



Real Estate Assets Department
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INTERSECTION CRE

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Document Type

LEGAL DOCUMENTS



Sub - Category

AGREEMENTS



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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 Heredia, an Individual dba Kite Country ("LESSEE"), to be effective as of March 1, 2016 (the "Effective Date"), when signed by the parties and approved by the CITY Attorney.

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 improved real property located at 3350 Sports Arena Boulevard, Suite J, San Diego, California 92110 (the "Premises"), in the shopping center commonly known as Sports Arena Square ("Shopping Center"), consisting of approximately 1,288 square feet ("Floor Area") and that is more particularly depicted in **Exhibit A: Site Plan** attached hereto. It is further agreed that: the Premises has not been surveyed; CITY and LESSEE have agreed to approximate square footage; and any deviation between approximate and actual square footage of the Premises shall not cause any reduction or change in rent or consideration due under this Lease.
- 1.2 Allowed Uses. LESSEE may use the Premises solely and exclusively for the purpose of Kite Supplies Store, and such other related or incidental purposes as may be first approved in writing by CITY, and for no other purposes whatsoever (the "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 and the Shopping Center property, 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 otherwise expressly provided herein or required by law, 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 hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein or required by law.
- 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.
- 1.7.5 Public Safety; Homeland Security. CITY reserves the right to install, repair and replace, at its own expense, secured-access video surveillance equipment for the purposes of public safety and homeland security. CITY shall have access to existing roof tops, light poles, existing electrical power and/or other structures on the Premises necessary to support this objective. CITY shall give LESSEE reasonable notice prior to entering upon the Premises for this reserved right. CITY shall pay all costs and expense related to the installation, repair and replacement of such video surveillance equipment.
- 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. "Fiscally responsible manner" shall mean financially capable of maintaining a certain quality to the operation of the business permissible under Allowed Uses.

- 1.9 Acceptance of the Premises. LESSEE represents and warrants that LESSEE has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. LESSEE agrees that LESSEE is relying solely on its independent inspections, tests, investigations, and observations in entering into this Lease. LESSEE acknowledges that the Premises are in the condition called for herein, and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, in the Premises. LESSEE further 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.
- 1.10 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).

SECTION 2: TERM

- 2.1 Term. The term of this Lease is three (3) years, and shall commence on March 1, 2016 and shall expire on February 28, 2019.
- 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 Monthly Rent (as defined below) in effect at 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. 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.

- 2.4 Future Development; No Relocation Assistance. LESSEE acknowledges that it is occupying the Premises after being informed by CITY that CITY may redevelop the area where the Premises are located. LESSEE hereby acknowledges and agrees that it is not eligible for any assistance and benefits under the Relocation Assistance Law (California Government Code sections 7260, et. seq.) and state and local rules and regulations adopted pursuant thereto, or any federal law, as a result of any displacement from the Premises, whether the displacement is caused by CITY or a third-party public entity, and LESSEE hereby waives and relinquishes any and all claims to such assistance and benefits which might otherwise accrue, if any, as a result of any such displacement. If LESSEE is reasonably required to vacate the Premises for a redevelopment project, CITY shall give LESSEE reasonable prior notice to vacate.

SECTION 3: TRASH AND REFUSE

- 3.1 Trash and Refuse. LESSEE shall, at its sole cost and expense, provide containers on the Premises to receive trash and refuse generated on the Premises. Refuse containers shall not be located outside the Premises. Such containers shall be covered and emptied regularly enough to prevent them from overflowing or creating unhealthful, unsightly, or unsanitary conditions. The contents of the containers shall be disposed of by LESSEE or others acting pursuant to LESSEE's direction, at LESSEE's sole cost and expense, at authorized landfills or other garbage reception areas as provided under applicable law at the time of collection.

SECTION 4: RENT

- 4.1 Rent. LESSEE shall pay to CITY by the first day of each calendar month rent ("Monthly Rent") in the amount of Eight Hundred and Twenty-Four Dollars (\$824.00).
- 4.2 Rent Adjustment. Rent adjustments shall take place throughout the term of the Lease per the schedule below:

<i>Dates:</i>	<i>Minimum Monthly Rent:</i>
3/1/2016 – 2/28/2017	\$824.00
3/1/2017 – 2/28/2018	\$876.00
3/1/2018 – 2/28/2019	\$927.00

- 4.3 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:

City of San Diego
C/O The Heritage Group
610 West Ash St. Suite 1503
San Diego, CA 92101

or hand-delivered to:

The Heritage Group
610 West Ash St. Suite 1503
San Diego, CA 92109

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.

