

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT dated as of June _____, 2017 (this "Agreement"), but retroactively effective as of June 1, 2017, is entered into by and between PROXIMA 707 LLC, a Delaware limited liability company ("Licensor"), and THE CITY OF SAN DIEGO, a California municipal corporation ("Licensee"), with reference to the following:

RECITALS

WHEREAS, Licensor is the owner of that certain building with an address of 707 Broadway, San Diego, California, commonly known and identified as 707 Broadway and consisting of approximately 179,220 rentable square feet (the "**Building**").

WHEREAS, Licensor and Licensee wish to enter into this Agreement in order to memorialize the terms relating to Licensee's use of that certain space (the "**Licensed Area**") in the Building as more particularly identified in Exhibit A attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

A G R E E M E N T

1. **Grant and Duration of License.** Subject to the terms and conditions hereof, Licensor hereby grants to Licensee a revocable license (the "**License**") to use the Licensed Area for the sole purpose of general office use by Licensee's police officers, and for no other use or purpose. The License shall commence on June 1, 2017 (the "**Commencement Date**") and continue until the earliest to occur of (a) May 31, 2020; or (b) at the election of Licensor, an Event of Default, as defined herein.

In addition to the License, Licensee shall have the right, on a non-exclusive basis and subject to Licensor's reasonable rules, regulations and/or security requirements relating to the same, to use the restrooms in the basement level of the Building and the Building's secured bicycle storage area.

2. **No Monthly License Fee.** Licensee shall have no obligation to pay any fee to Licensor for the use of the Licensed Area nor shall Licensee be obligated to pay for any utilities, services and other costs allocable to the Licensed Area during the term of the License; however, in no event shall Licensor be liable for any interruption or failure in the supply of any such utility services to Licensee and the Licensed Area.

3. **Parking.** Subject to reasonable written parking regulations, conditions and provisions as may from time to time be prescribed by Licensor, Licensee may use up to ten (10) parking spaces in the Building's parking facilities (in a location designated by Licensor) at no additional charge during the term of the License; however, Licensee hereby agrees to use commercially reasonable efforts to cause its police officers to park patrol vehicles on 7th or 8th

Avenue instead of in the Building's parking facilities. If Licensee is not permitted to utilize any parking space in the parking areas at any time, such facts shall never be deemed to be a default by Licensor so as to permit Licensee to terminate this Agreement (either in whole or in part) or pursue other remedies. Licensor shall not be responsible for enforcing Licensee's parking rights against any third parties. Licensee acknowledges and agrees that Licensor may, without incurring any liability to Licensee, from time to time, close-off or restrict access to the parking area, or relocate Licensee's parking spaces to other parking areas within a reasonable distance of the Licensed Area, for purposes of permitting or facilitating any such construction, alteration or improvements with respect to the parking area or to accommodate or facilitate renovation, alteration, construction or other modification of the Building.

4. **No Representations or Warranties.** Licensee accepts and shall use the Licensed Area in its AS-IS condition, with all faults. Licensee represents, warrants and agrees that Licensor has not made and shall at no time in the future be deemed to have made any express or implied representations or warranties with respect to the condition of the Licensed Area, its suitability for Licensee's intended use or its compliance with applicable laws, regulations or orders.

5. **Maintenance, Cleaning and Repair.** Licensee, at its sole cost and expense, shall keep the Licensed Area in broom clean condition. Any other maintenance and repair of the Licensed Area shall be performed by Licensor at Licensor's cost, except as provided in the penultimate paragraph of Section 7 below. At the expiration or earlier termination of this Agreement, Licensee shall terminate its use of the Licensed Area and shall surrender the Licensed Area to Licensor in the same or better condition than as received, reasonable wear and tear excepted.

6. **Alterations and Improvements.** Licensee shall not make any alterations or improvements to the Licensed Area without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. If Licensor commences construction of improvements or performs any other work in the Licensed Area while the Licensee is occupying the Licensed Area, Licensee agrees to cooperate with Licensor's contractors, agents and employees so that Licensee's occupancy does not interfere with Licensor's work.

