

DUPLICATE

CITY OF SAN DIEGO

GROUND LEASE

THIS CITY OF SAN DIEGO GROUND LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as Lessor, and Alexander Court Trust ("LESSEE"), as lessee, to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

- A. CITY owns that certain real property consisting of approximately 2.98 acres of land located at 2150 Pacific Beach Drive, San Diego, California 92109 (the "Property"), as more particularly described in **Exhibit A: Legal Description of Property**, attached hereto.
- B. On September 21, 1971, CITY entered into a LEASE AGREEMENT ("Current Lease") with Stephen B. Drogin, an individual, as filed with the San Diego City Clerk as Document No. 737414, for the construction and operation of one hundred twenty (120) market-rate apartment units commonly known as "Cedar Shores Apartments" (the "Improvements"), which are currently sited on the Property. The Property and the Improvements together are known as the "Premises."
- C. On July 29, 1982, the CITY consented to an assignment of the Current Lease to Julie Anne Drogin by the terms of that certain Assignment of Lease.
- D. CITY subsequently consented to a second assignment of the Current Lease from Julie Anne Drogin to Alexander Court Trust, in accordance with the terms and conditions of the Assignment of Lease dated September 10, 1996.
- E. The Current Lease was then assigned from Alexander Court Trust to Alexander Court Properties, L.P. in accordance with the terms and conditions of the Assignment of Lease dated November 21, 2003.
- F. The Current Lease was then assigned from Alexander Court Properties, L.P. to LESSEE in accordance with the terms and conditions of the Assignment of Lease dated April 23, 2019.
- G. LESSEE has requested this new Lease with a term of fifty years. During the term of this Lease, LESSEE shall ensure that at least eighteen (18) affordable residential dwelling units (as units become available), representing fifteen percent (15%) of the total number of units on the Premises, shall be made available for rent and occupied by households whose aggregate gross annual income at initial occupancy does not exceed eighty percent (80%) of the then current area median income ("AMI") for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by the United States Department of Housing and Urban Development and published in the Federal Register, as adjusted for household size. During the term of this Lease, CITY will annually monitor LESSEE's continued compliance with the affordable rent restrictions governing the applicable units.

- H. LESSEE shall invest a minimum of seven-million, ninety-five thousand dollars (\$7,095,000) in renovations to the Premises, which will include rehabilitating the existing Improvements, in accordance with provisions set forth in this Lease.
- I. On February 7, 2022, the City of San Diego City Council approved this Lease with the condition that the LESSEE install a new solar photovoltaic system serving the residential and other uses at the Property. As such, the LESSEE shall install a new solar photovoltaic system serving the residential and other uses at the Property within twenty-four (24) months of the Commencement Date, as defined herein.
- J. The Current Lease expires on September 30, 2026, but will terminate, by the mutual consent of the parties, upon the Commencement Date, as defined herein.
- K. CITY elects not to take possession of the Improvements if the Current Lease is terminated in accordance with Section 1.10 below. LESSEE will continue to own the Improvements and operate the Premises under the terms and conditions of this Lease.

NOW, FOR VALUABLE CONSIDERATION, based on the foregoing Recitals, which are incorporated into this Lease by this reference, and for valuable consideration the receipt and sufficiency of which is acknowledged, the parties agree as follows:

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Lease. Effective as of the Commencement Date (as defined below in Section 2.2), CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY, under the terms and conditions of this Lease. Prior to the Commencement Date, the Current Lease shall continue in full force and effect. Pursuant to Section 1.10 below, the Current Lease shall terminate, by the mutual consent of the parties, immediately upon the Commencement Date.

1.2 Allowed Uses. LESSEE shall use the Premises solely and exclusively for the following purposes (the "Allowed Uses"):

The Premises shall be used solely and exclusively for operating a residential apartment complex consisting of eighteen (18) studio affordable residential rental units (the "Affordable Units"), as units become available, representing fifteen percent (15%) of the total number of units on the Premises, and one hundred two (102) market rate multi-family residential rental units, and for uses reasonably and customarily related thereto, including related retail leases and agreements which, by way of example but not limitation, may include laundry leases, cable, and internet services. The types of units shall be as follows:

Type of Unit	Total Number
Studio-A	30
Studio-B	48
1 Bedroom	30
2 Bedroom	12
Total	120 (Plus a 2-bedroom Manager's Unit)

For calendar year 2021, the maximum rents that may be charged for each of the Affordable Units is \$1,377.00 (based on San Diego Housing Commission Payment Standards and Income Limits). For calendar 2022 and each year thereafter, the monthly rents for each of the Affordable Units shall not exceed the lesser of: (i) 1/12th of thirty percent (30%) of eighty percent (80%) of the then current AMI, as adjusted for unit size; or (ii) 105% of the monthly rent actually charged for such Affordable Unit for the immediately prior year.

- 1.2.1 CITY shall monitor the rent and occupancy restrictions of the Affordable Units annually. LESSEE shall cooperate with and provide information reasonably required by CITY as necessary to assure compliance with the rent and occupancy restrictions. LESSEE shall submit to CITY annual reports of its monitoring activities pursuant to this Lease, no later than July 31 for each prior fiscal year (July 1 – June 30), together with a Certificate of Compliance certifying under penalty of perjury that the rent and occupancy requirements of this Lease are being satisfied.
- 1.2.2 CITY shall have the right to audit up to twenty (20%) of the Affordable Units each year in order to verify the Affordable Units' continued occupancy by eligible residents. Notwithstanding anything to the contrary contained in this Lease, LESSEE shall not be required to terminate tenancies to the extent it would violate Section 42 of the Internal Revenue Code of 1986, as amended, at any time that such section is applicable to the Premises. LESSEE shall be solely responsible for any eviction of tenants; CITY shall have no obligation to evict any persons.
- 1.2.3 If a tenant of an Affordable Unit who was properly certified as an eligible tenant at the commencement of such tenant's occupancy, ceases to be eligible as a result of being over income, the over income tenant shall be permitted to continue to reside in the Affordable Unit at the reduced rental rate, unless the over income tenant reaches one hundred and forty percent (140%) of the applicable income limit, whereupon the tenant shall be given one hundred eighty (180) days' notice to vacate the Affordable Unit, effective from and after the date of such income determination. The tenant shall continue to be considered an "eligible tenant" until evicted, provided this continued occupancy complies with all applicable requirements.

- 1.2.4 LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY's written consent in each instance. The Allowed Uses shall be conducted in compliance with all laws, rules, and regulations of competent governmental authority.
- 1.2.5 CITY makes no representation or warranty regarding the lawfulness of any of the Allowed Uses, including without limitation whether any or all of the Allowed Uses are permitted under the land use laws applicable to the Premises.
- 1.2.6 LESSEE shall diligently conduct its business on the Premises, using commercially reasonable best efforts to obtain and maintain full occupancy of all rentable space on the Premises and to collect all rent owing to LESSEE.
- 1.3 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. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.
- 1.4 Governmental Approvals.
- 1.4.1 By entering into this Lease, neither CITY nor the CITY's City Council is obligating 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, alteration, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
- 1.4.2 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any alteration, rehabilitation, maintenance or restoration of the Premises, or any other improvements thereon, any aspect thereof, or issues or matters related thereto. Furthermore, CITY does not represent, warrant or guarantee any future approval of any alteration, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon, or any aspect thereof by the CITY, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any alteration, rehabilitation, or improvement of the Premises, or any other improvements thereon.
- 1.4.2.1 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 which LESSEE incurs as a result of CITY's failure to approve any alteration, rehabilitation, maintenance or restoration of the Premises or any other improvements thereon.
- 1.5 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 in this Lease or as required by law. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided in this Lease.

