DUPLICATE

CITY OF SAN DIEGO
FLAT RATE LEASE

BY AND BETWEEN

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION

AND

VICTOR J. SCHULMAN TRUST dated December 8, 1989, by FIRST AMERICAN TRUST, FSB, as Trustee

DOCUMENT NO. RR-310773
FILED NOV 15 2016
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO
FLAT RATE LEASE

THIS CITY OF SAN DIEGO FLAT RATE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and VICTOR J. SCHULMAN TRUST dated December 8, 1989, by FIRST AMERICAN TRUST, FSB, as Trustee ("LESSEE"), to be effective as of the date approved by the San Diego City Attorney (the "Effective Date).

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

SECTION 1: PREMISES; USES

1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that CITY-owned real property located at 3240 Sports Arena Boulevard, San Diego, California 92110 (the "Premises"), as improved with an existing LESSEE-owned building (the "Building") and consisting of approximately 16,000 square feet improved with a parking lot and more particularly described and depicted in **Exhibit A: Legal Description of Premises**, **Exhibit B: Site Plan**, and **Exhibit C: Aerial Plan of Premises** attached hereto.

1.2 Allowed Uses. LESSEE may solely and exclusively use the Premises to operate a retail store, and for no other purpose whatsoever. Notwithstanding the foregoing, and subject to the prior written approval of CITY in each instance, which approval shall be at CITY's sole discretion, other reasonably and incidental uses may be requested. Combined, all authorized uses shall hereinafter be referred to as "Allowed Uses".

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. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.

1.4 Governmental Approvals. By entering into this Lease, neither CITY nor 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, development, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.

1.5 CITY's Consent, Approval. Unless required by law or otherwise expressly provided herein, 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"), which shall not be unreasonably withheld or delayed. CITY's discretionary acts under this Lease shall be made in the Mayor's discretion, unless required by law or otherwise expressly provided herein.

1.6 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.

1.7 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, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.

1.7.3 Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.

1.7.4 Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises, and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to the Premises or LESSEE's personal property directly caused by CITY's exercising its rights reserved in this section. 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 applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner.

SECTION 2: TERM

2.1 Term. The term of this Lease shall commence on the Effective Date and expire on May 31, 2020 (the "Term").

2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to one hundred twenty-five percent (125%) of the rent in effect upon expiration or earlier termination of the Lease.

2.3 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, reasonable wear and tear excepted. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises exclusive of the Building. 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 provision, 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: OPERATIONS ON THE PREMISES

3.1 Operation of Facilities. LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Term. A regular schedule of days and hours of operation shall be established by LESSEE to best serve the public. LESSEE shall diligently furnish services to the public in a creditable manner.

3.2 Recycling Ordinance. LESSEE shall comply with CITY's Recycling Ordinance (San Diego Municipal Code sections 66.0701-66.0718, as amended from time to time), which requires responsible persons to provide on-site recycling service (including the provision of signage on recycling receptacles); ensure that occupants are educated about recycling services; and to require occupant participation in recycling programs. Occupant participation shall include separating recyclable materials from other solid waste and depositing the recyclable materials into recycling containers for collection. Recyclable materials includes, without limitation, plastic and glass bottles and jars, paper, newspaper, metal containers, cardboard, and rigid plastics including clean food waste containers, jugs, tubs, trays, pots, buckets, and toys. All compliance with the requirements of this section shall be in accordance with Recycling Ordinance specifications and all related regulations.

SECTION 4: RENT

4.1 Rent. LESSEE shall pay to CITY monthly rent ("Monthly Rent") in the amount of Ten Thousand Three Hundred Fifty-Eight Dollars ($10,358). Monthly Rent shall be increased by two percent (2%) annually on the anniversary of the Effective Date of the Lease. LESSEE shall pay the Monthly Rent in advance on the first day of each month during the Lease Term.

Beginning on the second year of the Lease Term, the minimum Monthly Rent will be Ten Thousand Five Hundred Sixty-five Dollars and Sixteen Cents ($10,565.16).

Beginning on the third year of the Lease Term, the minimum Monthly Rent will be Ten Thousand Seven Hundred Seventy-six Dollars and Forty-six Cents ($10,776.46).

Beginning on the fourth year of the Lease Term, the minimum Monthly Rent will be Ten Thousand Nine Hundred Ninety-one Dollars and Ninety-nine Cents ($10,991.99).

