

SETTLEMENT AND RELEASE

1. Rent Credit.

a. In consideration of the covenants and releases given and stated herein, the City shall pay TPCC Fifty Thousand Dollars (\$50,000.00), in the form of rent credits as provided herein. From and after the Effective Date, LESSEE shall be entitled to abate rent payments due to City under the Lease, up to and until the \$50,000 credit is fully used and applied. All such rent credit shall be fully used and applied within the first five (5) years after the Effective Date. In the event of any remaining balance of the stated rent credit at such five year time, CITY shall timely reimburse LESSEE for the unapplied amount.

b. TPCC represents and covenants that the above stated rent credit amount shall fully settle and satisfy all claims and demands that TPCC had, has, or may have directly or indirectly relating to or arising from the Dispute.

2. Third Amendment to Lease Agreement

a. In consideration of the covenants and releases given and stated herein, and in addition to the rent credit stated above, the Parties shall negotiate and bring forward to City's City Council a "Third Amendment to Lease Agreement" (the "Amendment") to amend the Lease to clarify and resolve outstanding lease issues and other matters between the Parties. The Amendment shall be substantially in the form as that attached hereto as **Attachment A: Third Amendment to Lease Agreement**. Within a reasonable time after the Effective Date and subject to the City Council's scheduling circumstances, the City shall present the Amendment to the City Council for consideration.

b. The Parties acknowledge and agree that authorization and approval of the Amendment is in the sole discretion of the City Council. By entering into this Agreement, neither City nor the City's City Council is obligating itself to TPCC with regard to the Amendment. City makes no representation or warranty regarding review or approval of the Amendment, or any aspect thereof, and failure of the City Council to approve the Amendment, or any aspect thereof, shall not give rise to any claim, liability, obligation, or cause of action related to this Agreement.

c. **Authorization, approval, and execution of the Amendment are conditions subsequent to this Agreement.** In the event that the City Council does not authorize and approve the Amendment, or if either of the Parties fail to subsequently timely execute the Amendment as approved by the City Council, **this Agreement, and all rights, privileges, and obligations provided herein, shall automatically and summarily TERMINATE and become VOID.**

3. Releases. The Parties also agree to the following covenants:

a. Mutual Release. The Parties do hereby release and discharge each other, their past and present elected officials, employees, members, managers, officers, agents, attorneys, insurers, divisions, successors and assigns, and any related holding, parent, sister or subsidiary corporations or affiliates, and all of their owners, officers, employees, directors,

agents and all of their successors and assigns wherever located or domiciled, from any and all loss, damages, liability, claims, demands, causes of action or suits of any type, whether in law and/or in equity, related directly or indirectly, or in any way connected with or arising, from the Dispute.

b. Section 1542 Waiver. The Parties expressly waive all of the benefits and rights granted them pursuant to California Civil Code § 1542, which section reads as follows:

A general release does not extend to claims which the creditor does not know of or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties do certify, through their authorized representatives who have signed below, that they have read all of the terms of this Agreement, including the release provisions contained herein and the quoted Civil Code section above, and that each fully understands all of the same. The Parties hereby expressly agree that this Agreement shall extend and apply to all unknown, unsuspected and unanticipated injuries, claims and damages, as well as those that are now disclosed, related to or arising from the Dispute.

c. No Further Action. The Parties agree that they will not prosecute, nor allow to be prosecuted, in any administrative agency, whether federal, state, or local, or in any court, whether federal or state, any claim or demand of any type related to the Dispute and the matters released under this Agreement.

4. Entire Agreement. The Parties further declare and represent that no promise, inducement or agreement not herein expressed has been made by or to them and that this Agreement contains the full and entire agreement between and among the Parties, and that the terms of this Agreement are contractual and not a mere recital.

5. Applicable Law. The validity, interpretation, and performance of this Agreement shall be construed and interpreted according to the laws of the State of California.

6. Knowing and Voluntary Agreement. The Parties acknowledge, through their authorized representatives who have signed below, that they have carefully read and fully understand all the provisions and effects of this Agreement. The Parties further acknowledge that they have been given the opportunity to consult with, and have consulted with, their own independent legal counsel with respect to the matters referenced in this Agreement. They acknowledge that they have fully discussed this Agreement with their attorney(s) or have voluntarily chosen to sign this Agreement without consulting an attorney, fully understanding the consequences of this Agreement. The Parties further acknowledge that they are entering into this Agreement without coercion or duress from anyone and that neither Party nor any of its agents or attorneys has made any representations or promises concerning the terms or effects of this Agreement other than those set forth in this Agreement.

7. Complete Defense. This Agreement may be pleaded as a full and complete defense and may be used as the basis for an injunction against any action, suit or proceeding which may be prosecuted, instituted or attempted by either party in breach thereof.

8. Counterparts. This Agreement may be executed in counterparts and, if so executed, each such counterpart shall have the force and effect of an original. A facsimile or electronic signature shall have the same force and effect as an original signature.

9. Severability. If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.

10. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned, as the authorized representatives of the City and TPCC, have executed this Agreement on the dates shown below.

Dated: JANUARY 20, 2015

By: [Signature]
THE CITY OF SAN DIEGO
Title: DIRECTOR, REAL ESTATE ASSETS *Asst. Chief*
County Officer

Dated: JANUARY 16, 2015

By: [Signature]
TORREY PINES CLUB CORP.
Title: CHAIRMAN OF THE BOARD

Attachment: Third Amendment to Lease Agreement

Approved as to form and legality this 21st day of January, 2015:

For City:

JAN I. GOLDSMITH, CITY ATTORNEY

By: [Signature]

Name: Jeremy Fonseca
Deputy City Attorney