- 1.6 Quiet Possession. LESSEE, in 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 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 damage.
- 1.7 Reservation of Rights.
- 1.7.1 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.
- 1.7.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good, without provision of consideration to LESSEE or any reduction in rent due.
- 1.7.3 Repairs. CITY may at all reasonable times upon not less than ten (10) days written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to the Premises as otherwise required under this Lease or by law.
- 1.7.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 1.7.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.8 Competent Management. LESSEE shall provide competent management of the Allowed 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 Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.
- 1.9 Supersedes Prior Agreements. As of the Commencement Date (defined below in Section 2.2), this Lease shall supersede any and all prior agreements between the parties and related to all or any portion of the Premises, including the Current Lease.
- 1.10 Termination of Current Lease. Effective as of the Commencement Date (defined below in Section 2.2), CITY and LESSEE mutually agree to terminate the Current Lease. The Current Lease shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.

SECTION 2: TERM AND COMMENCEMENT

- 2.1 Term. The term of this Lease ("Term") shall commence on the Commencement Date, as defined below in Section 2.2, and shall continue for fifty (50) years.

- 2.2 Commencement Date. The Term shall commence on the first of the month following the Effective Date (the "Commencement Date").
- 2.2.2 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term beginning on January 1st and ending on December 31st of each year of the Term; however, the first Lease Year shall be that period of time between the Commencement Date and the first December 31st following the Commencement Date.
- 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. LESSEE's 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 two (2) times 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.
- 2.4 Surrender of the 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 caused by LESSEE or arising in whole or in part from the Current Lease or this Lease. Upon surrender of the Premises, LESSEE shall deliver the Premises to CITY in good order, condition and state or repair, but shall not be responsible for damages or to make additional capital expenditures resulting from ordinary wear and tear, except as provided in Section 10.6, below. LESSEE shall be responsible for completing all work, at its sole cost and expense, or reimbursing CITY (including all costs and expenses, including attorneys' fees, incurred to ensure the completion of the work) for all work, necessary to bring the Premises back to good order, condition and state or repair (excepting ordinary wear and tear) upon the surrender of the Premises to CITY, provided that LESSEE is not responsible for making capital expenditures or replacements to enhance or extend the useful life of any Improvements otherwise in good working order, condition, and repair upon surrender of the Premises, except as provided in Section 10.6, below. 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.

SECTION 3: RENT

- 3.1 Gross Income. "Gross Income" shall mean all income collected from all operations conducted on the Premises, including subsidies and any other income to LESSEE derived from the Premises, but shall not include sale, financing, or refinancing proceeds, insurance or condemnation proceeds, capital or debt contributions to LESSEE made by any partners or affiliates of LESSEE or by any third party, or security deposits.
- 3.2 Rent. Rent payable under this Lease shall be the greater of: (a) the Percentage Rent (as defined below); or (b) the Minimum Monthly Rent (as defined below). Within thirty (30) days after the

end of each month during the Term, LESSEE shall deliver to CITY a schedule of LESSEE's Gross Income, for the month, together with a statement of the Percentage Rent payable for that month, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and deductions categorized by type. If the Percentage Rent calculated for any given month is greater than the Minimum Monthly Rent, LESSEE shall pay to CITY the Percentage Rent, otherwise LESSEE shall pay the Minimum Monthly Rent concurrently with the delivery of such schedule and statement.

3.2.1 Percentage Rent. The Percentage Rent ("Percentage Rent") payable to CITY shall be equal to eight and one-half percent (8.5%) of all Gross Income.

3.2.2 Percentage Rent Adjustment. Upon at least one hundred eighty (180) days prior notice to LESSEE, CITY may, at its option, adjust the Percentage Rent upward, and upward only, after the tenth (10th) Lease Year, to be effective as of the first day of the eleventh (11th) Lease Year, and every ten (10) Lease Years thereafter.

3.2.2.1 The Percentage Rent adjustment set forth above shall be determined by an appraisal of the Premises ninety (90) days prior to the start of the applicable Percentage Rent Adjustment Lease Year.

3.2.2.2 The appraisal shall be made based on the then current fair market rent for the Premises, as evidenced by recent leases for similar premises similarly improved and operated with uses substantially similar to the Allowed Uses, and located within the region comprised of Ventura County, Los Angeles County, Orange County, and San Diego County, California. In establishing the percentage rates for categories set forth in this Lease, the appraiser shall consider CITY's interest in the Premises as a fee simple absolute estate, and as vacant and available on the open market for the Allowed Uses at the commencement of the rental period under review.

3.2.2.3 CITY and LESSEE shall equally share the cost of the appraisal. The appraisal shall be performed by a Qualified Appraiser selected by agreement of the parties from a list of City of San Diego-approved appraisers ("Appraiser List") and within ten (10) days after LESSEE's receipt of such list. If the parties do not agree on an appraiser within said 10-day period, then CITY and LESSEE shall each select a Qualified Appraiser from the Appraiser List who in turn shall select a third Qualified Appraiser from the Appraiser List to perform the appraisal.

(a) "Qualified appraiser" shall mean a licensed "MAI" (or substantially equivalently qualified) appraiser reasonably experienced in appraising leases substantially similar to this Lease.

3.2.2.4 The appraisal shall be ordered for completion within sixty (60) days. The fair-market percentage rate set forth in the appraisal that is higher than the then current percentage rate for the Percentage Rent shall become the percentage rate used to determine the Percentage Rent under this Lease as of the applicable effective date for the lease period under review, regardless of when the appraisal is actually completed. If the adjustment is retroactively applied, LESSEE shall pay all

resulting Percentage Rent deficiencies within ninety (90) days after CITY's notice to LESSEE of the amount of such deficiencies. The percentage rate determined by the appraisal shall be binding on the parties. In no event shall any percentage rent adjustment result in a decrease in the percentage rate in effect immediately prior to the adjustment.