7. **Insurance.** At Licensee's sole cost and expense, Licensee shall maintain for the duration of this Agreement the following coverages in the following amounts:

(a) Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Licensee's operations, assumed liabilities or use of the Licensed Area, liquor liability (if Licensee serves or stores alcohol on the Licensed Area), including a Commercial General Liability endorsement covering the insuring provisions of this Agreement and the performance by Licensee of the indemnity agreements set forth in Section 8 of this Agreement with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Five Million Dollars (\$5,000,000).

(b) Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise and all other items of Licensee's property on the Licensed Area installed by, for, or at the expense of Licensee. Such insurance shall be written on a cause of loss – special form (“all risks”) basis, for 100% of the replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include (a) coverage for wind, flood, earthquake and terrorism, (b) boiler and machinery coverage, if applicable, (c) a vandalism and malicious mischief endorsement, (d) sprinkler leakage coverage, and (e) earthquake sprinkler leakage coverage.

(c) Business interruption, loss of income and extra expense insurance in such amounts as will reimburse Licensee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent occupants or attributable to prevention of access to the Licensed Area or to the Building as a result of such perils.

(d) Workers' compensation insurance in accordance with statutory law, with a waiver of subrogation in favor of Licensor, and employers' liability insurance with a limit of not less than \$1,000,000 per accident, \$1,000,000 disease policy limit and \$1,000,000 disease limit per each employee.

(e) Licensee shall carry and maintain during the entire term of the License, at Licensee's sole cost and expense, increased amounts of the insurance required to be carried by Licensee pursuant to this Section 7, and such other reasonable types of insurance coverage and in such reasonable amounts covering the Licensed Area and Licensee's operations therein, as may be reasonably requested by Licensor, but in no event shall such increased amounts of insurance or such other reasonable types of insurance be in excess of that required by owners of comparable Class “A” buildings located in downtown San Diego.

The minimum limits of policies of insurance required of Licensee under this Agreement shall in no event limit the liability of Licensee under this Agreement. Such insurance shall: (i) name Licensor, and the parties specified on Exhibit B attached hereto, as an additional insured; (ii) specifically cover the liability assumed by Licensee under this Agreement, including, but not limited to, Licensee's obligations under Section 8 of this Agreement; (iii) be issued by an insurance company (a) having a rating of not less than A-X in Best's Insurance Guide or which is otherwise acceptable to Licensor, (b) licensed to do business in the State of California, and (c) domiciled in the United States; (iv) with respect to the commercial general liability insurance described in Section 7(a) above, be primary insurance as to all claims thereunder and provide that any insurance carried by Licensor is excess and is non-contributing with any insurance requirement of Licensee; (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days' prior written notice shall have been given to Licensor and any mortgagee of Licensor; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Licensor. Licensee shall deliver said policy or policies or certificates thereof to Licensor on or before the Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Licensee shall fail to procure such insurance, or to deliver such certificate, Licensor may, at its option, procure such policies for the account of Licensee, and the costs of such policies (and any other costs incurred and/or damages suffered by Licensor in connection with Licensee's failure to procure such insurance) shall be paid to Licensor within five (5) days after delivery to Licensee of bills therefor. Licensee shall have the right to provide

insurance coverage which it is obligated to carry pursuant to the terms of this Section 7 in a blanket policy, provided such blanket policy expressly affords coverage to the Licensed Area and to Licensors as required by this Agreement.