Beginning on the fifth year of the Lease Term, the minimum Monthly Rent will be Eleven Thousand Two Hundred Eleven Dollars and Eighty-three Cents ($11,211.83).

4.2 Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to "City Treasurer" and be mailed to:

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

or hand-delivered to:

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

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

4.3 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. 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 LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease.

4.3.1 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 costs of the audit:

4.3.1.1. For any given lease year, if an audit reveals an underpayment of consideration due under this Lease 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

4.3.1.2. LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any deficiency determined by the audit shall be considered delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease.

4.4 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by 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.

4.5 Delinquent Monthly Rent. If LESSEE fails to pay Monthly Rent when due, LESSEE shall pay, in addition to the unpaid Monthly Rent, five percent (5%) of the delinquent Monthly Rent. If the Monthly Rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) (being a total of ten percent [10%]), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of Monthly 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. 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. 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 late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

5.1 Leasehold Encumbrances. LESSEE may not encumber LESSEE's leasehold estate by deed of trust or other security instrument.

5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part of the Premises, or grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, and guests, to use or occupy the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders.

5.2.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the assignment, sublease or other grant of rights be subject and subordinate to each and every provision of this Lease.

5.2.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its subtenants and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.

SECTION 6: DEFAULT AND REMEDIES

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

6.1.1 LESSEE fails to make any payment required under this Lease when due;

6.1.2 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;

6.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;

6.1.4 LESSEE is adjudicated a bankrupt; or

6.1.5 LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may 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:

6.2.1 the worth at the time of any unpaid rent that was due at the time of termination;

6.2.2 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;

6.2.3 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;

6.2.4 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

6.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2.1 and 6.2.2, 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 6.2.3, 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.

6.3 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

6.4 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises 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 7: EMINENT DOMAIN

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

7.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

7.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.

7.1.3 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 of LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.

7.1.4 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 improvements placed by it on the Premises in accordance with this Lease.

7.1.5 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 8: INDEMNITY; HOLD HARMLESS; INSURANCE

8.1 Indemnification and 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 this Lease or LESSEE's occupancy, use, development, maintenance or restoration of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that LESSEE's

duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents.

8.2 Insurance. LESSEE shall not begin operating under this Lease until it has:

8.2.1 obtained, and provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY;

8.2.2 obtained CITY approval of each company or companies as required in Section 8.5 of this Lease; and

8.2.3 confirmed that all policies contain the specific provisions required in Section 8.6 of this Lease. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. 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 this Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

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

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

8.3.1 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.

8.3.2 Commercial Automobile Liability. For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of $1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.

8.3.3 Workers' Compensation. For all of LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of $1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

8.3.4 Professional Liability. For all of LESSEE's employees who are subject to this Lease, LESSEE shall keep in full force and effect, Professional Liability coverage for professional liability with a limit of $1 million per claim and $2 million annual aggregate. LESSEE shall ensure both that:

8.3.4.1 the policy retroactive date is on or before the date of commencement of this Lease; and

8.3.4.2 the policy will be maintained in force for a period of five (5) years or termination of this Lease whichever occurs last. LESSEE agrees that for the time period defined above, there will be no changes or endorsements to the policy that increase CITY's exposure to loss.

8.3.5 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 of the Premises 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 said insurance to CITY's Real Estate Assets Department.

8.4 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.

8.5 Acceptability of Insurers.

8.5.1 Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY.

8.5.2 CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

8.6 Required Endorsements. The following endorsements to the policies of insurance are required to be provided to CITY before any operations are initiated under this Lease.

8.6.1 Commercial General Liability Insurance Endorsement.

8.6.1.1 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 the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.

8.6.1.2 Primary and Non-Contributory Coverage. The policy or policies must be endorsed to provide that the insurance is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and representatives with respect to the operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

8.6.2 Automobile Liability Insurance Endorsements.

8.6.2.1 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 the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESSEE.

8.6.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

8.6.3.1 Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of the required policy or policies.

8.7 Reservation of Rights. CITY reserves the right, from time to time, to review LESSEE's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to CITY.

8.8 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.

8.9 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the 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: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

9.1 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean and clear of refuse and obstructions, and shall dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy, and sanitary, LESSEE shall restore the Premises within a reasonable time.

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

9.3 Asbestos. If either CITY or LESSEE makes improvements, alterations or repairs to the Building or the Premises, the party causing such improvements, alterations or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises or the Building made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.

9.4 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises.