- 4.4 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.
- 4.5 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). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.
- 4.6 Security Deposit. CITY acknowledges that LESSEE has paid a security deposit in the amount of Four Hundred (\$400.00) ("Security Deposit"). LESSEE acknowledges that interest will not accrue on the Security Deposit. LESSEE further acknowledges that CITY, at its reasonable discretion, may require an additional security deposit and/or replenishment of the Security Deposit in the event that CITY should use the Security Deposit for payments to CITY required under the terms and conditions of this Lease.

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 Premises, 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 or the Premises must be reviewed and approved by CITY.
- 5.2.3 Additional Consideration to CITY from LESSEE. LESSEE and CITY agree that in the event of an assignment or in the event of a subletting of the majority portion of the Premises, LESSEE shall pay to CITY two percent (2%) of the gross amount paid to LESSEE in connection with an approved assignment of the Lease or two percent (2%) of any amount paid LESSEE in consideration of an approved sublease of all or a majority portion of the Premises. The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment or majority subletting, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an

acknowledgment from the proposed assignee or sublessee as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment or a sublease. Any assignment or subletting in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

- (a) an assignment or transfer of a beneficial interest in the Premises resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE's principal owner or chief executive office (if LESSEE is other than an individual); or
- (b) such other assignment for which CITY determines that the legal and equitable ownership interests in the Lease have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in or the beneficial use of, or legal title to, the Lease or the Premises as an asset or the income produced thereby.

5.2.4 Additional Consideration to CITY from Subleases. Excepting therefrom any majority sublease as described above, as a condition to CITY's approval of any sublease or other rental agreement as allowed under this Lease for a portion of the Premises, LESSEE shall pay to CITY fifty percent (50%) of the gross revenues owed to LESSEE under any sublease or other rental agreement for the Premises.

SECTION 6: DEFAULT AND REMEDIES

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

- (a) LESSEE fails to make any payment required under this Lease when due;
- (b) 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;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) 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:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) 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;
- (c) 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;
- (d) 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
- (e) 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(a) and 6.2(b), 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(c), 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 Monthly 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 (or beneficiary or mortgagee) 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.** Upon execution of this Lease by LESSEE, LESSEE shall: (a) obtain, and provide 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; (b) obtain CITY approval of each company or companies as required by this Lease; and (c) confirm that all policies contain the specific provisions required by 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, for the duration of this Lease, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss.
- 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.
- 8.4 Deductibles. All deductibles and self-insured retentions on any policy shall be the responsibility of LESSEE and shall be disclosed and acceptable 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 upon execution of this Lease by LESSEE.
- 8.6.1 Commercial General Liability Insurance Endorsement.
- (a) 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.

- (b) 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 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.

- (a) 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.

- (a) 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 policy or policies which arise from work performed by the named insured.

8.7 Reservation of Rights. 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 coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.

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.

- 8.10 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.

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 to their prior condition within a reasonable time. If LESSEE fails to restore the Premises as directed, CITY may cause the restoration, and LESSEE shall reimburse CITY on demand for the full cost thereof.
- 9.2 Asbestos. If either CITY or LESSEE makes improvements, alterations or repairs to the Shopping Center 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 Shopping Center 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.
- 9.3 Coordination of Work. LESSEE shall coordinate with CITY and with other lessees in the Shopping Center 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, including without limitation performing all maintenance and repair to the structural components of the Premises, such as interior wall supports, and all maintenance and repair to the interior heating, ventilating and air conditioning system in the Premises.

- 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 Real Estate Assets Department'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 gas and electrical services in connection with the operation of the Premises.
- 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 any 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 or the Shopping Center, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter summarily remove the item at LESSEE's cost. LESSEE's sign criteria are set forth in **Exhibit B: LESSEE Sign Criteria** attached hereto.