Licensors and Licensee agree to have their respective insurance companies issuing property damage and loss of income and extra expense insurance waive, by special endorsement (if required by such lender), any rights of subrogation that such companies may have against Licensors or Licensee, as the case may be. The provisions of the foregoing shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible. Notwithstanding anything in this Agreement to the contrary, Licensors and Licensee hereby waive any right that either may have against the other on account of any loss or damage if such loss or damage is insured by the property damage or loss of income and extra expense insurance (or in the event either party elects to self insure any such coverage) required to be in effect at the time of such loss or damage (this waiver extends to deductibles under such insurance); however, in the event any damage to the Licensed Area, Building or common areas occurs as a result of the negligence or willful misconduct of Licensee and/or its agents, contractors, employees and/or invitees, Licensee shall reimburse Licensors, promptly on demand, for the cost of incurred by Licensors in repairing such damage and the provisions of this paragraph shall not apply to such reimbursement obligation.

Notwithstanding anything to the contrary in this Agreement, so long as the Licensee hereunder is "The City of San Diego," Licensee may fulfill the obligations of this Section via self-insurance.

8. Indemnification; Compliance with Laws. Licensee shall defend, indemnify, and hold Licensors, and its employees, partners, affiliates, subsidiaries, directors agents and representatives harmless from any and all actions, adjudications, awards, causes of action, claims, losses, costs (including reasonable attorneys' fees and expenses), damages, liens, and liabilities whatsoever (collectively, "**Claims**"), which Licensors may incur or suffer as a consequence of Licensee's negligence, willful misconduct, use of the Licensed Area, Licensee's (or its invitees', employees', contractors', or agents') entry onto or removal of anything from the Licensed Area, or Licensee's failure to perform any of Licensee's obligations as and when required by this Agreement. This indemnification clause shall survive the termination or revocation of the License granted herein. At all times during the term of the License granted herein and at Licensee's sole cost and expense, Licensee shall comply with all laws, ordinances, regulations, orders and judgments pertaining to (a) the use of the Licensed Area, and (b) the placement or removal of any improvements or personal property from all or any part of the Licensed Area, including without limitation, all laws, ordinances, regulations, orders and judgments relating to the use, generation, disposal, transportation or storage of hazardous wastes, toxic substances or related materials (such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801; and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.) (collectively, "**Hazardous Materials**"). Licensee shall not use, generate, dispose of, transport or store any Hazardous Materials on, at or under the Licensed Area under any circumstances whatsoever.

9. **Transfer.** Notwithstanding any other provision hereof, the License shall automatically terminate upon Licensee's assignment, sublicense, pledge, sale, mortgage, grant of any license or any other transfer (collectively, "**Transfer**") of all or any part of Licensee's rights or benefits under this Agreement whether the Transfer is voluntary, involuntary, or by operation of law. Any such purported Transfer shall be void and of no force and effect. Licensee acknowledges and agrees that its agreement to be bound by the foregoing prohibition on Transfers constitutes a material portion of Licensors consideration for entering into this Agreement and that Licensors would not have entered into this Agreement but for such agreement by Licensee. Licensors agrees to be bound by the terms, covenants and conditions contained herein only so long as Licensors owns any interest in the Licensed Area. Notwithstanding anything to the contrary contained herein, effective immediately upon transfer by Licensors of Licensors interest in the Licensed Area, Licensors shall be released from all obligations and liabilities arising out of this Agreement.

10. **Events of Default and Remedies; Termination.** Any breach of any of Licensee's obligations under this Agreement shall be an "**Event of Default**" hereunder and shall entitle Licensors to immediately terminate this Agreement and revoke the License and pursue all damages, rights and remedies under this Agreement, at law or in equity. Notwithstanding anything to the contrary contained in this Agreement, either party shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the other.

11. **Licensors Limitation of Liability.** It is expressly understood and agreed that notwithstanding anything in this Agreement to the contrary, and notwithstanding any applicable law to the contrary, the liability of Licensors hereunder and any recourse by Licensee against Licensors shall be limited solely and exclusively to the interest of Licensors in and to the Licensed Area, and neither Licensors, nor any of its constituent partners, shall have any personal liability therefor, and Licensee hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Licensee. Under no circumstances shall Licensors be liable for consequential damages or for injury to Licensee's business or for any loss of income or profit therefrom.

