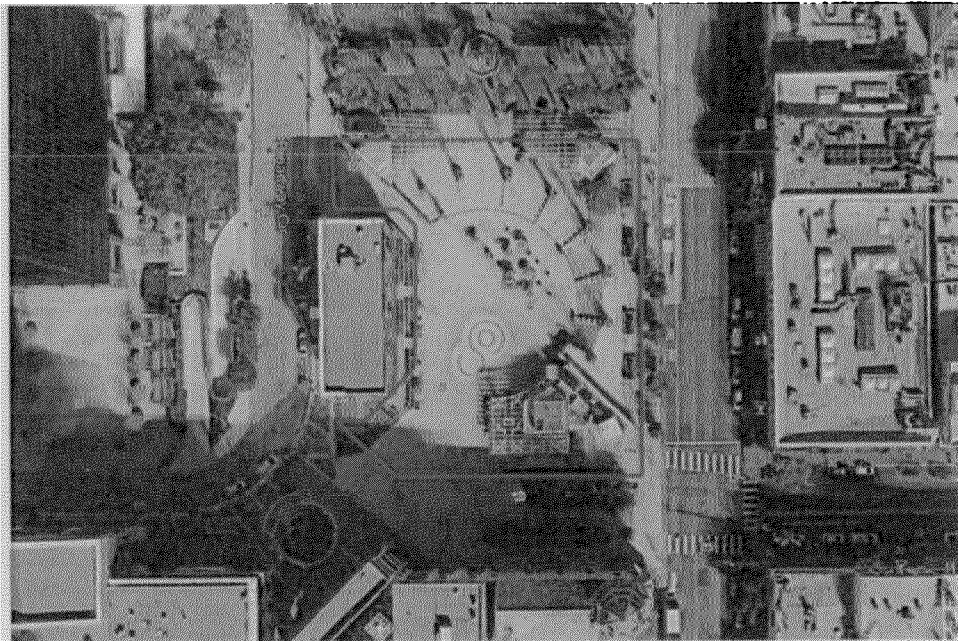


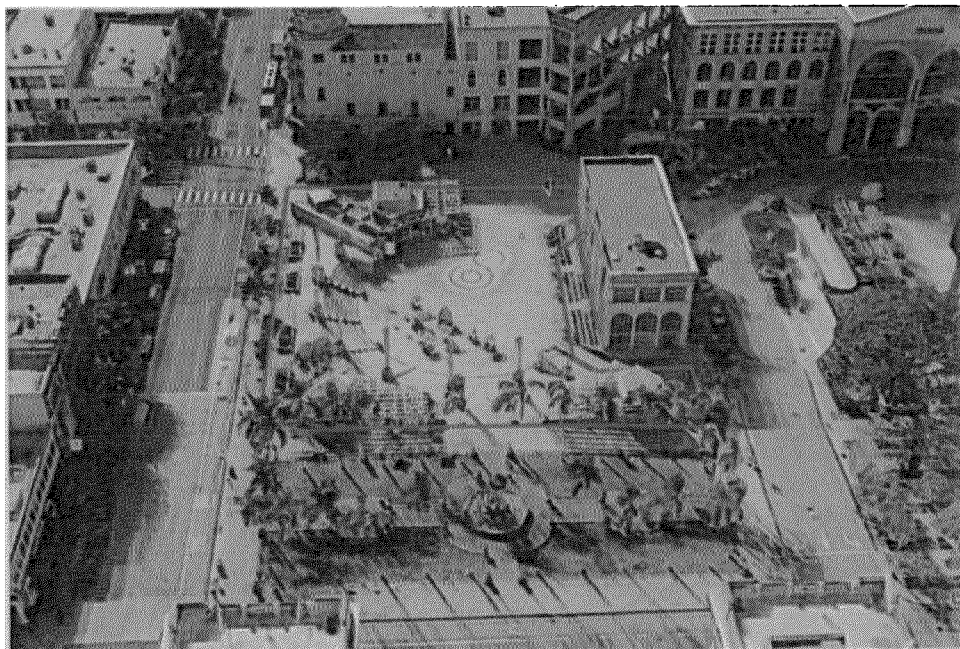
Exhibit A1: Legal Description

Parcel 2 of Parcel Map No. 21100, in the City of San Diego, County of San Diego, State of California, according to map thereof filed in the office of the County Recorder of San Diego County, December 11, 2013 as File No. 2013-0715890 of Official Records.

Exhibit A2: AERIAL PHOTOGRAPHS



Aerial view of the subject. Property boundaries are outlined in red and are approximate.



Oblique view of subject looking generally south. Property boundaries are approximate

Exhibit B1: Redevelopment Plan Summary

Overview

The Premises will be redeveloped into a community-serving, activated space through building renovations as well as landscape and hardscape improvements. Robust programming will ensure the site functions as a primary gathering place for the downtown community through live music performances, art fairs, farmers markets, and other important cultural events.

Physical Improvements & Amenities

The existing buildings located on the Premises will be rehabilitated, renovated and enhanced. An outdoor wood deck seating area will be located on the Premises up to the boundary line of the Premises and the Bradley building. The deck area will be attached to the currently vacant Bradley building which will become a large food hall. The Bradley building will provide local, diverse food hall vendors that will cater to the downtown community and serve as a primary activation catalyst for the park. The currently vacant kiosk building on the southeast corner of site will also be transformed into a restaurant and bar, and the currently vacant kiosks on the northwest and northeast corners of the site will be renovated and leased to food and beverage vendors. The existing restrooms adjacent to the currently vacant kiosk building on the southeast corner of the site will remain.

The existing hardscape and paving will be renovated and landscape will be added to the Premises. While certain sections of the existing paving will be retained, a large green lawn will be added to center of the Premises which will serve as a focal point for activities as well as a primary seating and recreational area for visitors. Attractive crushed stone paving will replace much of the existing paving and various trees will be added throughout the Premises. The configuration of the existing amphitheater seating will be retained while portions of the steps will be reclad with wood and infused with landscaping and umbrellas. A small dog park in the corner of the site will provide a welcoming space for pets.

Design & Aesthetics

The Premises will be transformed from a public space with hard surfaces devoid of trees and shade into a soft and welcoming gathering place with green lawns, tree groves, wood seating, and soft surfaces.

Although the Bradley building is not a part of the Premises, the building's success will enhance the LESSEE's ability to attract visitors to the Premises and contribute to the activation of the site. The Bradley Building will retain its current architectural features facing Broadway Circle but will be reclad in wood lattice archways and glass walls on the premise-facing side. The design will take cues from important local cultural sites such as the Botanical Building at Balboa Park as well as the existing post-modern architectural elements of Horton Plaza. Planters with hanging and climbing vines will soften the new surfaces and contribute to the garden-like atmosphere of the Premises. A generous wood deck seating area located on the Premises, adjacent to the building, will contribute to the indoor-outdoor experience and serve as a primary vantage point for visitors enjoying the activity of the Premises. A portion of the deck facing the amphitheater seating will accommodate live music and other performances.