9.5 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY. LESSEE shall, at its cost and expense, obtain and maintain trash receptacles and trash-removal service.

9.6 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without CITY's prior written approval. Once consent is given for any specific improvement/alteration, LESSEE shall not make any structural or architectural design alterations to said approved improvements, structures, or installations on the Premises without CITY's additional prior 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.

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

9.8 Construction Bond. If LESSEE constructs any type of improvements/alterations on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

9.9 Liens. LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, 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.

9.10 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.

9.11 Signs. LESSEE shall not erect or display new banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises after the Effective Date of this Lease, 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.

9.12 Ownership of Improvements and Personal Property.

9.12.1 Improvements. During the Term, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and thereafter shall be owned by CITY, with the exception of the Building which shall remain the separate property of LESSEE. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such CITY-owned improvements, fixtures, structures, and installations or additions removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later August 29, 2020. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required herein, CITY may, at its option, remove them at LESSEE's sole cost and expense.

9.12.1.1 CITY shall determine, in its sole discretion, whether it is interested in acquiring the Building from LESSEE or whether LESSEE shall remove the Building from the Premises at the expiration or earlier termination of the Lease.

9.12.1.2 CITY shall give LESSEE notice of its determination not less than a year prior to the expiration of the Term. If CITY determines that it is interested in acquiring the Building and LESSEE has not signed a Purchase and Sale Agreement by August 31, 2019, then the removal of the Building shall occur as described below.

9.12.1.3 If CITY determines that LESSEE shall remove the Building from the Premises, LESSEE shall, at LESSEE's sole cost and expense, remove the Building and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than August 29, 2020. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of the Building. If LESSEE fails to remove the Building as required herein, CITY may, at its option, remove it at LESSEE's sole cost and expense.

9.12.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

9.12.3 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY after August 29, 2020, for any period of time needed to remove improvements, including the Building, or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.

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

9.13 Unavoidable Delay. Except otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act or rendering any service required under this Lease, by reason of strikes, inability to procure materials, riot, insurrection, war or other reasons of a similar nature which are beyond the reasonable control of the party (collectively referred to herein as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period equivalent to the period of such delay. Notwithstanding the foregoing, nothing contained in this section shall be applied so as to: (i) permit any delay or time extension due to shortage of funds, or (ii) excuse any nonpayment or delay in payment of any type of rent. It shall be a condition to either party's claim of the benefit of this section that such party ("Claiming Party") notify the other in writing within 48 hours after the occurrence of the Event, and within 24 hours after request shall advise the other party in writing of its good faith estimate of the time which will be required until the delay is ended. Claiming Party shall advise the other in writing whenever Claiming Party learns that any material additional time shall be required, and promptly upon request shall advise the other party of any latest estimated time of cure of the delay and the actions being taken to cure the delay.

9.14 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County

Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

9.14.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.

9.14.2 "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the federal Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

9.14.3 Remediation If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, regulations and directives of competent governmental authorities.

9.14.4 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 to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all Hazardous Substances in any type of container, equipment or device 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 materials, wastes or other containers, equipment or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment or device requiring disposal or removal as required by this provision.

9.14.5 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, development, 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.

9.14.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or beneath the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency pursuant to 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.

9.14.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY shall notify LESSEE of such belief and allow LESSEE up to fifteen (15) days after such notice to commence the performance of an environmental assessment under regulatory oversight of the suspect area by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. If LESSEE fails to cause such an environmental assessment to be commenced with the noticed time period, CITY may cause the assessment to be performed. 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 city, county, state or federal laws, statutes, ordinances or regulations, 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 or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause, the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 10: GENERAL PROVISIONS

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

If to LESSEE:

VICTOR J. SCHULMAN TRUST dated December 8, 1989, by FIRST AMERICAN TRUST, FSB as Trustee
Attn: Chip Graham
5 First American Way, 4th Floor, MS3
Santa Ana, CA 92707
(877) 908-7878

If to CITY:

THE CITY OF SAN DIEGO
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700 (MS 51A)
San Diego, California 92101
(619) 236-6020

10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. Upon CITY's request, LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspections, if any).

10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.

10.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all of LESSEE's contracts for work related to this Lease so that such provisions will be binding upon each of LESSEE's contractors. LESSEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501 through 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.

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

10.6 Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Premises has not been inspected by a Certified Access Specialist (CASp).