12. **Subordination; Certificate.** The rights granted hereunder shall be fully subject and junior to the rights of Licensors, and its members, employees, directors, partners, lenders, and agents, as determined in Licensors sole and absolute discretion, and to all documentation now or hereafter recorded against the real property underlying the Building. From time to time, Licensee shall furnish to any party designated by Licensors, within ten (10) days after Licensors has made a request therefor, a certificate executed by Licensee confirming and containing such factual certifications and representations as to this License Agreement as Licensors may reasonably request.

13. **Holdover.** If after the expiration or earlier termination of the term hereof, Licensee remains in possession of the Licensed Area, Licensee shall protect, defend, indemnify and hold Licensors harmless from any and all Claims resulting from retention of possession by Licensee, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant or occupant founded upon such failure to surrender and any lost profits to Licensors resulting therefrom. The provisions of this Section shall not constitute a waiver by Licensors of any right of re-entry as otherwise available to Licensors, nor shall receipt of any

portion of the License Fee or any other act appearing to affirm the occupancy of Licensee operate as a waiver of the right to terminate this Agreement for a breach by Licensee hereof.

14. Notices. Any notice or other communication hereunder (a "Notice") from Licensor or Licensee to the other shall be in writing and shall have been duly given or furnished upon personal delivery or, if mailed, upon mailing by first class mail, postage prepaid, return receipt requested, addressed to Licensor or Licensee, as applicable, as follows:

Licensor:

PROXIMA 707 LLC
c/o Emmes Realty Services of California LLC
3161 Michelson Drive, Suite 900
Irvine, CA 92612
Fax: (949) 852-8881
Attn: Legal Department

and:

PROXIMA 707 LLC
c/o Emmes Realty Services of California LLC
701 "B" Street, Suite 200
San Diego, CA 92101
Fax: (619) 515-3406
Attn: Property Manager

Licensee:

The City of San Diego
c/o Fiscal Management Department MS 715
1401 Broadway
San Diego, CA 92101
Attn: Program Manager

Either party may designate any other or additional address by a Notice given pursuant hereto.

15. Interpretation. It is the intent of both parties hereto that this Agreement shall not be construed to convey to Licensee any interest or estate whatsoever in the Licensed Area. No action whatsoever of Licensor, or its successors, transferees, or assignees shall be deemed to constitute implied consent to extend the duration of this Agreement or to allow Licensee to continue to occupy the Licensed Area beyond the term described in Section 1 of this Agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement. This Agreement contains the entire agreement and understanding between the parties concerning the subject matter of this Agreement and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, concerning the matters that are the subject of this Agreement. All amendments, supplements and other modifications to this Agreement must be in writing and executed by the parties.

16. **Attorneys' Fees.** Should either party commence an action against the other to enforce any obligation under or otherwise interpret this Agreement, the prevailing party shall be entitled to recover its cost and reasonable attorneys' fees (including disbursements) from the other, whether or not such action is pursued to judgment.

17. **Choice of Law; Severability; Time of the Essence.** This Agreement shall be construed in accordance with and governed by the laws of the state in which the Licensed Area are located. If any provision of this Agreement or application thereof shall be deemed to be invalid, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement can only be modified by a writing executed by Licensor and Licensee. Time is of the essence with respect to each term of this Agreement.

18. **Waiver.** No term, condition or provision of this Agreement may be waived except by an express written instrument to such effect executed by the party to whom the benefit of such term, condition or provision runs. The waiver by any party of any term, covenant, agreement or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition contained in this Agreement, nor shall any custom or practice that may develop between the parties in the administration of the terms and conditions of this Agreement be construed to waive or to lessen the right of any party to insist upon the performance by the other party in strict accordance with the terms and conditions of this Agreement.

19. **Successors.** Subject to the Transfer provisions of this Agreement, the terms of this Agreement shall apply to, bind and inure to the benefit of the heirs, successors, executors, legal and personal representatives, administrators and assigns of the parties, as the case may be.