The restaurant and bar housed in an expanded version of the existing southeast kiosk building will have modern design features with glass and steel. The floor will be level with the outdoors and seating will spill from the indoors into the outdoor tree grove with crushed stone paving adjacent to the building.

Access

Access will be provided at specific points along the perimeter of the Premises. The south entrance will be a generous walkway between the Bradley building and the restaurant building. Trees and outdoor seating will line this entrance and funnel visitors into the central lawn of the Premises. The north entrance will align with the existing historic fountain and will be flanked by the existing kiosk buildings. The west entrance will come through the existing ramp between the Bradley building and the northwest kiosk building. A thoughtfully designed perimeter fence will line all sides of the Premises with gate access which will be used to secure the area during large gatherings and events.

Programming & Activation

In addition to the physical enhancements, the Premises will benefit from robust programming which will further activate this important space. Weekdays and weekends will feature casual live music performances and other cultural events such as art fairs and farmers markets. The size of the Premises and the amphitheater seating also make it ideal for larger scale events. Concerts and other performances will activate the Premises on nights and weekends. Partnerships will be formed with local businesses and community organizations to ensure the events in the Premises reflect and feature the people and culture of Downtown San Diego.

Exhibit B2 Redevelopment Plan

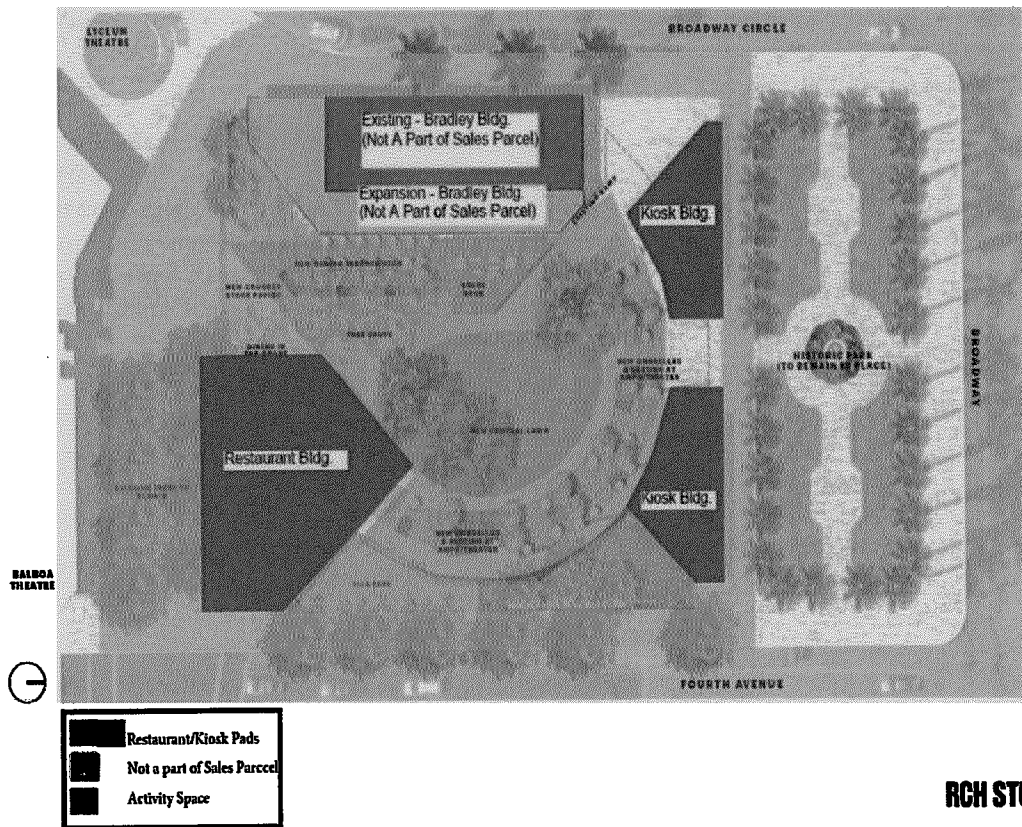


Exhibit C:

Schedule of Days and Hours of Operations

Average Annual Opening Hours

<u>Day of Week</u>	<u>Open</u>	<u>Closed</u>
Monday	9:00AM	8:00PM
Tuesday	9:00AM	8:00PM
Wednesday	9:00AM	8:00PM
Thursday	9:00AM	8:00PM
Friday	9:00AM	10:00PM
Saturday	9:00AM	10:00PM
Sunday	9:00AM	8:00PM

Observed Holidays

Christmas Day

Thanksgiving Day

Exhibit D: Maintenance Standard

A. GENERAL CONDUCT OF WORK

1. **Scope of Work.** Complete maintenance of all Plaza Property areas including, but not limited to, irrigation, pruning, shaping, and training of trees, shrubs, turf, and groundcover plants; fertilization; litter control; weed control; pest control, control of all plant diseases and pests; mowing; edging; sweeping; renovation and aerification of turf areas; maintenance and repairs of equipment, pathways, irrigation and drainage systems; and all other maintenance required to maintain the areas included in this Agreement in safe, attractive and useable condition and to maintain the plant material in good condition with horticulturally acceptable growth and color.

2. **Scheduling of Work.** The Lessee shall accomplish all normal maintenance required under this Agreement between the hours of 6:00 a.m. and 10:00 p.m., Monday through Sunday. Exceptions may be made to normal working hours where incidence of use may be too great during the hours specified to allow for property maintenance. No maintenance functions that generate excess noise, e.g., operations of power equipment which would cause annoyance to residents of the area, shall be commenced before 6:00 a.m. The Lessee shall conduct the work at all times in a manner which will not unreasonably interfere with pedestrian traffic on adjacent sidewalks or vehicular traffic on adjacent streets.

3. **Repair of Damage or Malfunction.** Damage to or malfunction of any improvement shall be repaired if such repair is a day-to-day non-capital repair and is therefore Lessee's responsibility under the Agreement.

4. **Miscellaneous Requirements.** Appropriate work zone safety provisions shall be made at all times for the protection of traffic and workers. Workers shall wear safety vests or designated uniforms at all times when performing site maintenance. All tools and equipment shall be appropriate for the task performed and shall be maintained in good working condition. Application of pesticides shall be done in accordance with all applicable laws and under the direct supervision of a California Certified Pesticide Applicator.

5. **Performance Requirements.** The Lessee shall also have available all ancillary tools and equipment needed to perform the specifications herein (shovels, rakes, pruners, etc.).