- 3.2.3 Minimum Monthly Rent. The Minimum Monthly Rent for the first five (5) Lease Years shall be eleven thousand seventy-eight Dollars (\$11,078.00).
- 3.2.4 Minimum Monthly Rent Adjustment. Effective as of the first day of the sixth(6th) Lease Year, and as of the first day of each sixth (6th) Lease Year thereafter, the Minimum Monthly Rent shall be recalculated to be equal to one twelfth (1/12th) of eighty percent (80%) of the annual average of the all rents paid and accrued during the three (3) Lease Years preceding the adjustment date, including without limitation the Percentage Rent and Minimum Monthly Rent. In no event shall any such adjustment result in a decrease in the Minimum Monthly Rent in effect immediately prior to the recalculation. LESSEE acknowledges that such adjustments shall be calculated by CITY after receipt of all applicable Gross Income schedules and Percentage Rent statements. LESSEE further acknowledges that any adjustment shall apply retroactively and shall be payable by LESSEE as in effect of the first day of the Lease Year in which the adjustment is made. Until such calculations are completed, LESSEE shall continue paying the most the current Minimum Monthly Rent or Percentage Rent, whichever is greater. Within thirty (30) days after CITY notifies LESSEE of the new Minimum Monthly Rent, LESSEE shall pay to CITY any and all rent deficiencies between the previous Minimum Monthly Rent and the retroactive, adjusted Minimum Monthly Rent.
- 3.3 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not an Allowed Use under this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. No unauthorized use charges shall satisfy or credit against any other rent obligations of LESSEE under this Lease. The unauthorized use charge shall otherwise 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.
- 3.4 Annual Statements. Within ninety (90) days after the end of each Lease Year, LESSEE shall deliver to CITY a statement of Gross Income for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source and expenses categorized by type. Each such annual statement shall also include calculations of a summary of the Percentage Rent for each month of the Lease Year and any other amounts payable to CITY under this Lease for the Lease Year. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises.
- 3.5 Time and Place of Payment. All rent payments shall be made payable to "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.

- 3.6 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Income.

- 3.6.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term and for five (5) years thereafter. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from and related to LESSEE's use of the Premises.

- 3.6.2 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all reasonable costs of the audit:

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent

reported as payable by LESSEE and the rent payable as determined by the audit; or

- (b) LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 3.7 Delinquent Payments. If LESSEE fails to make any payment expressly required by 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 fifteen (15) 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 San Diego 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 San Diego 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.

SECTION 4: ASSIGNMENT & SUBLETTING

- 4.1. Time is of Essence; Provisions Binding on Successors and Assigns. Time is of the essence of all of the terms, covenants, and conditions of this Lease, and, except as otherwise provided herein, all of the terms, covenants, and conditions of this Lease shall apply to, benefit, and bind the successors and assigns of the respective parties, jointly and individually.
- 4.2. Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except apartment renters, employees, agents, and guests of LESSEE, to use or occupy the Premises or any part thereof, without the prior written consent of the CITY in each instance, not to be unreasonably withheld, conditioned or delayed. A consent to assignment, subletting, occupation, or use by any person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. Any such assignment or subletting without such consent shall be void and shall, at the option of CITY, terminate this Lease. This Lease shall not, nor shall any interest therein, be assignable as to the interest of LESSEE by operation of law, without the prior written consent of the CITY. "Assignment" for the purposes of this Lease shall include, without limitation, any transfer of any interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners or principals or controlling shareholders.

Approval of any assignment or sublease of this Lease shall be conditioned upon the assignee or sublessee 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. The CITY shall require, as a condition to approval of any sublease of the majority portion of the leasehold, or any assignment, that LESSEE pay additional consideration to CITY, as set forth in Section 4.3, Equity Sharing, and may further require that this Lease or the requested sublease otherwise be revised to comply with then current CITY lease requirements. Pursuant to City Charter Section 225, the CITY must review and approve every person or entity which will have an interest in this Lease.

Prior to the Effective Date of this Lease, LESSEE shall provide CITY with all applicable information therefor, and pay all CITY fees, for all subleases for which LESSEE seeks CITY's consent. Any unconsented to sublessees occupying space on the Premises after the Effective Date shall subject LESSEE to a default under this Lease and shall subject this Lease to termination.

- 4.3 Equity Sharing. LESSEE agrees that as additional consideration for this Lease, and in addition to all other rents payable to CITY, CITY shall be entitled to participate in any "equity" received by LESSEE during the Term. For purposes of this paragraph, "equity" shall mean any amount paid to LESSEE as consideration for an assignment of this Lease or Major Sublease of the Premises; provided, however, equity shall not include any base rents or additional rents payable to LESSEE by its subtenants. "Major Sublease" shall mean any sublease or series of subleases entered into by LESSEE that constitute a single related transaction which individually or cumulatively involves twenty-five (25%) percent or more of the total acreage of the Premises, except for Permitted Transactions, as defined in this Section 4.3. In addition, equity shall include any proceeds of a loan secured by LESSEE's leasehold interest in the Premises which are not expended for permanent leasehold improvements or to refinance any existing loan used for permanent leasehold improvements. In the event of any action resulting in "equity" as described above, LESSEE agrees that CITY shall be entitled to a payment equal to two percent (2%) of any such equity. For purposes of calculating such payment, equity shall be the total consideration resulting from the transaction including total cash payments and the market value of non-cash consideration, including, but not limited to, stocks, bonds, deferred payments, secured and unsecured notes and forbearances, regarding claims and judgments. LESSEE also agrees that CITY shall be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings or other structures, or any portion thereof on the Premises upon the Effective Date of this Lease. CITY shall also be entitled to a payment equal to two percent (2%) of the value of all consideration payable on a lease or on the full sale price for any buildings or other structures, or any portion thereof built on the Premises pursuant to **Exhibit "B"** Renovation Plan. Prior to CITY's consent to any assignment, Major Sublease or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from Lessee pursuant to the provisions of this paragraph together with a written acknowledgment of accuracy of LESSEE's written statement from the proposed assignee, sublessee or lender of the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the closing of the transaction, whether it be an assignment, a sublease or a refinancing. In the case of a Major Sublease which provides for periodic payment of rent, CITY shall be entitled to ten percent (10%) of the difference between the rent paid by LESSEE to CITY and the rent paid by the sublessee to LESSEE, which amounts shall be added to the rent paid to CITY. Any assignment, subletting or refinancing in violation of the terms and conditions of this paragraph shall be void.

The provisions of this paragraph shall not apply to the following "Permitted Transactions":

- (a) an assignment or transfer of a beneficial interest in LESSEE's leasehold estate resulting from a devise, bequest, or intestate succession for the benefit of LESSEE's principal owner or chief executive officer (if LESSEE is other than an individual);
- (b) such other assignment or transfer due to a reorganization or other activity of LESSEE which the CITY reasonably determines that a substantial change has not occurred with respect to the direct or indirect legal and equitable ownership interests in LESSEE, in the legal or fictitious name of the LESSEE, as there is no material change in the equity, in beneficial use of or legal title to the leasehold as an asset or the income produced thereby; or
- (c) A one-time assignment from Alexander Court Trust to Alexander Court CS, LCC, a California Limited Liability Company.
- (d) A one-time cash-out refinance in an amount not to exceed seven million, ninety-five thousand dollars (\$7,095,000) for amounts needed per the Renovation Plan and described in **Exhibit "B."** Any other items that were not part of the Renovation Plan or were not approved by the CITY shall not be included as part of this one-time refinancing.
- (e) A one-time non-cash-out refinance of four hundred eighty-three thousand one hundred and eighty-seven dollars (\$483,187) to payoff financing previously obtained pursuant to the Current Lease.