10.7 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 (ADA); and all other applicable local, state and federal laws and regulations enacted, or hereafter enacted, protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:

10.7.1 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.

10.7.2 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.

10.7.3 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.

10.7.4 Where required by law, any improvements made to the Premises by LESSEE shall comply with 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 the sole cost of LESSEE.

10.7.5 LESSEE shall include language in each sublease agreement which indicates the sublessee's agreement to abide by the foregoing provisions. LESSEE and sublessees shall be individually responsible for their own ADA employment programs.

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

10.8 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:

10.8.1 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.

10.8.2 Establish a drug-free awareness program to inform employees about all of the following:

10.8.3 The dangers of drug abuse in the workplace;

10.8.4 LESSEE's policy of maintaining a drug-free workplace;

10.8.5 Any available drug counseling, rehabilitation, and employee assistance programs; and

10.8.6 The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each of its subleases and contracts 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 subleases and contractors, shall be individually responsible for their own drug-free workplace program.

10.9 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

10.10 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

10.11 Water Quality Best Management Practices. LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and stormwater management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

10.11.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of the Lease (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.

10.11.2 Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.

10.12 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 discriminate or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

10.13 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.

10.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.

10.15 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.

10.16 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.

10.17 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties, and agreements between them pertaining to this Lease. Any modification, alteration, or amendment of this Lease shall be in writing and signed by all the parties hereto.

10.18 Partial Invalidity. If any term, covenant, condition, or provision of this Lease is found invalid, void, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

10.19 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.

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

VICTOR J. SCHULMAN TRUST dated December 8, 1989, by FIRST AMERICAN TRUST, FSB as Trustee

Date: August 8, 2016

By: Robert Graham
Name: Robert Graham
Title: Vice President

THE CITY OF SAN DIEGO, a California municipal corporation

Date: 8/10/16

By:
Cybele Thompson
Director, Real Estate Assets Department

Approved as to form this 1st day of August, 2016.

JAN I. GOLDSMITH, City Attorney

By: Debra J. Bevier
Name: Deputy City Attorney
Deputy City Attorney

Exhibit A: Legal Description of Premises
Exhibit B: Site Plan
Exhibit C: Aerial Plan of Premises

Exhibit A: Legal Description of Premises

That portion of Pueblo Lots 314 and 337 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to the map thereof made by James Pascoe recorded in the office of the county recorder of said county as Miscellaneous Map No. 36, described as follows:

Beginning for reference at a point in the southeasterly line of said lot distant South 35°56'45" West along said line 7.00 feet from the northeast corner of said lot, said point being also a point in the southwesterly line of Kurtz Street as said Street was widened to 57.00 feet by Ordinance No. 7527 passed and adopted by said City of San Diego July 25, 1957; thence along said southwesterly line North 53°58'40" West 80.00 feet; thence leaving said southwesterly line South 35°56'45" West 147.26 feet; thence North 54°03'15" West 50.00 feet; thence South 35°56'45" West 93.80 feet; thence North 75°04'35" West 30.00 feet to the TRUE POINT OF BEGINNING; thence

South 35°56'45" West 182.83 feet to a point in that certain curve in the northerly line of Frontier Street, 115.00 feet wide, having a radius of 1019.93 feet and being concave northeasterly, a radial line of said curve through said point bears North 18°04'01" East; thence westerly along said curve through a central angle of 5°59'16" an arc distance of 106.59 feet; thence tangent to said curve along said northerly line North 77°55'15" West 46.42 feet; thence leaving said northerly line North 35°56'45" East 185.00 feet; thence South 75°04'35" East 152.12 feet to the TRUE POINT OF BEGINNING; containing 0.594 acres, more or less.