B. INSPECTION

1. **Facility Inspection.** The Lessee shall provide for ongoing daily inspection of the Plaza Property. This inspection shall be performed by the workers as well as non-working supervisor who shall provide a written punch list each week of items requiring remedial action or attention together with dates when the required work will be performed. Failure to provide such a punch list will indicate that no remedial action is required and that all work has been performed in accordance with these specifications.

C. HARD SURFACE MAINTENANCE

1. Litter and Waste Removal. All trash, foreign substances, dangerous objects, and other debris shall be removed from the area at least daily. Litter shall be removed by 11:00 a.m. to keep all areas litter-free and allow the public usage of park facilities. Includes emptying all trash receptacles as needed and daily removal of litter on the ground or in the lawn/planter/sand areas. Trash receptacles shall be repaired as needed.

The Lessee will remove and replace liners when receptacle is more than half full or has a strong odor from receptacle. Dumpsters are to be emptied before they 100% full. The areas around dumpster are to be kept clear of litter.

2. Sweeping/Blowing. All paved areas shall be inspected daily when litter is removed. Remove sand, dirt, and debris to avoid hazardous conditions. Blowers may be used, if operated in a responsible manner – not before 6:00 a.m. Areas should be inspected for safety and/or items requiring repair. Potential hazards shall be immediately barricaded/taped off for non-use until the problem can be evaluated and or repaired. Landlord shall immediately be notified of such hazards. Repairs shall be completed as needed.

3. Graffiti Abatement. Amenities are to be kept free of graffiti and vandalism on buildings, concrete, benches, tables, play equipment, site furnishings should be repaired in a timely manner but no later than within forty-eight (48) hours of observation. Acts of vandalism causing a hazard shall be repaired or taken out of service immediately.

4. Sidewalks and Paved Areas. All sidewalks and other paved surfaces shall be maintained in a safe, non-hazardous, and useable condition and free of trip hazards at all times. All fecal matter, stones, glass, paper, leaves, twigs, and all other debris shall be removed from paved areas. Painted lines and informational / directional signs shall be maintained so as to be clear, distinct, and readable.

5. Steam Cleaning and Power Washing. Before steam cleaning and power washing, workers will sweep, collect and dispose of debris; dry clean oil spots, dispose of absorbent in trash; and place oil-absorbent booms around storm drains. When using soap, cleaners may direct discharge to sewer. When using pressurized water, direct flow may be directed to storm drains. Workers shall power wash a minimum of two times per week or more as necessary based upon commercially reasonable practices.

D. TURF MAINTENANCE (if applicable)

1. Mowing. Mowing equipment shall be maintained so as to provide a smooth, even cut without tearing. The blade adjustment shall provide a uniform, level cut without ridges or depressions. The mower blades shall be kept sharp. Equipment shall not be allowed to create ruts or depressions in the turf.

Mowing shall be performed so that no more than one-third (1/3) of the grass blade is removed during each mowing in returning the grass to the accepted height for the species of grass being mowed.

Mowing must be done in a neat pattern. Mowing patterns are to be alternated to avoid compaction of soil. All sidewalks shall be cleaned immediately after mowing. Cuttings shall be removed from all hardscape and turf areas and not blown into the street or shrub beds. Persons providing the mowing services shall report wet soggy areas in turf due to over watering or leaks to their supervisors immediately.

2. Edging Method. All turf shall be edged adjacent to all improved surfaces. Where no improved surfaces exist, turf edges shall be maintained if the turf area abuts a shrub bed or property line or any other area where turf delineation is required. All edging must have a clean cut with the cut perpendicular to the hard surface and not removed from it. Edging shall include all fixtures (e.g., fire hydrants, manhole covers, meter boxes, valve boxes, quick couplers, gate valves). Chemical edging is unacceptable.

3. Fertilization. Fertilizer shall be delivered to the site only in the original unopened containers bearing the manufacturer's guaranteed analysis. Damaged packages will not be accepted.

Fertilizers shall be applied Three (3) times a year to promote healthy plant growth at the rates as follows: One (1) pound of actual nitrogen per 1,000 square feet of planted area shall be applied to shrubs, vines, groundcovers, and trees as specified.

Acceptable complete fertilizers include, but are not limited to: Nitra King 22-3-9-(S), Turf Supreme 16-6-8, Turf Supreme with Best-Cote 15-5-7, and Best Super Turf (for September fertilization). Acceptable organic fertilizers include, but are not limited to Milorganite or Gro-Power, which have been processed to remove excess levels of salt.

As deemed necessary, other materials including, but not limited to, iron chelate, soil sulfur, gypsum, surfactant enzymes such as Sarvon or Naiad, etc., may be needed and shall be applied, as necessary.

Adequate irrigation shall immediately follow the application of fertilizers and/or amendments to force fertilizer material to rest directly on the soil surface. Drip irrigated areas shall be adequately hand watered using quick coupler valves and hoses to dissolve fertilizer.

Fertilization must occur in prescribed months and shall be accomplished in a manner so as to achieve an even green. If fertilization results are patchy, remedial fertilizer must be applied immediately.

4. Renovation. Renovation shall be the operation that removes accumulated thatch from turf areas. Refuse generated from renovation shall be removed from the work site no later than the day following renovation. Thatch and other debris left on the site overnight shall be completely contained in bags or burlap sheets so that it does not migrate to adjacent areas.

5. Aerification. All turf areas shall be aerified by core removal to a depth of 2". Under adverse conditions or where turf is suffering from compaction due to high use, aerification may be necessary at more frequent intervals. The frequency interval shall be as required to promote healthy, vigorous growth.

In performing periodic operations as required herein, routine grounds maintenance services at the same work site such as, but not limited to, litter control, weed control and irrigation shall continue without interruption.

6. Top Dress and Overseed. Once a year minimum, between December and May or more as needed. To provide continuity of turf surfaces. Seed mix shall be spread at 6.0 lbs. per 1,000 sq. ft. Top Dress at a rate of one (1) yard of topsoil per 2,500 sq. ft. or 1/8 inch shall be spread ½ sand and ½ organic materials.

Seed and top dress material shall be dragged and rolled to correct low spots and seed is to be in contact with soil. Top dress and overseed shall be spread in conjunction with aerification.

7. Weed/Pest/Fungicide Control. Prompt remedial action as necessary to maintain plant material in optimum condition.

Regularly inspect all landscaped areas for presence of disease, insect, or rodent infestation and identify the disease, insect, or rodent and specify control measures to be taken, and shall implement an approved control measures, exercising extreme caution in the application of all sprays, dusts, or other materials utilized. Approved control measures shall be continued until the disease, insect or rodent is controlled to the satisfaction of the Landlord. Lessee shall utilize all safeguards necessary during disease, insect or rodent control operations to ensure safety of the public and the employees, in accordance with current standard practices accepted by the State of California Department of Food and Agriculture.