- 4.4. Encumbrance. Subject to receipt of the CITY's prior written consent, which shall not be unreasonably withheld, LESSEE may encumber its leasehold estate, and those permanent improvements existing on the Premises during the Term of this Lease, by a deed of trust, mortgage, chattel mortgage, or other security instrument to secure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of renovating the Premises. However, no more than ten percent (10%) of the loan proceeds may be disbursed for payment of incidental costs of renovation, including but not limited to the following: off-site improvements for service of the Premises; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction.

All encumbrances of the Premises or of any permanent improvements thereon must first be approved in writing by the CITY and shall also be for the exclusive purpose of renovation of the Premises. In the event any such approved deed of trust or mortgage or other security agreement should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the City-approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by CITY, said mortgagee or beneficiary may assign this Lease to its nominee, if, in the reasonable opinion of CITY, the nominee is a reputable, qualified, and financially responsible person or entity. Any deed of trust, mortgage, or other security agreement shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof.

- 4.5. Charter Section 225. Pursuant to City Charter Section 225, LESSEE and each of its assignees and subtenants shall make a full and complete disclosure of the name and identity of all persons and/or entities directly or indirectly involved in this Lease (residential tenants exempted) and the precise nature of all interests of all such persons. Each and every person and/or entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

SECTION 5: DEFAULT AND REMEDIES

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

- 5.1.1 LESSEE fails to make any payment required under this Lease;
- 5.1.2 LESSEE breaches any of its obligations under this Lease, 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;
- 5.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- 5.1.4 LESSEE is adjudicated as bankrupt; or
- 5.1.5 LESSEE makes a general assignment for the benefit of creditors.

- 5.2 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 failures 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:

- 5.2.1 the worth at the time of award any unpaid rent that was due at the time of termination;
- 5.2.2 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 affirmatively proves could have been reasonably avoided;
- 5.2.3 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 be reasonably avoided;
- 5.2.4 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
- 5.2.5 all other amounts in addition to or in lieu of those previously stated as maybe permitted

from time to time by California law.

As used in clauses 5.2.1 and 5.2.2, 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 5.2.3, 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.

5.3 Default if Leasehold is Encumbered. If there is a CITY-approved encumbrance on LESSEE's leasehold interest, CITY shall give the mortgagee or beneficiary written notice of LESSEE's default under this Lease, and the same mortgagee or beneficiary shall have thirty (30) days from the notice to cure the default, or, if the default is not 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 mortgagee or beneficiary uses reasonable diligence to pursue a cure, as determined in CITY'S sole discretion. If the mortgagee or beneficiary chooses to cure the default through litigation or foreclosure, then CITY may exercise any of the following options:

- 5.3.1 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 mortgagee or beneficiary;
- 5.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use 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; and
- 5.3.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, 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 substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

5.4 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.

- 5.5 Waiver. Any waiver by CITY of a breach or default by the 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 are a part of publicly-owned 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.

SECTION 6: EMINENT DOMAIN

- 6.1 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 shall be as follows:
- 6.1.1 Full Taking. If the entire Premises are taken, or a portion of the Premises is taken which is greater than a Partial Taking (defined below) ("Total Taking"), this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 6.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs and, in the reasonable opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation for the Allowed Use ("Partial Taking"), 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.
- 6.1.3 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 owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.1.4 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 LESSEE-owned improvements on the Premises in accordance with this Lease.
- 6.1.5 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.

SECTION 7: WASTE, DAMAGE OR DESTRUCTION

- 7.1 Waste, Damage or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within three (3) days of the occurrence of such fire or damage is over \$10,000 (or within 24 hours in an emergency situation). LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, 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 previously submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage unless an individual situation calls for the immediate repair and/or restoration of the Premises (to be determined by CITY in its sole discretion), LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 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 acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation 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 sole negligence or willful misconduct of CITY or its elected officials, officers, employees, representatives or 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. Prior to the Commencement Date, LESSEE shall not begin operating under the Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance required in below; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each 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 the Lease, shall not be deemed limited in any way to the insurance coverage required herein. Except as provided for under California law, all policies of insurance required hereunder must provide that CITY is entitled to thirty (30) days prior written notice (10 days for cancellation due to non-payment of premium) of cancellation or non-renewal of the policy or policies. Maintenance of specified insurance coverage is a material element of the Lease

and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of the Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of the Lease.

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

8.2.1.1 Commercial General Liability. 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 arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. 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.

8.2.1.2 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 Allowed Uses under this Lease or the Premises in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

8.2.2 Self-Insured Retentions. Self-insured retentions must be declared to and approved by CITY. CITY may require LESSEE to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or CITY.

8.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by the Lease or in the Special General Conditions 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.

8.2.4 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY prior to the Commencement Date.

8.2.4.1 Commercial General Liability Insurance Endorsements.

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 Additional Insured, CITY 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 its behalf, or (d) premises owned, leased, controlled or used by LESSEE.

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 CITY and its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured. Any insurance maintained by CITY and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

8.2.5 **Modification.** To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and/or coverage of any insurance required under this Lease at any time, by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance reasonably required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

8.2.6 **Additional Insurance.** LESSEE may obtain additional insurance not required by the Lease.

8.2.7 **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.

8.2.8 **Accident Reports.** LESSEE shall promptly report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed 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, and other pertinent information.

SECTION 9: RENOVATIONS; ALTERATIONS; MAINTENANCE

9.1 **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.

9.2 **Renovations/ Alterations.** Subject to Section 10, LESSEE shall not renovate, modify or alter the Premises in any manner except in accordance with plans and specifications previously submitted to and approved by the CITY. LESSEE shall not make any structural or major architectural design alterations to any approved improvements, structures or installations on the Premises without CITY's written approval, but maintenance and repair work or minor aesthetic improvements conducted in the LESSEE's ordinary course of business that are routinely made in preparing vacant units for new tenants otherwise made in accordance with applicable law and the terms of this Lease shall not require CITY's written approval. 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.

- 9.3 Construction Bond. If Lessee renovates, modifies or alters the Premises, CITY may at any time require LESSEE to deposit with CITY a faithful performance bond in the amount of one hundred percent (100%) of the estimated cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security reasonably satisfactory to CITY. The bond shall insure that the work commenced by LESSEE will be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted work will 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.
- 9.4 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, renovations, alterations, work or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes renovations, alterations, work 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.
- 9.5 Ownership of Improvements and Personal Property.
- 9.5.1 Any and all permanent improvements, in ground plant or tree material, in-ground irrigation and water wells, structures, and installations or additions to the Premises now existing or installed on the Premises by LESSEE shall at expiration or earlier termination of this Lease be deemed to be part of the Premises and shall become, at CITY's option, CITY's property free of all liens and claims, except as may otherwise be provided in this Lease.
- 9.5.2 If CITY elects not to assume ownership of all or any improvements, plant or tree material, in-ground irrigation and water wells, structures, and installations, CITY shall so notify LESSEE a minimum of one (1) year prior to expiration of the Term (except in the case of an early termination due to default or other early termination event allowed pursuant to this Lease, in which case reasonable notice shall be given), and LESSEE shall remove all such improvements, in-ground plant or tree material, in-ground irrigation and water wells, structures and installations, as directed by CITY at LESSEE's sole cost on or before lease expiration or earlier termination. If LESSEE fails to remove any improvements, in-ground plant or tree material, in-ground irrigation and water wells, structures, and installations as directed, LESSEE agrees to reimburse CITY for all costs and fees, including attorneys' fees, incurred by CITY involved with said removal and collecting reimbursement for said removal.
- 9.5.3 LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property shall be removed by LESSEE by the date of the expiration or earlier termination of this Lease. Any of said items which LESSEE fails to remove will be removed and/or stored by CITY subject to California law, and LESSEE agrees to reimburse CITY for all costs and fees, including attorneys' fees, incurred by CITY involved

with said removal and/or storage and collecting reimbursement for said removal and/or storage.