9.12 Ownership of Improvements and Personal Property.

9.12.1 Improvements. During the term of this Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises by LESSEE. 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. 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 improvements, fixtures, structures, and installations or additions removed by LESSEE. 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 than sixty (60) days after the expiration or earlier termination of this Lease. 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.

9.12.2 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 for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property or to cause repairs 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. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or 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.

9.14 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. "Hazardous Substances" shall mean any hazardous liquid, solid, or gaseous material 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.

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

- a. Environmental Assessment. Upon reasonable cause to believe that 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 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, then 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 laws and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 10: COMMON AREAS

- 10.1 Use of Common Areas. LESSEE and its employees and invitees are, except as otherwise specifically provided in this Lease or the Shopping Center rules and regulations or as otherwise designated from time to time by CITY, authorized to use the Common Areas of the Shopping Center ("Common Areas") in common with other persons during the Term. The Common Areas are more particularly depicted on **Exhibit A: Site Plan**, and shall be maintained and operated at all times for the benefit and/or use of the customers and patrons of LESSEE and of other lessees, owners, occupants, and invitees of the Shopping Center. As of the Effective Date, the Shopping Center contains a total floor area of 77,163 square feet.
- 10.2 CITY's Maintenance Responsibilities. CITY shall keep the Common Areas and non-leased portions of the Shopping Center neat, clean and orderly, properly lighted and landscaped, and shall repair any damage to the exterior wall supports, roof, floor supports and building-wide mechanical systems in the Common Area and Shopping Center. Notwithstanding the foregoing, all expenses incurred by CITY in connection with the operation, repair, cleaning and maintenance of the Common Areas and the Shopping Center ("Common Area Costs") shall be charged and prorated in the manner set forth in this Lease.
- 10.3 Control of Common Areas. CITY shall have the right at all times to determine the nature and extent of the Common Areas and to make changes from time to time which in CITY's opinion are desirable and in the best interests of all persons using the Common Areas. CITY's rights hereunder include, without limitation, the right to install, remove, relocate and change driveways, entrances, exits, automobile parking spaces, the direction and flow of traffic, prohibited areas, landscaped areas, utilities and all facilities of the foregoing.

CITY shall have exclusive control of the Common Areas, and may, without limitation, lease space within the Common Areas to lessees for the sale of merchandise or services,

and permit advertising displays, educational displays and entertainment in the Common Areas; provided, however, none of the foregoing shall materially adversely affect the visibility or accessibility of the Premises. CITY may at any time and from time to time during the Term exclude and restrain any person from use or occupancy of the Common Areas, except for bona fide customers, patrons and service suppliers of LESSEE and other lessees and occupants of the Shopping Center who use the Common Areas in accordance with the rules and regulations then established by CITY. The rights of LESSEE as to Common Areas as stated herein shall at all times be subject to the rights of CITY, the other lessees of CITY and the other owners and occupants of the Shopping Center to use the Common Areas in common with LESSEE. LESSEE shall not create or permit any obstructions in the Common Areas and shall permit its customers, patrons and service suppliers to use the Common Areas only for normal parking and ingress and egress to and from the Premises occupied by LESSEE.

- 10.4 Rules and Regulations. CITY shall have the right to establish, and from time to time change, alter and amend, and to enforce against LESSEE and the other users of the Common Areas, such reasonable rules and regulations (including the exclusion of employees' parking from Common Areas) as CITY may deem necessary or advisable for the proper and efficient operation and maintenance of the Common Areas and Shopping Center ("Rules and Regulations"). The Rules and Regulations may include, without limitation, the hours during which the Common Areas, including any enclosed mall, shall be open for use. LESSEE shall comply with the Rules and Regulations attached to this Lease as **Exhibit C: Rules and Regulations.**
- 10.5 Employee Parking. CITY shall at all times have the right to designate a particular parking area to be used by the employees of LESSEE and other occupants of the Shopping Center and any such designation may be changed by CITY from time to time. LESSEE and its employees shall park their cars only in those portions of the Common Areas, if any, designated for that purpose by CITY. LESSEE shall furnish CITY with an accurate current list of all of LESSEE's employees' automobile license plate numbers within fifteen (15) calendar days after the Effective Date of this Lease and thereafter within five (5) calendar days after any change in the accuracy of the list. If LESSEE or its employees fail to park their cars in designated parking areas, CITY may charge LESSEE Twenty-Five Dollars (\$25) per day per car for each such violation and shall have the right to have any such car towed away. All amounts due under this Section 10.8 shall be payable by LESSEE within ten (10) calendar days after demand by CITY.