E. PLANT MAINTENANCE

1. Weed Removal. Weeds shall be removed from all shrub and groundcover beds, planters, tree wells, cracks in paved areas, including sidewalks, and areas covered with ornamental rocks to maintain all turf, shrub and hardscape areas in a weed-free condition.

Weed removal shall mean complete removal of all weed growth. For the purpose of this specification, a weed will be considered "any undesirable or misplaced plant". Weeds shall be controlled by manual, mechanical, or chemical methods.

2. Pruning – Trees. All trees shall be maintained in their natural shapes. Pruning shall be performed in such a manner as to promote the best growth habits, appearance, and health of the tree, and to prevent encroachment which blocks vision or is in any manner deemed undesirable by the Landlord. Lessee shall, as part of this Agreement, be responsible for tree pruning all trees. Trees shall not be topped. Lessee shall bring to the attention of the Landlord

within twenty-four (24) hours any tree that shows signs of root heaving or leaning, or is in any manner a safety hazard.

All newly planted trees shall be securely staked with two (2) "lodge pole" type stakes placed on opposite sides of the tree, outside the root ball, and secured to the tree with at least two (2) flexible rubber tree ties.

Tree Ties shall be inspected regularly to ensure against girdling and abrasion.

Trees and shrubs that are uprooted and/or broken due to storms, regardless of size, shall be up righted immediately, if possible. If this is not possible, they shall be removed immediately (including roots) and the holes must be filled.

3. Pruning – Shrubs and Groundcover. All shrubs and groundcover plants growing in the Plaza Property shall be pruned as required to maintain plants in a healthy, growing condition; to maintain plant growth within reasonable bounds; and to prevent encroachment of passage-ways, walks, streets, or view of signs; or encroachment in any manner deemed objectionable by the Landlord. Dead or damaged limbs shall be removed with sharp pruning tools, with no stubs remaining. Pruning shall be done so as to permit plants to grow naturally in accordance with their normal growth characteristics. Shearing, hedging or severe pruning of plants, unless authorized by the Landlord shall not be permitted. Growth regulators shall not be used.

4. Fertilization – Trees, Shrubs, and Groundcover. Fertilizer shall be delivered to the site only in the original unopened containers bearing the manufacturer's guaranteed analysis. Damaged packages will not be accepted.

Fertilizers shall be applied at the rates as follows: One (1) pound of actual nitrogen per 1,000 square feet of planted area shall be applied to shrubs, vines, groundcovers, and trees as specified.

Acceptable complete fertilizers include, but are not limited to: Nitra King 22-3-9-(S), Turf Supreme 16-6-8, Turf Supreme with Best-Cote 15-5-7, and Best Super Turf (for September fertilization). Acceptable organic fertilizers include, but are not limited to, Milorganite or Gro-Power, which have been processed to remove excess levels of salt.

As deemed necessary, other materials including, but not limited to, iron chelate, soil sulfur, gypsum, surfactant enzymes such as Sarvon or Naiad, etc., may be needed and shall be applied, as necessary.

Adequate irrigation shall immediately follow the application of fertilizers and/or amendments to force fertilizer material to rest directly on the soil surface. Drip irrigated areas shall be adequately hand watered using quick coupler valves and hoses to dissolve fertilizer.

Fertilization must occur in prescribed months and shall be accomplished in a manner so as to achieve an even green. If fertilization results are patchy, remedial fertilizer must be applied immediately.

5. **Season Color / Plant Replacement.** Lessee shall supply the labor and all materials to replace any tree, shrub, groundcover, or other plant which is damaged or lost as a result of faulty maintenance or negligence. Any plant damaged or lost through vehicular damage, theft, or vandalism shall be replaced in kind and size unless Lessee and Landlord determine that such plant should not be replaced because its placement is the reason it was damaged, and it is likely to be damaged again.

In order to ensure maximum healthy growth and overall aesthetic appearance of planting in the work area, it may be desirable to replace certain plants. The necessity or desirability of such plant replacement shall be determined upon agreement by and between Lessee and Landlord.

6. **Mulch Inspection / Replacement.** Mulch Two (2) times a year in all planting beds which shall be checked regularly for appropriate coverage and depth (3" minimum). Replace as needed.

F. FACILITIES / STRUCTURES / SYSTEMS MAINTENANCE

1. **Irrigation Systems Maintenance and Repair.** Irrigation shall be done by the use of automatic, mechanical sprinkler systems where available and operable; however, failure of the existing irrigation system to provide full and proper coverage shall not relieve Lessee of the responsibility to provide adequate irrigation with full and proper coverage to all areas.

Irrigation systems are regularly and continuously functional. Maintain efficient and effective irrigation systems and adhere to current water restrictions. Sprinkler systems shall be maintained in such a way as to guarantee proper coverage and full working capability, and shall make whatever adjustments may be necessary to prevent excessive run-off into streets, rights-of-way or other areas not meant to be irrigated. Frequency and amount of irrigation is determined by Evapotranspiration (ET) requirements.

Repair components to their original operating level at installation. Replace or repair worn out components when a problem is reported or noticed during inspection. Irrigation repairs are initiated within 24 hours after a problem is identified. Significant changes should be recorded on as-builts.

Program Controllers should routinely be checked and programmed to meet ET needs by plant type. The system will be programmed to water between 10:00 p.m. and 6:00 a.m. not more than three nights per week per zone. Application rate should be less than infiltration rate. Water use should be monitored and evaluate actual consumption compared to ET and water budgets. Irrigation Audits should be performed periodically by a certified Irrigation Association's Certified Landscape Irrigation.

All areas not adequately covered by a sprinkler system shall be irrigated by portable irrigation method. Lessee shall furnish all hoses, nozzles, sprinklers, etc. necessary to accomplish this supplementary irrigation. Care shall be exercised to prevent water waste, erosion, and/or detrimental seepage into existing underground improvements or structures.

Irrigation shall be accomplished as follows:

(a) Shrub beds shall be irrigated as required to maintain horticulturally acceptable growth and color, and to promote deep rooting. Shrub areas shall be irrigated at a rate which keeps surface runoff to a minimum. The irrigation rate shall be adjusted to the needs of shrub types, seasons and weather conditions.

(b) Newly planted trees, shrubs, and groundcover shall receive special attention until these plants are established. Adequate water and fertilizer shall be applied to promote normal, healthy growth. Proper berms or basins shall be maintained during the establishment period.

2. Electrical / Lighting Repair and Maintenance. Any electrical and lighting equipment is to be maintained and operated according to manufacturer's recommendations. Electrical maintenance is to be performed by a licensed electrician.