- 9.5.4 If any removal of such personal property by LESSEE results in damage to the remaining improvements on the Premises, LESSEE agrees to reasonably repair all such damage or LESSEE agrees to reimburse CITY for all costs and fees, including attorneys' fees, incurred by CITY involved with said repairs and collecting reimbursement for said repairs.
- 9.5.5 Notwithstanding any of the foregoing, in the event LESSEE desires to dispose of any of its personal property used in the operation of said Premises upon expiration or earlier termination of this Lease, then CITY shall have the first right to acquire or purchase said personal property.
- 9.5.6 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time needed after the expiration or termination of this Lease to remove improvements or personal property as required by this Lease, whether removal is done 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 a qualified appraiser.
- 9.6 Entry and Inspection. Upon not less than 72 hours written 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, may, during regular business hours enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 9.7 Maintenance. LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY, ordinary wear and tear excepted. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 9.8 Utilities. LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises.
- 9.9 Taxes. 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 licenses and permits, and including 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 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 assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.
- 9.10 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's written consent (not to be

unreasonably withheld or delayed) in accordance with applicable laws and regulations. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

- 9.11 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by strike, lockouts, labor disputes, acts of God, inability to obtain labor, materials or reasonable substitutes, judicial orders, enemy or hostile governmental action, civil commotion, accidents, fire, flood, earthquake, or other casualty, and other causes beyond the reasonable control of the party required to perform the act (excluding financial inability or hardship), that party shall be excused from performing the act for a period equal to the period of the prevention or delay (collectively "Unavoidable 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.

9.12 Hazardous Substances.

9.12.1 LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances 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 in violation of applicable law on the Premises without CITY's 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 in violation of applicable law.

9.12.2 Definitions. 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, 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.

9.12.3 Remediation. If LESSEE's occupancy, use, maintenance, alteration or renovation 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 in accordance with all applicable laws, rules and regulations of competent governmental authority.

9.12.4 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 such 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 pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.

- 9.12.5 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, alteration, 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.
- 9.12.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations 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.
- 9.12.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, alteration, 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 authority, 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 of Hazardous Materials caused by LESSEE's Operations 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 costs and expenses therefor.

SECTION 10: RENOVATION PLAN

- 10.1 Renovation Plan. Notwithstanding anything to the contrary contained herein, as additional consideration, LESSEE shall make certain renovations to the Premises, at a minimum of seven million, ninety-five thousand dollars (\$7,095,000), within the required completion dates, as set forth in **Exhibit "B"** Renovation Plan ("Renovation Plan") attached hereto and made a part hereof. CITY and LESSEE understand, acknowledge and agree that reasonable modifications of the Renovation Plan may be necessary in connection with the processing of appropriate permits and other approvals from the CITY acting in its regulatory capacity, and any such modifications shall be subject to the prior written approval of CITY as Lessor under this Lease. LESSEE shall secure CITY's prior written approval to commence work on the renovations set forth in **Exhibit "B"** Renovation Plan.

Without limiting LESSEE's obligation and ability to complete the work described in the Renovation Plan, nothing in this Lease 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.

- 10.1.1 Permits and Approvals. Prior to commencing any work on the Premises, in accordance with the Renovation 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 set forth in the Renovation Plan, including final review pursuant to the California Environmental Quality Act ("CEQA"). For the avoidance of doubt, approval of this Lease does not foreclose all options, alternatives or mitigation measures for purposes of CEQA. If LESSEE fails to secure all required permits and approvals from the competent governmental authorities to commence work in accordance with the Renovation Plan within two (2) years from the Commencement Date, 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.

10.2 Failure to Meet Schedules: Termination.

- 10.2.1 Failure of Renovation Plan. Notwithstanding any provision of this Lease to the contrary, CITY may, in its sole discretion, terminate this Lease if any of the following occurs:
- (a) LESSEE fails to commence the work pursuant to the Renovation Plan within one (1) year after the Commencement Date;
 - (b) LESSEE fails to complete the work set forth in the Renovation Plan within one (1) year after the scheduled completion date for the Renovation Plan; or
 - (c) After commencement of the work set forth in the Renovation Plan, the work is

stopped for more than three (3) months, unless such work stoppage is caused by a force majeure event.

- 10.3 Liquidated Damages. The parties agree that the damages to CITY resulting from LESSEE's failure to complete the work identified in the Renovation Plan by the scheduled completion dates would be extremely difficult to determine. Therefore, the Parties agree that if LESSEE fails to complete the work set forth in the Renovation Plan as required by this Lease by the scheduled completion date, as set forth in **Exhibit "B"** Renovation Plan, as may be amended, LESSEE shall pay to CITY the amount of Three Hundred and Forty-One Dollars (\$341.00) as liquidated damages, and not as a penalty, for each day after the applicable scheduled completion date until completion of the improvements set forth in **Exhibit "B"** Renovation Plan. Such liquidated damages shall be deemed additional rent due and payable upon CITY's demand therefor.
- 10.4 City's Costs; Indemnity. In addition to all fees, costs, etc., required to be paid by LESSEE for the processing of its plans through the City of San Diego's Development Services Department, or any other regulatory agency, LESSEE shall reimburse CITY for all reasonable out-of-pocket costs and expenses (including, without limitation, any architect and/or engineer fees) incurred by City in approving or disapproving LESSEE's plans. LESSEE shall be liable for and shall indemnify and defend CITY from any claim, demand, lien, loss, damage or expense, including reasonable attorneys' fees and costs, arising from LESSEE's performance of work permitted under this Lease.
- 10.5 Force Majeure. For purposes of Section 10 of this Lease, "force majeure event" shall mean an event beyond LESSEE's reasonable control, including, without limitation, strikes or other labor difficulties, unavailability or scarcity of materials or labor, war, riot, civil insurrection, accidents, material adverse weather conditions and acts of God, but does not include delays attributable to obtaining necessary governmental permits and approvals.
- 10.6 Annual Maintenance and Repairs. During the last ten (10) years of the Term, LESSEE shall be required to expend, on an annual basis, at least twelve and a half percent (12.5%) of the Gross Income for each such twelve (12) month period on maintenance and repairs to the Premises, so as to provide assurance to CITY that the Improvements will be in satisfactory condition when the Term expires.

SECTION 11: GENERAL PROVISIONS

- 11.1 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."

- 11.2 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 Postal Service, registered or certified mail, postage prepaid or by nationally recognized overnight courier and addressed as follows:

If to LESSEE:

Alexander Court Trust
c/o Michael P. Drogin, Manager
8060 La Jolla Shores Drive, Suite 7C
La Jolla, California 92037

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Department of Real Estate and Airport Management
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101

Either party may change the place to which notices are given by advising the other party in writing.