SECTION 11: GENERAL PROVISIONS

- 11.1 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:

Mr. Victor Heredia
Dba Kite Country
3350 Sports Arena Blvd. Suite J
San Diego, CA 92110

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

With a COPY to:

THE HERITAGE GROUP
610 West Ash St. Suite 1503
San Diego, CA 9200

- 11.2 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. 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 inspection of LESSEE's fire-suppression equipment in the Premises).
- 11.3 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.
- 11.4 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 22.3501-22.3517, 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.

- 11.5 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.
- 11.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the 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 any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. LESSEE's compliance shall include but not necessarily be limited to the following:
- 11.6.1 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.
- 11.6.2 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.
- LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 11.6.3 Where required by law, any improvements made to the Premises by LESSEE shall comply with all 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.
- (a) 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.

- (b) 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.

11.7 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:

11.7.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances are prohibited on the Permit Area and specifying the actions that will be taken against employees for violations of the prohibition.

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

- (a) The dangers of drug abuse in the workplace;
- (b) LESSEE's policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) 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 Permit 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.

11.8 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.

11.9 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.

- 11.10 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.
- 11.10.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date (i.e., Permit No. R9-2013-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
- 11.10.2 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.
- 11.11 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, 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.
- 11.12 Cumulative Remedies. Except as expressly provided in this Lease, 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.
- 11.13 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 11.14 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.
- 11.15 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.
- 11.16 Supersedure. As of the Effective Date, this Lease shall supersede and annul all prior leases, right-of-entry permits, or other agreements concerning LESSEE's use of the

Premises, by and between CITY and LESSEE, and each such agreement shall be void and of no effect, except as to any rentals and fees that may have accrued or any rights and remedies accrued or granted to CITY under those agreements.

- 11.17 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.
- 11.18 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.
- 11.19 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.

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

LESSEE:

Date: 3-23-2016

By: 
VICTOR HEREDIA
an _____

THE CITY OF SAN DIEGO, a California
municipal corporation

Date: 

By: 
Cybele Thompson
Director, Real Estate Assets Department

Environmental Analysis Section Environmental Clearance:

This activity has been determined to be exempt from CEQA
pursuant to CEQA Section 15301 (Existing Facilities).

Date: 5/12/16

By: Alyssa Muto
Name: Alyssa Muto
Title: Deputy Director, Environment & Planning Dept.
Policy Analysis

Approved as to form and legality
this 8th day of July, 2016.