Lights are to be checked biweekly during operating period to report any outages. Graffiti on light poles to be removed within 48 hours.

3. Audio ~~Visual and Data~~ Systems Maintenance and Repair. Any electronic kiosks, audio visual and data ~~systems~~ equipment is to be maintained and operated according to manufacturer's ~~recommendations~~. Equipment maintenance is to be performed by a licensed or certified technician.

4. Theatrical ~~Systems Repair and~~ Maintenance. Any theatrical systems equipment is to be maintained and ~~operated according~~ to manufacturer's recommendations. Electrical maintenance is to be ~~performed by a licensed~~ electrician.

5. Site Furniture and Structures Repair and Maintenance. All equipment and public site furnishings shall be maintained in a clean and safe condition at all times. Benches and tables are clean and free of debris and litter. Tabletops and benches are smooth and clear of any sharp edges. Identification, traffic, and rules signs must be properly secured, and signs are clean legible, visible, and free of any protrusions.

Any damage to or malfunction of site furnishings or equipment shall be reported to the Landlord and repaired immediately if such repair is a day-to-day non-capital repair and is therefore the Lessee's responsibility under the Agreement.

6. **Structure Maintenance.** Fences and gates shall be maintained so as to perform to design specifications, and shall be operational and attractive. Fabric, bollard posts, and rails are securely fastened, free of holes, gaps, and rust.

7. **Site Plumbing and Drainage Repair and Maintenance.** All plumbing systems equipment is to be maintained and operated according to designer's intentions and manufacturer's recommendations. Plumbing maintenance is to be performed by a licensed plumber.

8. **Restroom Repair and Maintenance.** Restrooms are clean and sanitary, if required, free of any debris or hazards, and all amenities are functional; paper products are stocked; and restrooms are free of graffiti.

9. **Vendor Cart Repair and Maintenance.** Equipment is maintained and operated according to manufacturer's recommendations.

10. **Seasonal Decorations Installations.** Equipment is maintained and operated according to manufacturer's recommendations. Electrical work is to be performed by a licensed electrician.

11. **Vector Control.** Prompt remedial action as necessary to maintain plant material in optimum condition. Vector control is to be performed by a licensed professional.

Exhibit E:
Prevailing Wage Requirements

PREVAILING WAGES. Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, LESSEE and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to San Diego Municipal Code Chapter 2, Article 2, Division 42. LESSEE must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, LESSEE, its contractors and subcontractors shall ensure that all workers who perform work under this Lease are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1. Copies of such prevailing rate of per diem wages are on file at the City of San Diego's Equal Opportunity Contracting Department and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. LESSEE, its contractors and subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Lease. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Lease in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Lease, each successive predetermined wage rate shall apply to this Lease on the date following the expiration date of the previous wage rate. If the last of such predetermined wage

rates expires during the life of this Lease, such wage rate shall apply to the balance of the Lease.

2. **Penalties for Violations.** LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
3. **Payroll Records.** LESSEE and its contractors and subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. LESSEE shall require its contractors and subcontractors to also comply with section 1776. LESSEE and its contractors and subcontractors shall submit weekly certified payroll records online via the CITY's web-based Labor Compliance Program. LESSEE is responsible for ensuring its contractors and subcontractors submit certified payroll records to the CITY. LESSEE and its subcontractors shall also furnish the records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required in Labor Code section 1771.4.
4. **Apprentices.** LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. LESSEE shall be held responsible for their compliance as well as the compliance of their contractors and subcontractors with sections 1777.5, 1777.6 and 1777.7.
5. **Working Hours.** LESSEE and its contractors and subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
6. **Required Provisions for Subcontracts.** LESSEE shall include at a minimum a copy of the following provisions in any contract they enter into with a contractor or subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
7. **Labor Code Section 1861 Certification.** LESSEE in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Lease, LESSEE certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

8. **Labor Compliance Program.** The CITY has its own Labor Compliance Program authorized in August 2011 by the DIR. The CITY will instruct LESSEE to withhold contract payments pursuant to the agreement between LESSEE and LESSEE's contractors or subcontractors when payroll records are delinquent or deemed inadequate by the CITY or other governmental entity, or it has been established after an investigation by the CITY or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Equal Opportunity Contracting Department at 619-236-6000.
9. **Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to enter into any contract for public work, as defined in this chapter of the Labor Code unless currently registered and qualified to perform the work pursuant to Section 1725.5. In accordance with Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."
- 9.1. A Bidder's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor pursuant to Public Contract Code section 4107.
- 9.2. A contract entered into with any contractor or subcontractor in violation of Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of section 1725.5 of this section.
- 9.3. LESSEE certifies that he or she has verified that all subcontractors used on this public works project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and LESSEE shall provide proof of registration for themselves and all listed subcontractors to the CITY at the time of bid or proposal due date or upon request.
10. **Stop Order.** For LESSEE or its contractors or subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

11. **List of all Subcontractors.** The CITY may ask LESSEE for the most current list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Lease at any time during performance of this Lease, and LESSEE shall provide the list within ten (10) business days of the CITY's request. Additionally, LESSEE shall provide the CITY with a complete list of all subcontractors utilized on this Lease (regardless of tier), within ten (10) business days of the completion of the work authorized by this Lease, along with their DIR registration numbers.
12. **Exemptions for Small Projects.** There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Bidder shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:
 - 12.1. **Registration.** The Bidder will not be required to register with the DIR for small projects. (Labor Code section 1771.1).
 - 12.2. **Certified Payroll Records.** The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The LESSEE will need to keep those records for at least three years following the completion of the contract. (Labor Code section 1771.4).
 - 12.3. **List of all Subcontractors.** The LESSEE shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 11 above. (Labor Code section 1773.3).

Exhibit F: Maintenance Agreement Rent Credit

This exhibit serves as the schedule of the annual Maintenance Agreement Rent Credit as an offset against actual operating expenses. The Adjusted NOI should be reduced by the repayment of the Capital Investment, plus preferred rate of return, before calculating the ground rent to the City as 50% of remaining cash flow. See example below using 2026, which is estimated to be the first stabilized year and estimating Sales Parcel income and expenses (including events programming) of approximately \$545,000:

Developer Estimate of Net Operating Income ⁽¹⁾	
Effective Gross Income	\$2,151,000
(Less) Operating Expenses	(\$1,581,000)
(Less) Capital Reserve	<u>(\$25,000)</u>
Total Operating Expenses	(\$1,606,000)
Net Operating Income (NOI)	\$545,000
Add: Maintenance Agreement Rent Credit ⁽²⁾	\$688,900
Adjusted NOI – Prior to Repayment of Capital Investment	\$1,234,000
(1) Reflects stabilized Lease Year 4 (2026).	
(2) Per KMA updated Exhibit F.	