- 11.3 Compliance with Law. LESSEE shall at all times in the use, maintenance, occupancy, renovation and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. Upon request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE. However LESSEE may, after written notice to CITY, by appropriate proceedings conducted promptly at LESSEE's expenses, and in LESSEE's name, and/or wherever necessary in CITY's name contest in good faith the enforcement of any such law or regulation against LESSEE, and LESSEE may defer compliance with the same during such contest, provided LESSEE diligently prosecutes such contest to a final determination by the authority having jurisdiction thereof, and providing LESSEE shall defend, indemnify and save CITY harmless from any fine, penalty or other civil or criminal liability resulting from such contest or deferral.
- 11.4 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 of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 11.4.1 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.

- 11.4.2 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.
- 11.5 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 all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, gender expression, gender identity, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its 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.
- 11.6 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE certifies that it will maintain such equal benefits throughout the term of this Lease.
- 11.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with 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"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
- 11.7.1 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.
- 11.7.2 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.
- 11.7.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.

- 11.7.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 11.7.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access 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 LESSEE's sole cost and expense.
- 11.7.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.
- 11.8 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:
 - 11.8.1 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; and
 - 11.8.2 Establish a drug-free awareness program to inform employees about all of the following:
 - 11.8.2.1 The dangers of drug abuse in the workplace;
 - 11.8.2.2 LESSEE's policy of maintaining a drug-free workplace.
 - 11.8.2.3 Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 11.8.2.4 The penalties that may be imposed upon employees for drug abuse.

LESSEE shall include in each of its sublicenses and contracts (but not any residential sublease) related to this Lease language obligating each sublicensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

- 11.9 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 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.
- 11.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. To the extent legally required under applicable law with respect to any work on the Premises, 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.

- 11.11 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 Residential 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.

- 11.12 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 on the Premises.
- 11.13 Memorandum of Lease. A Memorandum of Lease, substantially in the form of **Exhibit C** Memorandum of Lease, attached hereto, shall be executed, acknowledged and recorded in the Office of the County Recorder of the County of San Diego, State of California immediately after the Commencement Date.
- 11.14 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 11.15 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.16 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.
- 11.17 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.
- 11.18 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, maintenance and renovation of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

- 11.19 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.
- 11.20 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.
- 11.21 Consents. Unless otherwise specified herein, all consents to be given by either party shall be reasonably and timely given.
- 11.22 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. LESSEE shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 11.22.1 LESSEE and Sublessee Requirement. The Equal Pay Ordinance applies to any commercial sublessee of the Premises to the same extent as it would apply to LESSEE. LESSEE shall require commercial sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- 11.22.2 Notice Requirement. LESSEE must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

[Signature Page Follows]

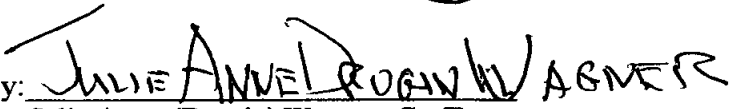
IN WITNESS WHEREOF, this Lease is executed to be effective as of the Effective Date.

Date: 3/29/2022

ALEXANDER COURT TRUST, as Lessee

By: 
Michael P. Drogin, Co-Trustee

Date: 3-27-22

By: 
Julie Anne (Drogin) Wagner, Co-Trustee

THE CITY OF SAN DIEGO,
a California municipal corporation

Date: 4-6-22

By: 
Penny Maus, Director
Department of Real Estate and Airport
Management

Approved as to form this 7th day
of April 2022.

MARA W. ELLIOTT, City Attorney

BY: 
Kevin Reisch
Sr. Chief Deputy City Attorney

Exhibit A: Legal Description of Premises
Exhibit B: Renovation Plan
Exhibit C: Memorandum of Lease

Exhibit A

Legal Description of Premises

LOTS 1 THROUGH 40, AND THE VACATED ALLEY, IN BLOCK 309, PACIFIC BEACH, ACCORDING TO MAP THEREOF NO. 922, FILED SEPTEMBER 24, 1904 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN DIEGO; TOGETHER WITH THOSE VACATED PORTIONS OF NOYES STREET, OLIVER OLNEY STREET ADJOINING SAID BLOCK 309 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

Exhibit B

Cedar Shores Apartments Alexander Court Trust

RENOVATION PLAN

Overview

Cedar Shores is an existing 120-unit apartment complex built in 1972. Located in the community of Pacific Beach near the northeast area of Mission Bay, the property consists of (78) Studio, (30) One Bedroom/One Bath & (12) Two Bedroom/Two Bath conventional apartment units in a three story structure with separate office, managers unit, pool and spa.

Proposed Renovation

Though well maintained, the apartment complex will benefit from renovation. Lessee's proposed renovation will provide the City higher revenue and provide benefit to the immediate neighborhood without removing critical housing stock. Upon execution of the lease, Lessee will initiate the following:

Interior Unit Remodel: Upgrade kitchen cabinets, counters, appliances, electrical and plumbing. Reconfigure floor plans to allow maximum use of living space.

(Estimated Cost - \$2,135,000)

Clubhouse and Level 2 Pool Deck: Renovate clubhouse, managers unit, pool & spa. The renovated clubhouse will include leasing offices, community room, fitness center, computer lab, managers unit, maintenance workshop, equipment storage, community kitchen and bathrooms.

(Estimated Cost - \$3,260,000)

Exterior Building Improvements: Update exterior with new materials (stucco, wood, etc.). Replace exterior doors, windows, sliding doors, balcony guardrails, update exterior exit ways and new roof.

(Estimated Cost - \$1,250,000)

Interior Common Areas: Renovation of common area lobbies and hallways.

(Estimated - \$300,000)

Landscaping: Install drought tolerant plant material and update irrigation and lighting.

(Estimated - \$150,000)

Solar Photovoltaic System: Installation of solar photovoltaic system serving the residential and other uses on premises (Estimated Cost - \$95,000)

TOTAL ESTIMATED COSTS

\$7,095,000

ALEXANDER COURT TRUST
 2150 Pacific Beach Drive, San Diego, CA 92109
 120 Residential Units

EXHIBIT C
RENOVATION PLAN
Cedar Shores Apartments
Alexander Court Trust

		Estimated From Commencement Date	Minimum Improvement Costs
Phase 1	Estimated Completion Date:	30 months	\$5,897,750
	City Lease Signed (Commencement Date)		
	Architectural		
	• Submittal for Discretionary Approvals & Permits (8-12 months)	8-12 months	
	• Submittal for General Building approvals & Permits (2-3 months)	2-3 months	
	Construction Staging	3-4 months	
	Commence Exterior Update Residential Building	3-4 months	
	• New Exterior Materials (stucco, wood, etc.)		
	• New windows & sliding doors		
	• Update balconies & quardrails		
	• New roof		
	• New exterior doors & guardrails		
	Unit Remodel @ 3 units per month (estimated turnover)		
	• New Kitchen Cabinets & Appliances		
	• Updated Floor Plan		
	• New modern flooring		
	Construction Staging	8-12 months	
	Commence Construction of Clubhouse	8-12 months	
	Install Solar Photovoltaic System serving residential & other uses	12-24 months	
	Parking Lot & Lighting Update		
Phase 2	Estimated Completion Date:	45 months	\$1,197,250
	Unit Remodel @ 3 units per month (estimated turnover)		
	Update Interior Common Area lobbies, hallways & stairwells		
	Install Drought Tolerant Landscaping		
	Update Irrigation		