Exhibit B: Site Plan of Premises

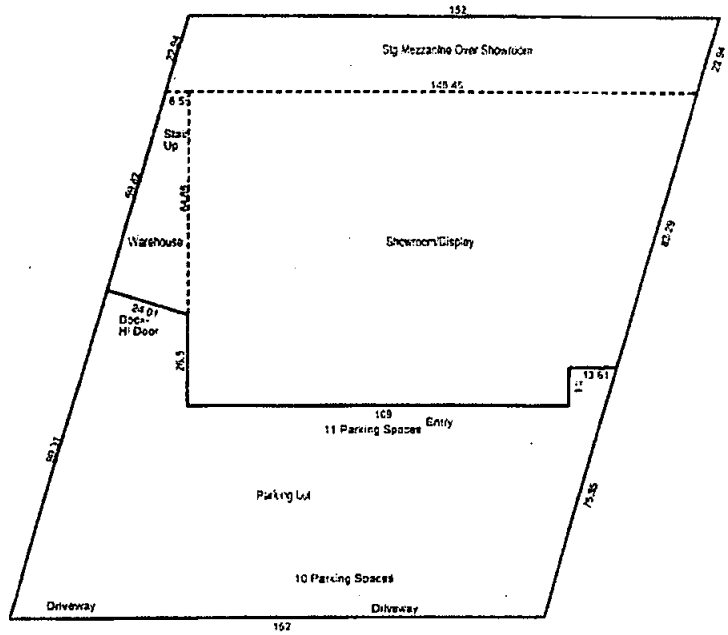
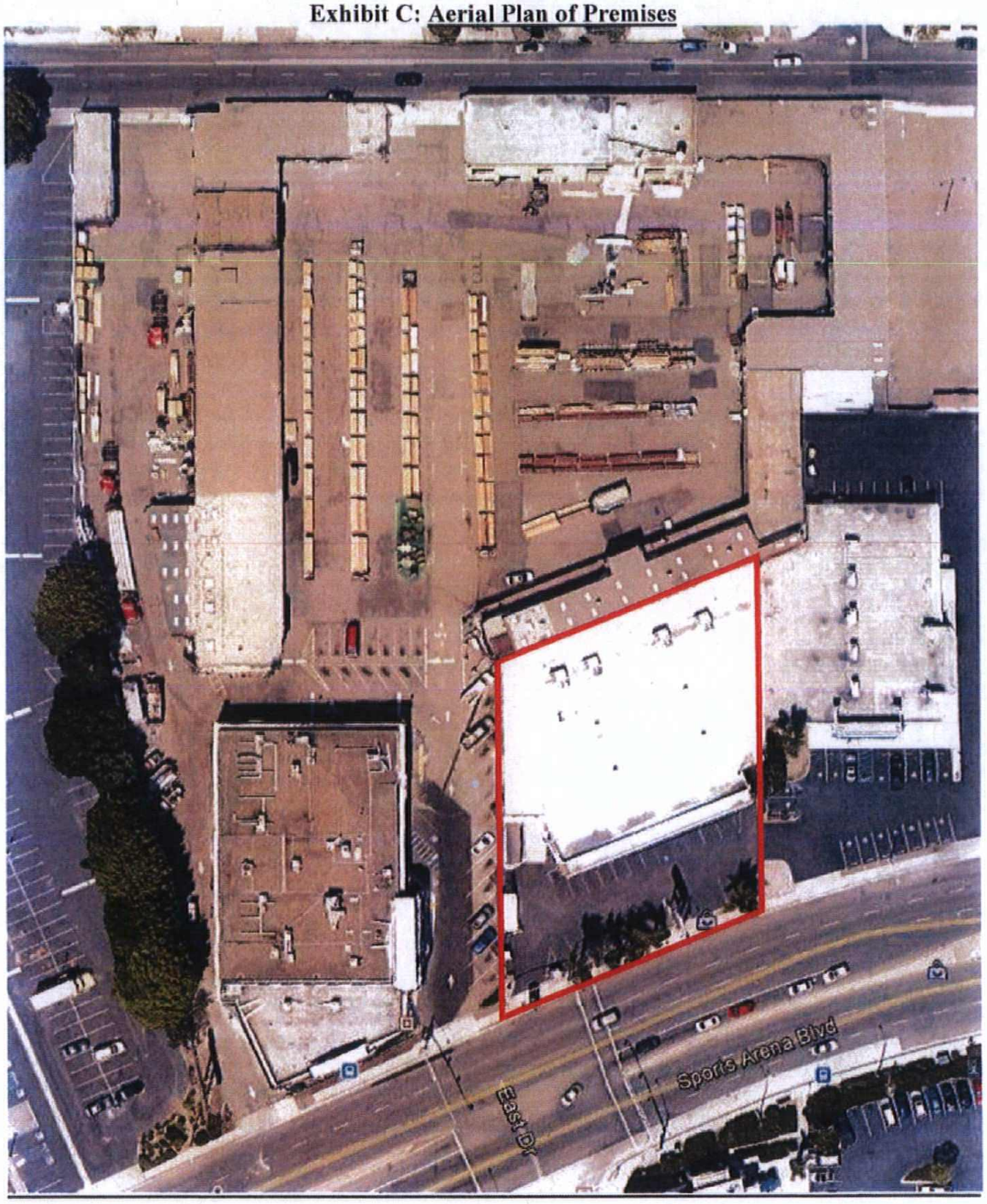