EXHIBIT F

ESTIMATE OF MAINTENANCE AGREEMENT RENT CREDIT HORTON PLAZA URBAN PARK LEASE ANALYSIS CITY OF SAN DIEGO

2010 Estimated Maintenance Obligation				2022 Estimated Maintenance Obligation		Maintenance Agreement Rent Credit				
Operating Year	Fiscal Year	Section 33433 Summary Report		2014 Maintenance Agreement	Proposed Lease Timing	Allocation to Sales Parcel ⁽¹⁾	Calendar Year	Total by Calendar Year	Adjusted to Reflect Redevelopment Period ⁽²⁾	
-	2010 - 2011	\$0	\$0	\$0	\$0	\$0				
-	2011 - 2012	\$0	\$0	\$0	\$0	\$0				
-	2012 - 2013	\$0	\$0	\$0	\$0	\$0				
-	2013 - 2014	\$0	\$0	\$0	\$0	\$0				
1	2014 - 2015	\$597,000	\$0	\$0	\$0	\$0				
2	2015 - 2016	\$615,000	\$0	\$0	\$0	\$0				
Park Maintained	3	2016 - 2017	\$633,000	\$633,000	\$633,000 ⁽³⁾	\$0	\$442,000			
	4	2017 - 2018	\$652,000	\$652,000	\$652,000	\$0	\$455,000			
	5	2018 - 2019	\$672,000	\$672,000	\$672,000	\$0	\$469,000			
	6	2019 - 2020 ⁽⁴⁾	\$692,000	\$692,000	\$692,000	\$0	\$483,000			
Park Closed	7	2020 - 2021	\$713,000	\$713,000	\$713,000	\$0	\$498,000	2020	\$249,000	\$0
	8							2021	\$505,000	\$0
Construction	9	2021 - 2022	\$734,000	\$734,000	\$734,000	\$0	\$512,000	2022	\$520,000	\$0
	10	2022 - 2023 ⁽⁵⁾	\$756,000	\$756,000	\$378,000	\$378,000	\$528,000	2023	\$536,000	\$0
		2023 - 2024	\$779,000	\$779,000	\$389,500	\$389,500	\$544,000	2024	\$552,000	\$655,400
								2025	\$568,500	\$671,900
11	2024 - 2025	\$802,000	\$802,000	\$0	\$802,000	\$560,000	2026	\$585,500	\$688,900	
12	2025 - 2026	\$826,000	\$826,000	\$0	\$826,000	\$577,000	2027	\$603,000	\$706,400	
13	2026 - 2027	\$851,000	\$851,000	\$0	\$851,000	\$594,000	2028	\$621,000	\$724,400	
14	2027 - 2028	\$877,000	\$877,000	\$0	\$877,000	\$612,000	2029	\$639,500	\$742,900	
15	2028 - 2029	\$903,000	\$903,000	\$0	\$903,000	\$630,000	2030	\$659,000	\$762,400	
16	2029 - 2030	\$930,000	\$930,000	\$0	\$930,000	\$649,000	2031	\$679,000	\$782,400	
17	2030 - 2031	\$958,000	\$958,000	\$0	\$958,000	\$669,000	2032	\$699,500	\$802,900	
18	2031 - 2032	\$987,000	\$987,000	\$0	\$987,000	\$689,000	2033	\$721,000	\$824,400	
19	2032 - 2033	\$1,017,000	\$1,017,000	\$0	\$1,017,000	\$710,000	2034	\$742,500	\$845,900	
20	2033 - 2034	\$1,048,000	\$1,048,000	\$0	\$1,048,000	\$732,000	2035	\$764,500	\$867,900	
21	2034 - 2035	\$1,079,000	\$1,079,000	\$0	\$1,079,000	\$753,000	2036	\$787,500	\$890,900	
22	2035 - 2036	\$1,111,000	\$1,111,000	\$0	\$1,111,000	\$776,000	2037	\$810,500	\$913,900	
23	2036 - 2037	\$1,144,000	\$1,144,000	\$0	\$1,144,000	\$799,000	2038	\$834,500	\$937,900	
24	2037 - 2038	\$1,178,000	\$1,178,000	\$0	\$1,178,000	\$822,000	2039	\$859,500	\$962,900	
25	2038 - 2039	\$1,213,000	\$1,213,000	\$0	\$1,213,000	\$847,000	2040	\$885,000	\$988,400	
26	2039 - 2040	\$0	\$1,249,000	\$0	\$1,249,000	\$872,000	2041	\$449,000	\$500,700	
27	2040 - 2041	\$0	\$1,286,000	\$0	\$1,286,000 ⁽⁶⁾	\$898,000 ⁽⁶⁾				

Net Present Value @ 8.0% Discount Rate \$6,580,000 ⁽⁷⁾ \$8,142,000 ⁽⁸⁾ \$3,302,000 ⁽⁸⁾ \$4,840,000 ⁽⁸⁾ \$5,684,000 ⁽⁸⁾

(1) Allocated based on pro rata share of land area (Sales Parcel at 69.8% and Historic Horton Park at 30.2%).

(2) The August 2022 draft Lease defines the Redevelopment Period as the maximum of the first 24 months of the Active Term (25 years), during which Lessee completes a minimum of \$5 million of the Capital Improvements. KMA has reallocated "unused" Maintenance Agreement Rent Credit from the Redevelopment Period to the period 2025-2041. Allow for rounding error.

(3) For modeling purposes, assumes maintenance obligation start date of July 1, 2016. Actual maintenance obligation started May 3, 2016.

(4) Park closed in March 2020.

(5) Per Developer correspondence (dated November 1, 2022), target opening date is January 2024.

(6) For modeling purposes, assumes maintenance obligation end date of June 30, 2041. Actual maintenance obligation ends May 3, 2041.

(7) Net present value in 2010-2011 dollars.

(8) Net present value in 2014-2015 dollars.

5503
12/06/2022

(R-2023-320)
COR. COPY

RESOLUTION NUMBER R-

314519

DATE OF FINAL PASSAGE

DEC 09 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO MAKING CERTAIN DETERMINATIONS IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; APPROVING A LEASE TO SCP PARK SERVICES, LLC FOR PROPERTY ADJACENT TO THE HORTON PLAZA RETAIL CENTER (HORTON PLAZA URBAN PARK) AND VARIOUS OTHER ACTIONS RELATED TO THE PARCEL COMMONLY KNOWN AS HORTON PLAZA URBAN PARK IN THE HORTON PLAZA REDEVELOPMENT PROJECT AREA; AND AUTHORIZING A WAIVER OF CERTAIN LEASE-RELATED REQUIREMENTS IN COUNCIL POLICY 700-10.