Total

\$7,095,000

Exhibit C

Memorandum of Lease

RECORDING REQUESTED BY AND

WHEN RECORDED MAIL TO:

City of San Diego
1200 Third Avenue, MS-51 A
San Diego, CA 92101
Attention: Dept. of Real Estate and Airport Management

MAIL TAX STATEMENTS TO:

Alexander Court Trust

c/o Michael P. Drogin, Co-Trustee
Julie Ann (Drogin) Wagner, Co-Trustee
8060 La Jolla Shores Drive, Suite 7C
La Jolla, CA 92037

SPACE ABOVE THIS LINE FOR RECORDER'S USE

MEMORANDUM OF LEASE

This Memorandum of Lease (the "**Memorandum**") is dated as of April 7, 2022
between City of San Diego, a California municipal corporation ("**CITY**"), and Alexander Court Trust
("**LESSEE**") who agree as follows:

1. CITY currently leases the Property described on Exhibit A to LESSEE, pursuant to that certain LEASE AGREEMENT ("Current Lease") dated September 21, 1971, between CITY and Stephen B. Drogin, an individual, on file with the San Diego City Clerk as Document 737414 for the operation of one hundred twenty (120) market-rate apartment units. The Current Lease was consented to assignment to Julie Anne Drogin by the terms of that certain Assignment of Lease dated July 29, 1982. CITY subsequently consented to the second assignment of the Current Lease from Julie Anne Drogin to Alexander Court Trust, in accordance with the terms and conditions of the Assignment of Lease dated September 10, 1996. The Current Lease was then assigned from Alexander Court Trust to Alexander Court Properties, L.P., in accordance with the terms and conditions of the Assignment of Lease dated November 21, 2003. The Current Lease was then assigned from Alexander Court Properties, L.P. to LESSEE in accordance with the terms and conditions of the

Assignment of Lease dated April 23, 2019.

2. The parties have agreed to enter into a new lease entitled Percentage Ground Lease ("Lease"), effective on April 7, 2022. The Commencement Date of the Lease is May 1, 2022. Pursuant to the Lease, CITY has leased the Property to LESSEE and LESSEE has accepted tenancy of the Property from CITY commencing on the Commencement Date (as defined therein) and as set forth herein and continuing for fifty (50) years. During the term of the Lease, LESSEE shall ensure that at least eighteen (18) affordable residential dwelling units (as units become available), representing fifteen percent (15%) of the total units on the Premises, shall be made available for rent and occupied by households whose aggregate gross annual income at initial occupancy does not exceed eighty percent (80%) of the then current area median income ("AMI") for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by the United States Department of Housing and Urban Development and published in the Federal Register, as adjusted for household size.

3. The provisions of the Lease to be performed by LESSEE, whether affirmative or negative in nature, are intended to and shall bind LESSEE and its successors and assigns at any time, and shall inure to the benefit of CITY and its successors and assigns.

4. The provisions of the Lease to be performed by CITY, whether affirmative or negative in nature, are intended to and shall bind CITY and its successors and assigns at any time, and shall inure to the benefit of LESSEE and its successors and assigns.

5. This Memorandum is prepared for the purpose of recordation only and it in no way modifies any of the provisions of the Lease.

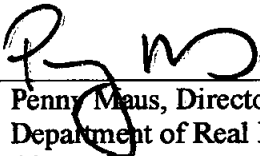
6. Reference is made to the entire Lease for any and all purposes. A true copy of the Lease is on file in the office of the San Diego City Clerk, 202 C Street, 2nd Floor, San Diego, California 92101, as Document Number RR- 313882.

[Signature Page Follows]

IN WITNESS WHEREOF, CITY and LESSEE have executed this Memorandum as of the date first set forth above.

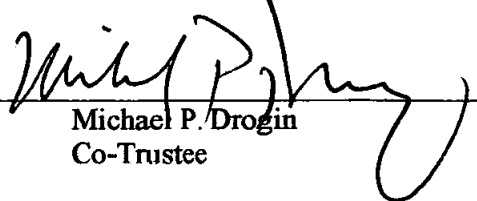
CITY

THE CITY OF SAN DIEGO

By: 
Penny Maus, Director
Department of Real Estate and
Airport Management

LESSEE

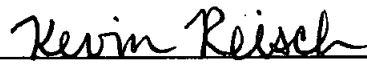
ALEXANDER COURT TRUST

By: 
Michael P. Drogin
Co-Trustee

By: 
Julie Anne (Drogin) Wagner
Co-Trustee

Approved as to form this 7th day of
April, 2022.

MARA W. ELLIOTT, CITY ATTORNEY

By: 
Kevin Reisch
Sr. Chief Deputy City Attorney

CIVIL CODE §1189

STATE OF CALIFORNIA)
) §
COUNTY OF San Diego)

personally appeared Penny Maus
Name of Signer

A rectangular notary seal stamp with a decorative border. On the left is a circular emblem for the State of California, featuring the word 'EUREKA' at the top, 'THE GREAT SEAL OF THE STATE OF CALIFORNIA' around the perimeter, and '1846' at the bottom. To the right of the emblem, the text reads: 'TERESA DOLORES MORSE', 'Notary Public - California', 'San Diego County', 'Commission # 2277360', and 'My Comm. Expires Mar 9, 2023'.

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

Signature Teresa Adams-Morse

GENERAL
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)

) ss:

)

COUNTY OF San Diego

On 3/29/2022 before me Kevin Reed, notary public
(insert name and title of the officer),

Personally appeared Michael P. Dregin, 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 their 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

Kevin Reed

[Seal]



GENERAL
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)

) ss:

)

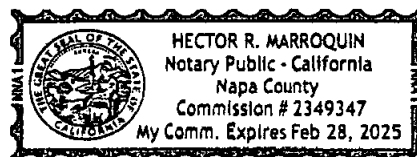
COUNTY OF Napa

On 03/27/2022 before me Hector R. Marroquin, Notary Public
(insert name and title of the officer),

Personally appeared Julie Anne Progn Wagner, 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 their 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 _____

[Seal]

EXHIBIT A TO MEMORANDUM OF LEASE

Legal Description of Premises

LOTS 1 THROUGH 40, AND THE VACATED ALLEY, IN BLOCK 309, PACIFIC BEACH, ACCORDING TO MAP THEREOF NO. 922, FILED SEPTEMBER 24, 1904 IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SAN DIEGO; TOGETHER WITH THOSE VACATED PORTIONS OF NOYES STREET, OLIVER AVENUE AND OLNEY STREET ADJOINING SAID BLOCK 309 IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA.