JAN I. GOLDSMITH, City Attorney

By: [Signature]
Name: Debra J. Baver
Deputy City Attorney

Exhibit A: Site Plan

Exhibit B: LESSEE Sign Criteria

Exhibit C: Rules and Regulations

Exhibit A: Site Plan

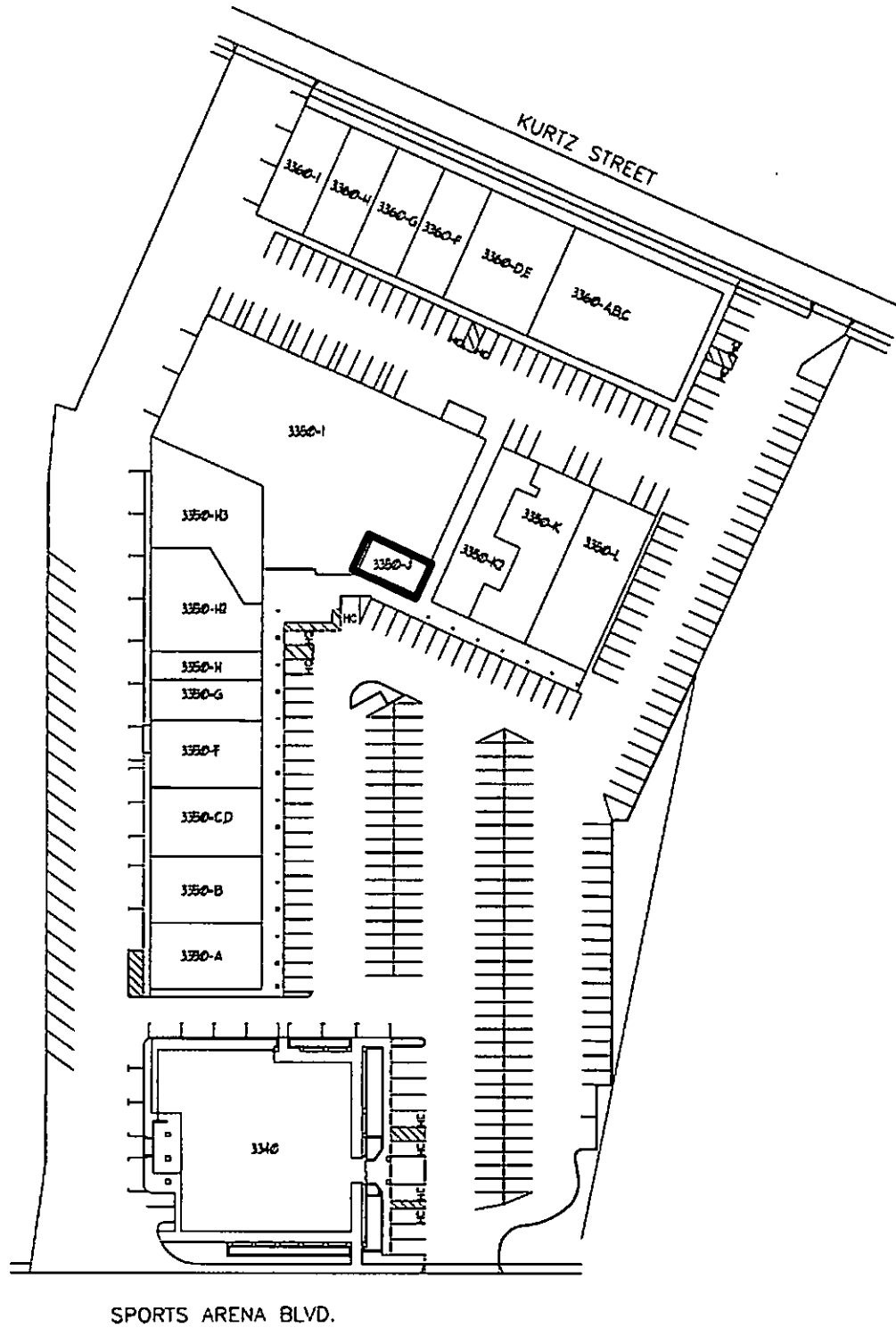


Exhibit B: LESSEE Sign Criteria

These criteria have been established for the purpose of assuring a uniform appearance of the Shopping Center and for the mutual benefit of all lessees. Conformance will be strictly enforced, and any installed non-conforming or unapproved signs must be brought in conformance of the sole expense of the lessee.

A. General Requirements

1. All signs shall be constructed and installed at the lessee's expense.
2. All lessees shall be responsible for the fulfillment of all requirements of these criteria.

B. Door Lettering

1. Each lessee shall be permitted to place upon each entrance of its demised premises not more than 144 square inches of decal application letter not to exceed two inches in height, indicating hours of business, emergency telephone numbers, etc. Decal lettering must be white and is permitted only on glass entrance doors.
2. Each lessee who has a non-customer receiving door may apply in location, as directed by CITY, in two inch high black letters, the lessee's name and address.

C. General Specifications for Overhead Signs

1. No audible signs will be permitted.
2. Sign copy will be restricted to company name only.
3. The sign must have a shape, design and color to be specified by CITY.
4. Placement of the sign and method of attachment to the building will be directed by CITY.
5. Upon the removal of any sign, all damage to the building must be repaired at the lessee's expense.
6. Except as provided herein, no painting, advertising placards, banner, pennants, names, insignia, trademarks or other descriptive materials shall be affixed or maintained upon the glass panes or exterior walls of any building. Any violating materials will be removed by CITY immediately and held in the possession of CITY for five (5) business days. After expiration of such five-day period, if CITY has not been contacted by the lessee, such material will be destroyed.