20. **Brokers.** Licensee hereby represents and warrants to Licensor that Licensee has not entered into any agreement or taken any other action that might result in any obligation on the part of Licensor to pay any brokerage commission, finder's fee or other compensation with respect to this Agreement, and Licensee agrees to protect, defend, indemnify and hold Licensor harmless from and against any and all Claims in any way arising or resulting from or in connection with or related to any breach or inaccuracy of such representation and warranty.

21. **OFAC Compliance.**

(a) Licensee represents and warrants that (a) Licensee and each person or entity owning an interest in Licensee is (i) not currently identified on the Specially Designated Nationals and blocked Persons Listed maintained by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and/or on any other similar list maintained by OFAC pursuant to any authorizing statute, executive order or regulation (collectively, the "List"), and (ii) not a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, regulation, or Executive Order of the President of the United States, (b) none of the funds or other assets of Licensee constitute property of, or are beneficially owned, directly or indirectly, by any Embargoed Person (as hereinafter defined), (c) no Embargoed Person has any interest of any nature whatsoever in Licensee (whether directly or indirectly), (d) none of the funds of

Licensee have been derived from any unlawful activity with the result that the investment in Licensee is prohibited by law or that this Agreement is in violation of law, and (e) Licensee has implemented procedures, and will consistently apply those procedures, to ensure the foregoing representations and warranties remain true and correct at all times. The term “**Embargoed Person**” means any person, entity or government subject to trade restrictions under U.S. law, including but not limited to, the International Emergency Economic Powers Act, 50 U.S.C.A. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder with the result that the investment in Licensee is prohibited by law or Licensee is in violation of law.

(b) Licensee covenants and agrees (a) to comply with all requirements of law relating to money laundering, anti-terrorism, trade embargos economic sanctions, now or hereafter in effect, (b) to immediately notify Licensor in writing if any of the representations, warranties or covenants set forth in this Section 21 are no longer true or have been breached or if Licensee has a reasonable basis to believe that they may no longer be true or have been breached, (c) not to use funds from any “Prohibited Person” (as such term is defined in the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism) to make any payment due to Licensor under this Agreement, and (d) at the request of Licensor, to provide such information as may be requested by Licensor to determine Licensee’s compliance with the terms hereof.

(c) Licensee hereby acknowledges and agrees that Licensee’s inclusion on the List at any time prior to the expiration or earlier termination of this Agreement shall be an Event of Default and this Agreement shall automatically terminate. Notwithstanding anything to the contrary, Licensee shall not permit the Licensed Area or any portion thereof to be used or occupied by any person or entity on the List or by any Embargoed Person (on a permanent, temporary or transient basis), and any such use or occupancy of the Licensed Area by any such person or entity shall be an Event of Default hereunder.

22. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Licensors and Licensee have caused their duly authorized representatives to execute this Agreement as of the date first above written.

“LICENSOR”:

PROXIMA 707 LLC,
a Delaware limited liability company

By: Ashley Proctor

Printed Name: Ashley Proctor

Title: Authorized signatory

“LICENSEE”:

THE CITY OF SAN DIEGO,
a California municipal corporation

By: Cybele Thompson

Printed Name: Cybele Thompson

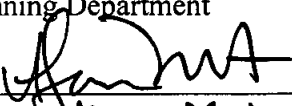
Title: Director, Real Estate Assets Department

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Environmental Analysis Section Environmental Clearance

This activity is not subject to CEQA pursuant to CEQA Guidelines Section 15060 (c) (2), which covers activities that would not result in a direct or reasonably foreseeable indirect physical change in the environment. The foregoing statement is the opinion of Licensee, not Licensor, and Licensor makes no representation or warranty, and shall have no liability to Licensee, regarding the correctness of the foregoing statement.

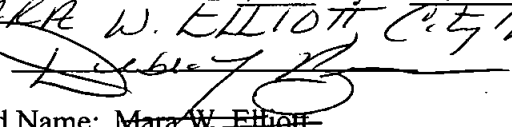
ALYSSA MUTO, Deputy Director
Planning Department

By: 

Name: Alyssa Muto

Title: Deputy Director, Planning Dept.