WHEREAS, Redevelopment Agency of the City of San Diego (Former RDA) and Horton Land LLC, Horton Plaza Venture LLC, and Horton Plaza, L.P. (Original Developer) entered into that certain Owner Participation Agreement for the project commonly known as the "Horton Plaza Retail Center" dated January 19, 2011, and filed with the Office of the Former RDA on January 21, 2011, as Document Number D-04599a (OPA) for the purpose of revitalizing the retail center and providing public plaza and open space components; and

WHEREAS, the OPA provided for, among other things, the design and development of capital improvements in the "Sales Parcel" (Plaza Improvements) and refurbishment and renovation of the "Park Property"; and

WHEREAS, the Sales Parcel and the Park Property are contiguous parcels located adjacent to the Horton Plaza Retail Center near the intersection of Broadway and Fourth Avenue in downtown San Diego, and they are collectively referred to as the "Horton Plaza Urban Park" in the OPA; and

WHEREAS, under Assembly Bill x1 26 (AB 26), as modified by the California Supreme Court in *California Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231 (2011), and subsequent legislation, the Former RDA dissolved as of February 1, 2012, and the City of San Diego, solely in its capacity as the designated successor agency to the Former RDA (Successor Agency), became responsible for fulfilling the enforceable obligations, disposing of the properties and other assets, and unwinding the affairs of the Former RDA, including all rights and obligations under the OPA; and

WHEREAS, by March 28, 2012, Horton Plaza, LLC (Developer) assumed all the Original Developer's right, title, and interest under the OPA; and

WHEREAS, in connection to the OPA, Horton Plaza Services, Inc., an affiliate entity of Developer (Horton Services), the Successor Agency, and the City of San Diego (City) entered into that certain Maintenance and Operations Agreement (Maintenance Agreement) and that certain Park/Plaza Property Event and Use Agreement (Programming Agreement) (collectively, the Park Agreements), both dated as of February 3, 2014, whereby Horton Services would provide for the long-term future maintenance, operation, and activation of the Horton Plaza Urban Park including the Plaza Improvements; and

WHEREAS, in accordance with the OPA, the Successor Agency acquired fee interest in the Sales Parcel from the Developer in 2014 then transferred the Sales Parcel with the newly constructed Plaza Improvements to the City in 2016; and

WHEREAS, on June 18, 2018, the Oversight Board for the Successor Agency approved that certain Assignment and Assumption of Documents Related to Horton Plaza effective as of August 1, 2018, whereby the Successor Agency assigned to the City all right, title, interest, and obligations relating to the OPA and related documents; and

WEREAS, the Developer transferred all of its right, title, and interest under the OPA and related documents to Stockdale Acquisitions, LLC (Stockdale) under that certain Sale, Purchase and Escrow Agreement dated as of April 3, 2018, then Stockdale assigned its interest to SCP Horton Owner 1, LLC, SCP Horton Owner 2, LLC, SCP Horton Owner 3, LLC, and SCP Horton Owner 4, LLC (collectively, SCP) by that certain Assignment and Assumption Agreement dated as of August 22, 2018; and

WHEREAS, Stockdale also assigned the Park Agreements to SCP by that separate Assignment and Assumption Agreement dated as of August 22, 2018, which SCP then assigned to its affiliate, SCP Park Services (Lessee); and

WHEREAS, the Park Agreements generally address Lessee's existing maintenance, operation, and activation obligations related to the Sales Parcel, the Park Property, and surrounding sidewalks (collectively, Plaza Property) for a 25-year period beginning in 2014 and valued at \$6,580,000, and include City's obligation to maintain a capital reserves account for certain capital repairs and replacements on the Plaza Property; and

WHEREAS, the City and SCP sought to convert the existing Horton Plaza Retail Center to a mixed-use technology office campus comprised of creative office space, retail, entertainment, and food and beverage uses to attract high tech companies Downtown, thereby providing a catalytic impact to Downtown and an economic engine to the Downtown commercial sector; and

WHEREAS, in order to effectuate these goals, the City and SCP entered into that certain First Implementation Agreement to Owner Participation Agreement, effective July 23, 2019 (First Implementation Agreement), authorizing the amendment of the OPA, Agreement Affecting Real Property, and Grant Deed to reduce the stated minimum square footage of gross

leasable area of retail uses (Land Use Restriction) from 600,000 to 300,000 square feet of gross leasable area of retail uses, and possible further reductions based on stated criteria, and to address other Developer obligations under the OPA to complete construction of certain Public Improvements and Bradley Redevelopment, as each is defined in the First Implementation Agreement; and

WHEREAS, in consideration for City's agreement to reduce the Land Use Restriction, valued at \$6,761,000 (Retail Reduction Value), SCP agreed to compensate the City in the form of public benefits valued at \$6,761,000, specifically by providing enhanced private security on the Plaza Property for five months and granting an 82-month extension to the Lyceum Theater Lease at the current rate of \$1 per year; and

WHEREAS, under the First Implementation Agreement, the City and SCP commenced exclusive negotiations for the proposed ground lease to SCP, or an entity under the control of SCP, for the Plaza Property that fully incorporates the terms of the Park Agreements; and

WHEREAS, having completed their exclusive negotiations, the City and SCP now propose a ground lease for only the Sales Parcel that fully incorporates the terms of the Park Agreements as they relate to the Sales Parcel (Ground Lease) and propose corresponding amendments to the existing Park Agreements to remove all rights and obligations relative to the Sales Parcel; and

WHEREAS, the purpose of the Ground Lease is to maximize activation of the Sales Parcel, control loitering and vandalism, and generally allow SCP or its affiliate to enhance, rehabilitate, lease, and maintain the Plaza Property for active commercial and community-serving activities that promote ongoing activation throughout the day (Project); and

WHEREAS, all of Lessee's existing obligations under the Maintenance Agreement relative to Plaza Property, excluding therefrom the Sales Parcel, will continue under the First Amendment to the Horton Plaza Urban Park Maintenance and Operations Agreement (Amended Maintenance Agreement), which removes Lessee's obligations relative to the Sales Parcel and retains Lessee's continuing obligations relative to the Park Property; and

WHEREAS, in order to effectuate the Project, the City and Lessee desire to enter into the Ground Lease for the Sales Parcel and the Amended Maintenance Agreement governing the Park Property, attached to the staff report accompanying this item at City Council (Staff Report) as Attachment B and Attachment C, respectively (collectively, Agreements); and

WHEREAS, SCP acquired from Horton that certain Guaranty of Maintenance and Operations Agreement with respect to Lessee's existing obligations under the Park Agreements, which shall remain in full force and effect as it relates to those obligations whether under the Park Agreements as amended or incorporated into the Ground Lease to Lessee; and

WHEREAS, Lessee seeks to rehabilitate, renovate, and enhance existing structures as identified in the Ground Lease and its exhibits (Renovations) and to maximize use and activation of the Sales Parcel as a community-serving and commercial space; and