Exhibit C: Rules and Regulations

Rules and Regulations **for** **Sports Arena Square**

1. No sign, placard, picture, advertisement, name or notice shall be inscribed, displayed, printed, or affixed on or any part of the outside or inside of the Shopping Center or Premises without the prior written consent of CITY, and CITY shall have the right to remove any such sign, placard, picture, advertisement, name or notice without notice to and at the expense of LESSEE by a person approved by CITY. LESSEE shall not place anything or allow anything to be placed near the glass of any window, door, partition, or wall which may appear unsightly from the outside of the Premises as determined by CITY. LESSEE shall not without the prior written consent of CITY cause or otherwise sunscreen or cover any window.
2. The sidewalks, exits, entrances, and fire lanes shall not be obstructed by LESSEE or used for any purpose other than for ingress or egress from the Premises.
3. The toilets and sinks or any other apparatus in the restrooms of the Premises shall not be used for any purpose other than that for which they were constructed and no foreign substances of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage, or damage resulting from the violation of this rule shall be borne by LESSEE or its employees or invitees.
4. LESSEE shall not in any way deface the Premises or any part thereof.
5. CITY reserves the right to exclude or expel from the Premises any person who, in the judgment of CITY, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of the Rules and Regulations. LESSEE shall not disturb the quiet enjoyment of any other lessee in the Shopping Center, nor shall LESSEE be permitted to allow gatherings or parties at the Premises or at the Shopping Center. No loud speakers, television, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without the prior written consent of CITY.
6. No vending machines of any description shall be installed, maintained or operated upon the Premises without the prior written consent of CITY.
7. CITY shall have the right, exercisable without notice and without liability to CITY, to change the name and street address of the Shopping Center of which the Premises are a part.
8. LESSEE shall not be permitted to conduct any work activity outside of the Premises. LESSEE shall not work on motor vehicles on or in the Premises or the Shopping Center.

9. LESSEE shall not permit any trash, oils, chemicals or any foreign materials to be deposited or disposed in the landscaped, parking or Common Areas of the Shopping Center. Trash (not including oil, hazardous materials, chemicals, which shall not be disposed of on the Shopping Center) shall be placed inside bins, at a level not higher than the top of the bin and shall not be placed outside the bin or in the enclosure area. LESSEE shall cooperate with CITY and all other lessees of the Shopping Center so that the Common Areas may be kept in a clean and orderly condition and free of obstruction. CITY provides normal use of waste containers and disposal service; however, LESSEE shall provide at LESSEE's expense, waste containers and regular disposal service as may be required by LESSEE in excess of the service made available by CITY as provided above. This shall preclude abnormal trash pick-ups as determined by CITY, at its sole discretion, where trash generated by LESSEE is considered excessive and above average usage.

10. LESSEE shall be responsible for protecting the floor areas of the Premises from damage by chemicals, paint, machinery, heavy equipment or other hazardous materials. If in CITY's opinion it shall be necessary, LESSEE, at LESSEE's sole expense, shall provide protective floor covering or sealing as required to prevent damage. LESSEE shall satisfactorily, in the opinion of CITY, repair any damage to the Floor Area upon vacating the Premises.

11. LESSEE shall not disturb, solicit, or canvass any occupant of the Shopping Center and shall cooperate to prevent the same.

12. No aerial or antenna (including satellite dishes, vents, stacks, etc.) shall be erected on the roof or exterior walls of the Premises or in the Shopping Center, without in each instance, the prior written consent of CITY. Any such items so installed without such written consent shall be subject to removal by CITY at any time without notice. Any repair to the Premises required as a result of the installation or removal of these items will be paid in full by LESSEE to CITY.

13. No storage shall be permitted outside the Premises, including, without limitation, the storage of motor vehicles, trucks, boats, trailers, pallets, drums, or equipment of any kind or nature, without the prior written consent of CITY. LESSEE shall be held liable for any damage to asphalt/parking lot caused by LESSEE's use or by unauthorized storage of the aforementioned vehicles or equipment.

14. CITY provides free, normal use of water for restroom purposes; however, if LESSEE uses water service for other than restroom purposes, a monthly water charge may be assessed.

15. LESSEE shall not burn any trash or garbage of any kind in or about the Premises.

16. No residential uses, including residing, sleeping or cooking, are permitted on the Premises or in the Shopping Center.