RESOLUTION NUMBER R- 313882

DATE OF FINAL PASSAGE FEB 23 2022

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A 50-YEAR GROUND LEASE BETWEEN THE CITY OF SAN DIEGO AND ALEXANDER COURT TRUST FOR APPROXIMATELY 2.98 ACRES OF REAL PROPERTY LOCATED AT 2150 PACIFIC BEACH DRIVE FOR THE CEDAR SHORES APARTMENT PROJECT, AND MAKING A RELATED FINDING THAT THE GROUND LEASE SERVES A VALID PUBLIC PURPOSE.

WHEREAS, the City of San Diego (City) owns approximately 2.98 acres of real property located at 2150 Pacific Beach Drive, San Diego, California (Property); and

WHEREAS, since 1971, the City has leased the Property to Alexander Court Trust (Lessee), or to Lessee's predecessors-in-interest, under a lease on file with the San Diego City Clerk as Document No. 737414 (Current Lease), for the construction and operation of 120 market-rate residential rental units, commonly known as Cedar Shores Apartments; and

WHEREAS, the Current Lease is for a 55-year term expiring September 30, 2026; and

WHEREAS, the City and Lessee, by its current co-trustees, Julie Anne (Drogin) Wagner and Michael P. Drogin, now propose entering into that certain Percentage Ground Lease (New Lease), a copy of which is included in the docket materials accompanying this Resolution; and

WHEREAS, the New Lease will have a 50-year term, commencing the first day of the calendar month after the parties sign the New Lease, and will supersede the Current Lease; and

WHEREAS, the New Lease includes the following requirements: (a) Lessee will invest a minimum of \$7,000,000 to complete various improvements at the Property, consisting of interior and exterior upgrades as further described in the Renovation Plan attached as Exhibit B to the

New Lease; (b) the rent payable by Lessee to the City will be the greater of percentage rent or minimum rent, with the initial percentage rent equal to 8.5 percent of all gross income generated from the Property and the initial minimum rent equal to \$11,078 per month; (c) the amount of percentage rent will be adjusted every ten years, and the amount of minimum rent will be adjusted every five years, as further described in Section 3.2 of the New Lease; and (d) Lessee will be responsible for all maintenance, utilities, and insurance for the Property throughout the term of the New Lease; and

WHEREAS, although the Property does not currently include any affordable housing units, the New Lease requires Lessee to provide a minimum of 18 low-income affordable housing units, equating to a total of 15 percent of the overall residential units on the Property, as units become available; and

WHEREAS, during the term of the New Lease, the affordable housing units on the Property will be made available for rent and occupied by households whose aggregate gross annual income does not exceed 80 percent of local area median income; and

WHEREAS, the City will annually monitor Lessee's compliance with the affordable rent restrictions affecting the Property; and

WHEREAS, Paragraph S on page 15 of Council Policy 700-10 (Paragraph S) provides that, when the City grants a lease extension during the last 20 percent of the remaining lease term, the City shall receive compensation from the lessee equal to the change in present value attributable to the City's deferral of its reversionary interest in the leasehold improvements; and

WHEREAS, the City has estimated that the difference in present value under Paragraph S is negative \$3,133,321 because Lessee will invest \$7,000,000 in capital improvements and will pay increased rent to the City during the New Lease term; and

WHEREAS, accordingly, Lessee does not owe any compensation to the City under Paragraph S because the City will gain a net financial benefit by entering into the New Lease with a 50-year term, as opposed to allowing the Current Lease to expire in September 2026; and

WHEREAS, in addition to the City receiving adequate consideration in the New Lease transaction, the Council will make a finding in this Resolution that the New Lease serves a valid public purpose by imposing long-term affordable rent restrictions with respect to 18 existing residential units on the Property that are not presently subject to affordable rent restrictions; and

WHEREAS, the market value of the fee interest of the Property in a vacant condition, as determined by an independent fee appraiser and confirmed by qualified City staff, is \$9,500,000 as of August 5, 2021; and

WHEREAS, as amended by Assembly Bill 1486 effective January 1, 2020, the Surplus Land Act (SLA), California Government Code sections 54220-54234, is generally intended to make a local agency's surplus land (i.e., land not needed for the local agency's use) available for potential acquisition by affordable housing sponsors or other local public entities; and

WHEREAS, in April 2021, the California Department of Housing and Community Development (HCD) issued the final SLA Guidelines to assist with implementation of the SLA, as amended by Assembly Bill 1486; and

WHEREAS, Section 102(h) of the SLA Guidelines states HCD's view that the SLA process applies to lease transactions, except for (1) any lease of land on which no development or demolition will occur and (2) any lease which has a term that is less than five years, including any extensions, amendments, or options; and

WHEREAS, HCD has confirmed that, under clause (1) above, the SLA process does not apply to lease transactions that involve renovation or rehabilitation activities, with no demolition or consolidation of existing residential units; and

WHEREAS, the New Lease involves renovations and upgrades to the existing facilities on the Property and will not result in the demolition or consolidation of any existing residential units, and therefore, the New Lease is not subject to the SLA process; NOW, THEREFORE,

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

1. The Council finds that the New Lease serves the valid public purpose of imposing long-term affordable rent restrictions with respect to 18 existing residential units on the Property that are not presently subject to affordable rent restrictions.

2. The Council approves the New Lease, for the term of 50 years, conditioned upon a provision being added to the Renovation Plan attached to the New Lease requiring the Lessee to install a new solar photovoltaic system serving the residential and other uses at the Property.

3. The Mayor or designee is authorized and directed, on the City's behalf, to sign the New Lease. A copy of the New Lease, when fully signed, shall be placed on file in the Office of the City Clerk as Document No. RR- 313882.

4. The Mayor or designee is authorized, on the City's behalf, to sign all additional documents necessary to implement the terms and conditions of the New Lease.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Kevin Reisch
Kevin Reisch
Senior Chief Deputy City Attorney

KJR:jdf
1/25/2022
2/7/2022 REV.
Or.Dept: Real Estate Assets
Doc. No.: 2782908_2
Companion to R-2022-236

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego at this meeting of FEB 07 2022.

ELIZABETH S. MALANDRINO
City Clerk

By [Signature]
Deputy City Clerk

Approved: 2/23/22
(date)

[Signature]
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on FEB 07 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 FEB 23 2022.

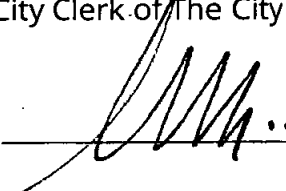
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 313882

Passed by the Council of The City of San Diego on February 7, 2022, by the following vote:

YEAS: **LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE,**
VON WILPERT, CATE, CAMPILLO, MORENO, & ELO-RIVERA.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

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)

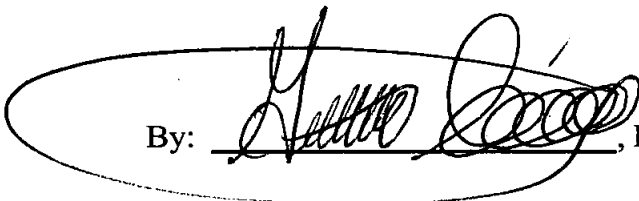
By: **Gil Sanchez**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-313882**, approved on **February 7, 2022**. The date of final passage is
February 23, 2022.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy