

**LICENSE AND USE AGREEMENT  
BETWEEN S.V.D.P. MANAGEMENT, INC., D/B/A FATHER JOES' VILLAGES  
AND THE CITY OF SAN DIEGO**

**THIS LICENSE AND USE AGREEMENT** (this "Agreement") is made and entered into as of October 25, 2017, between S.V.D.P. Management, Inc., d/b/a Father Joe's Villages, a California non-profit corporation having an office at 3350 E Street, San Diego California 92102 (the "Owner"), and the City of San Diego (the "City").

**RECITALS**

A. WHEREAS, the Owner is the owner of the Penske Lot located in the city of San Diego, in the state of California, as more particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

B. WHEREAS, the City wishes to use the Property to install a 60ft by 120ft stressed membrane structure ("Sprung Structure") and to operate a public facility to provide shelter to homeless individuals, whether directly or through the San Diego Housing Commission, which organization administers the City's homeless shelters and services programs through contracts with third parties ("Project").

C. WHEREAS, the Owner wishes to give the City a license to access and use the Property for the Project and dismantle the Sprung Structure upon the completion of the Project.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises set forth herein, the parties hereto, for themselves and for their respective successors and assigns, hereby agree as follows:

**AGREEMENT**

1. **Term.** This Agreement shall remain in effect until November 30, 2018, unless earlier terminated by mutual agreement of the Parties (the "Term"). The parties may agree, in writing, prior to the expiration of the Term to extend this Agreement for up to an additional one year period.

2. **Occupancy.** Subject to the terms and conditions of this Agreement, Owner hereby grants permission to City, San Diego Housing Commission, and their respective officers, employees, agents and contractors to enter upon and occupy the Property for the Project.

3. **Use Requirement.** Throughout the Term, the City or its contractors, shall be permitted to perform the following:

- a. Access the Property to install a Sprung Structure, which installation may require a crane.
- b. Make necessary mechanical, engineering and plumbing (MEP) connections.

c. Allow the City, San Diego Housing Commission, their agents or contractors to operate the Project within the Sprung Structure together with the installation and operation of facilities that are needed to serve the individuals within the structure.

d. Install/update necessary gates to segregate and/or secure the Property.

4. **Acknowledgment**. The Owner agrees to provide the City with use and access to the Property, provided however, the City agrees to the following:

a. Subject to the terms of a separate contract for the operation of the Project, the Property will be used for the Project for a minimum period of nine (9) months ("Operation Term"), but in no event shall the use and access to the Property and operation of the Sprung Structure extend beyond the Term without prior written agreement of both the Owner and the City.

b. Removal of the Sprung Structure, restroom trailers and all living amenities within forty-five (45) days from the end of Operation Term, but in no event shall the Sprung Structure, restroom trailers and living amenities remain on the Property beyond the Term, unless extended.

c. Return the Property to the Owner in its original condition less any normal wear and tear. The Owner acknowledges that the City will prepare all or part of the site with asphalt to prepare for the erection of the Sprung Structure, which asphalt will remain at the end of the Term.

5. **Insurance**. The City is self-insured for its public liability insurance, which includes general liability and automobile liability coverage for property damage and bodily injury claims.

The City is also self-insured for Worker's Compensation for all City employees.

6. **Indemnification**. The City shall protect, defend, indemnify and hold Owner and its 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 City's officials, officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with the performance of this Agreement by the City, contractors or agents, and all reasonable expenses of investigating and defending against same, including without limitation reasonable attorney fees and costs; provided, however, that City's duty to indemnify and hold harmless shall not include any claims asserted or established liability arising from the negligence or intentional misconduct of Owner or its officers, employees, representatives or agents. The City's indemnification obligation will not apply to any actions arising out of Owner's use or activities conducted on the Property. This hold harmless agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the City.

7. **Governing Law**. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of California without regard to principles of conflict of laws.

8. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and agreements, either oral or written, expressed or implied, relating to the subject matter hereof. Any amendments to or waivers of the terms of this Agreement must be in writing and executed by the parties hereto.

9. **Notice.** Any written notice permitted or required to be given under this Agreement shall be in writing and shall be delivered by personal delivery, by any method of mail (postage prepaid) requiring return receipt, by overnight courier, or by facsimile, to the party to be notified at its address given on the first page of this Agreement, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earliest of: (a) the date of actual receipt; (b) if mailed, three (3) days after the date of postmark; (c) if delivered by overnight courier, the next business day the overnight courier regularly makes deliveries, or (d) if delivered by facsimile, receipt of automatically generated confirmation of facsimile transmission.

a. Notices to CITY:

THE CITY OF SAN DIEGO  
Attention: Cybele Thompson  
Director, Real Estate Assets Department  
1200 Third Avenue, Suite 1700, MS 51A  
San Diego, California 92101

THE CITY OF SAN DIEGO  
Attention: Jonathan Herrera  
Senior Advisor on Homeless Coordination  
202 C Street, 9<sup>th</sup> Floor  
San Diego, CA 92102

10. **Counterparts.** This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures shall be as effective as original signatures.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Agreement as of the first date written above.

S.V.D.P. MANAGEMENT, INC.

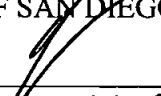
BY: 

Name: Matthew D. Nuth

Title: C.A.O.

Date: 10/25/2017

CITY OF SAN DIEGO

BY: 

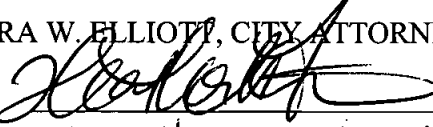
Name: Cybele Thompson

Title: Director Real Estate Assets

Date: 10/27/17

Approved as to form this 27<sup>th</sup> day of October, 2017.

MARA W. ELLIOTT, CITY ATTORNEY

BY: 

Name: Heather Ferbert

Title: Deputy City Attorney

**Exhibit A**

**Legal Description of the Property**

Property: 1402 Commercial Street, San Diego CA 92101

LOTS C, D, E, F, G, H, I AND J OF BLOCK 169 OF HORTON'S ADDITION, ACCORDING TO MAP THEREOF FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

EXCEPTING THEREFROM THAT PORTION OF LOT F LYING IN NATIONAL AVENUE DEEDED TO THE CITY OF SAN DIEGO BY DEED DATED JULY 20, 1904 AND RECORDED MARCH 22, 19095, IN BOOK 361, PAGE 298 OF DEEDS.

A.P.N. 535-614-11-00