Approved as to form this 12th day of July, 2017:

By: 

Printed Name: Mara W. Elliott

Title: Deputy
City Attorney

EXHIBIT A
LICENSED AREA

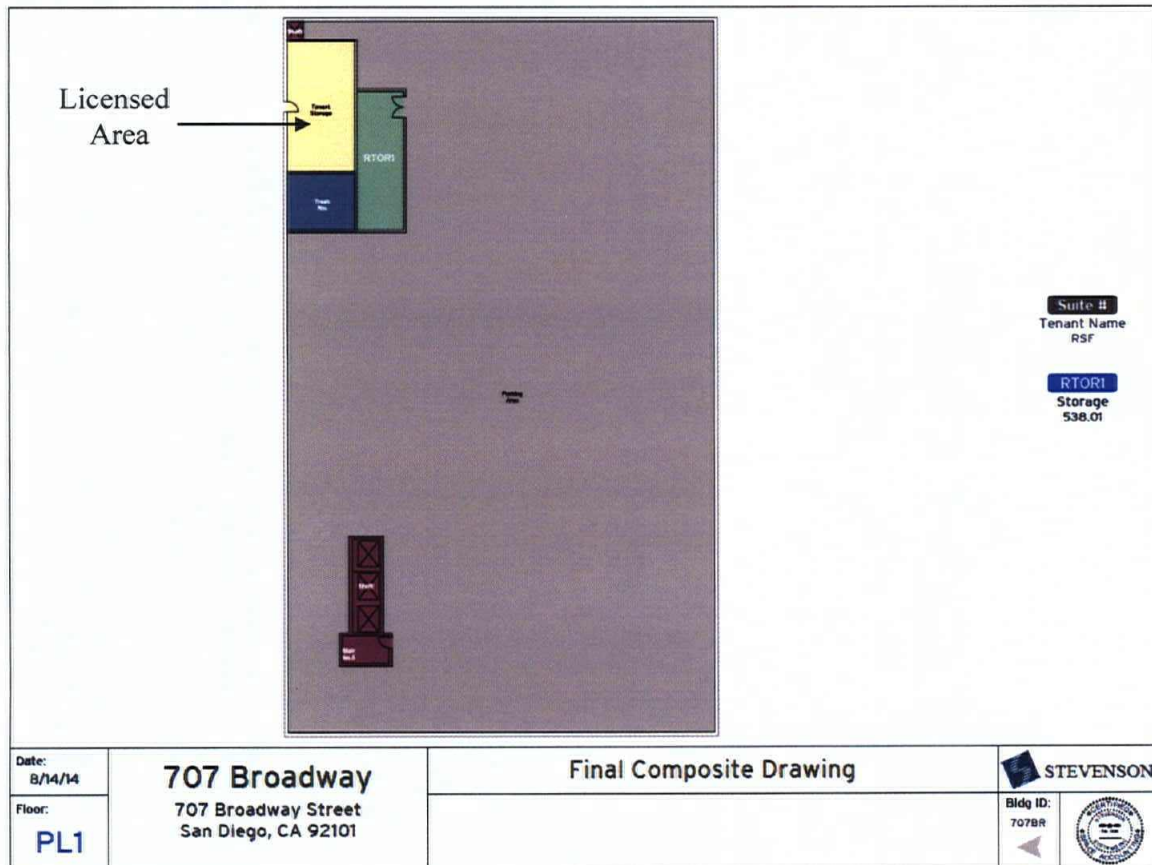


EXHIBIT B

ADDITIONAL INSUREDS

Certificate Holder

Proxima 707 LLC

ADDITIONAL INSUREDS

Proxima 707 LLC
Proxima 707 Member LLC
Broadclay Lexington Associates LLC
Emmes Realty Advisors LLC
Emmes Realty Services LLC
Emmes Realty Services of California LLC
Regency 701 B Street LLC
KREF Lending I LLC