Exhibit C: Aerial Plan of Premises



(R-2017-222)

RESOLUTION NUMBER R- 310773

DATE OF FINAL PASSAGE NOV 17 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A FOUR-YEAR FLAT RATE LEASE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE VICTOR J. SCHULMAN TRUST, FOR THE REAL PROPERTY LOCATED AT 3240 SPORTS ARENA BOULEVARD, IN THE CITY OF SAN DIEGO.

WHEREAS, the City of San Diego (City) owns approximately 80 acres of land in an area commonly referred to as the Sports Arena Area, which is located within the City of San Diego; and

WHEREAS, in 1993 City entered into a lease agreement (Original Lease) with Trend Furniture (Original Lessee) for the lease of City-owned real property located in the Sports Arena Area at 3240 Sports Arena Boulevard, in the City of San Diego (Premises); and

WHEREAS, the Premises is a 0.59 acre parcel, comprised of 25886 square feet of raw land; and

WHEREAS, in 2001 the Original Lessee entered into a sublease (Sublease) with the Salvation Army (Sublessee) for the use and occupancy of the building that had been built on the Premises; and

WHEREAS, subsequent to entering into the Original Lease, the Original Lessee assigned its interest in the Original Lease to the Victor J. Schulman Trust dated December 8, 1989, by First American Trust, FSB, as trustee (The Trust); The Trust is City's current lessee; and

WHEREAS, although the original Terms for the Original Lease and the Sublease have both expired, The Trust and Sublessee continue to have use and occupancy rights to the Premises through the legal holdover status of the Original Lease and the Sublease; and

WHEREAS, although the Premises has a building located on it, the building is owned by the Trust and said ownership will not revert to City at the termination of The Trust's holdover status; and

WHEREAS, the Premises has been operated for retail purposes for over thirty years and The Trust is now requesting the right to enter into a new four-year flat rate lease agreement (New Lease) in order to continue its operations at the Premises, which operations shall include allowing Sublessee to continue its operations on the Premises; and

WHEREAS, the current annual rent under the Original Lease is $56,400; and

WHEREAS, the initial annual rent under the proposed New Lease will increase the rent to $124,296 for the first lease year, and thereafter the rent will increase annually by two percent (2%), which will result in annual rents for lease years two, three, and four of $126,782, $129,318, and $131,904, respectively; and

WHEREAS, the market value of the real estate subject to the New Lease, as appraised by an independent fee appraiser, is $1,294,000; NOW, THEREFORE,

BE IT RESOLVED, that the Mayor, or his designee, is authorized and directed to execute the new four-year Flat Rate Lease Agreement between the City of San Diego and the Victor J. Schulman Trust dated December 8, 1989, by First American Trust, FSB, as trustee, the terms and conditions of which are more fully set forth in Document No. RR-310773, which is on file with the City Clerk.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Debra J. Bevier
Deputy City Attorney

DJB:mcm
October 28, 2016
Or.Dept: Real Estate Assets Dept.
Doc. No.: 1381808

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 15 2016.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: 11/17/16 _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on NOV 15 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	☒	☐	☐	☐
Lorie Zapf	☐	☐	☒	☐
Todd Gloria	☐	☐	☒	☐
Myrtle Cole	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
David Alvarez	☒	☐	☐	☐
Marti Emerald	☐	☐	☒	☐

Date of final passage NOV 17 2016.

(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:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

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

By Linda Drurey, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 310773

Passed by the Council of The City of San Diego on November 15, 2016, by the following vote:

YEAS:	**LIGHTNER, COLE, KERSEY, CATE, SHERMAN, ALVAREZ.**
NAYS:	**NONE.**
NOT PRESENT:	**ZAPF, GLORIA, EMERALD.**
RECUSED:	**NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

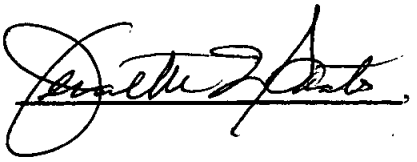
By: **Jeannette I. Santos**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of RESOLUTION NO. **R-310773**, approved on **November 17, 2016**. The date of final passage is **November 17, 2016**.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: , Deputy