WHEREAS, in consideration of Lessee completing the Renovations, which will cost at least \$5,000,000, Lessee will be eligible for rent credits equal to the actual cost of the completed Renovations; and

WHEREAS, as appraised by an independent fee appraiser, the market value of the Sales Parcel is approximately \$15,345,441, comprised of \$180,000 in land value based on existing use restrictions imposed by the City and \$15,165,441 in improvements value based on the depreciated value of the existing urban park improvements; and

WHEREAS, the Ground Lease term is 25 years and, provided that Lessee has completed an additional \$4,000,000 in Renovations as required in the Ground Lease, one possible 17-year extension and two additional 10-year extensions to be exercised at Lessee's option, over which time the City will receive 50 percent of the net income (defined as gross revenue less operating expense as specifically described in the Ground Lease and exhibits) generated by Lessee; and

WHEREAS, rent credits for Lessee's completion of the Renovations will be credited against the City's 50 percent share until rent credits are exhausted, at which point the City anticipates receiving its share of the net cash flow on an annual basis; and

WHEREAS, the City and Lessee agree the Ground Lease will not include a minimum rent component and established percentage rates will not be adjusted during the Ground Lease term; and

WHEREAS, the City Council believes that the Agreements are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accordance with the public purposes and provisions of applicable state and local law and requirements; and

WHEREAS, consistent with the California Environmental Quality Act (CEQA), the environmental impacts of development within the San Diego Downtown Community Plan area have been evaluated in the Final Environmental Impact Report for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and Tenth Amendment to the Redevelopment Plan for the Centre City Redevelopment Project (Downtown FEIR), certified by the Former RDA and the City Council on March 14, 2016 (Resolutions R-04001 and R-301265, respectively), and subsequent addenda to the Downtown FEIR certified by the Former RDA on July 31, 2007 (Former RDA Resolution R-04193), April 21, 2010 (Former RDA Resolution R-04510), and August 3, 2010 (Former RDA Resolution R-04544), and certified by the

City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and

WHEREAS, certain environmental effects related to development projects in the San Diego Downtown Community Plan area also have been evaluated in the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561); and in the Final Environmental Impact Report for the City's Climate Action Plan (CAP FEIR), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the addendum to the CAP FEIR certified by the City Council on July 12, 2016 (City Council Resolution R-310595); and

WHEREAS, the Downtown FEIR, the CAP FEIR, and the related environmental documents described above (collectively, Certified CEQA Documents) are the most recent and comprehensive environmental documents pertaining to the Project, and the Downtown FEIR and the CAP FEIR are Program Environmental Impact Reports (Program EIRs) prepared in accordance with CEQA Guidelines section 15168; and

WHEREAS, the City has included language in the Environmental Impact portion of the staff report explaining the consistency of the project with CEQA (Consistency Evaluation); and

WHEREAS, the Consistency Evaluation explains that the Project is within the scope of the development program analyzed in the Certified CEQA Documents and will not result in new or increased environmental effects compared to what already has been evaluated in the Certified CEQA Documents; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego (Council), as follows:

1. The Council finds and determines that all recitals set forth in this Resolution are true and correct and fully incorporated in this Resolution.

2. Consistent with the analysis described by the Consistency Evaluation, the environmental effects of the Project were adequately addressed in the Certified CEQA Documents, and the Project is within the scope of the development program described therein.

3. The Council adopts the following findings, as set forth in the Consistency Evaluation, with respect to the environmental effects of the Project:

(a) No substantial changes are proposed in the Project, or to the circumstances under which the Project is to be undertaken, which will require important or major revisions in the Certified CEQA Documents; and

(b) No new information of substantial importance to the Project has become available, which was not known or could not have been known at the time the Certified CEQA Documents were certified as complete, and which shows that the Project will have any significant effects not discussed previously in the Certified CEQA Documents, or that any significant effects previously examined will be substantially more severe than shown in the Certified CEQA Documents, or that any mitigation measures or alternatives previously found not to be feasible or not previously considered would substantially reduce or lessen any significant effects on the environment; and

(c) No negative declaration, subsequent environmental impact report, or supplement or further addendum to the Downtown FEIR or the CAP FEIR is necessary or required; and

(d) The development of the Project will have no significant effect on the environment, except as identified and considered in the Certified CEQA Documents, and no new or additional project-specific mitigation measures are required in connection with development of the Project; and

(e) The Project will not have any new effects that were not adequately covered in the Certified CEQA Documents, and therefore, the Project is within the scope of the development program approved under the Certified CEQA Documents.

4. Consistent with CEQA Guidelines sections 15162 and 15168, the Council determines that no further environmental documentation is required to address the potential environmental effects of the Project.

5. The City Clerk, or designee, is directed to file a Notice of Determination with the Clerk of the Board of Supervisors for the County of San Diego regarding the Project.

6. The Council approves the Agreements (i.e., the Ground Lease and the Amended Maintenance Agreement), including all attachments and exhibits to the Agreements.

7. The Mayor, or designee, is authorized and directed to sign the Agreements, including all attachments and exhibits requiring the City's signature, and all other documents necessary and appropriate to carry out and implement the Agreements or effectuate the purposes of this Resolution. A copy of the signed Ground Lease shall be placed on file with the Office of the City Clerk as Document No. RR- 314519-1. A copy of the signed Amended Maintenance Agreement shall be placed on file with the Office of the City Clerk as Document No. RR- 314519-2.

8. The Council waives application of the normal lease requirements under Council Policy 700-10 regarding a minimum rent component and periodic adjustment of percentage rates every 10 years to fair market rates.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Daphne Z. Skogen
Daphne Z. Skogen
Deputy City Attorney

DZS:hm
11/30/2022
12/05/2022 COR. COPY
Or, Dept: Econ Dev
Doc. No.: 3155723_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2022.

ELIZABETH S. MALAND
City Clerk

By Connie Otterson
Deputy City Clerk

Approved: 12/9/22
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on DEC 06 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Stephen Whitburn	☒	☐	☐	☐
Monica Montgomery Steppe	☐	☐	☒	☐
Marni von Wilpert	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Raul A. Campillo	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Sean Elo-Rivera	☒	☐	☐	☐

Date of final passage DEC 09 2022

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

(Seal)

TODD GLORIA

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By Corrie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 314519

Passed by the Council of The City of San Diego on December 6, 2022, by the following vote:

YEAS: LACAVA, CAMPBELL, WHITBURN, VON WILPERT, CATE, CAMPILLO,

MORENO, & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: MONTGOMERY STEPPE.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Connie Patterson, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. R-314519 approved on December 6, 2022. The date of final
passage is December 9, 2022.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: Connie Patterson, Deputy