



CITY OF SAN DIEGO FLAT RATE LEASE

BY AND BETWEEN

THE CITY OF SAN DIEGO,
A CALIFORNIA MUNICIPAL CORPORATION, LESSOR

AND

El Cajon Boulevard Business Improvement Association,
A CALIFORNIA NON PROFIT CORPORATION, LESSEE

effective 5/18/14

CITY OF SAN DIEGO
FLAT RATE LEASE
[El Cajon Boulevard Business Improvement Association]

THIS CITY OF SAN DIEGO GROUND LEASE ("Lease") is entered into by and between **THE CITY OF SAN DIEGO, a California municipal corporation** ("CITY"), as lessor, and **El Cajon Boulevard Business Improvement Association, a California non-profit corporation** ("LESSEE"), as lessee, to be effective when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

RECITALS

A. City owns unimproved land that is not being utilized by a City department. The community would like to put the property to good use for the benefit of the public.

B. El Cajon Boulevard Business Improvement Association is interested in utilizing the property on a temporary basis for a public gathering place.

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

SECTION 1: PREMISES; ALLOWED USES

1.1 Premises. Under the terms and conditions of this Lease, CITY hereby leases to LESSEE, and LESSEE hereby leases from CITY, all of that certain real property consisting of approximately 0.282 acres of unimproved land located at the north-east corner of El Cajon Boulevard and Central Avenue, Assessor's Parcel Number 454-732-34, and as more particularly depicted in **Exhibit A: Premises**, attached hereto (the "Premises").

1.2 Allowed Uses. LESSEE may use the Premises solely and exclusively as a temporary public gathering place to host outdoor community activities and events (the "Allowed Use"), and for no other purpose whatsoever without CITY's prior written consent in each instance. It is the intent of the parties that this Lease shall in no way be construed to allow permanent infrastructure or improvements on, in, or under the Premises. LESSEE shall, at all times, be responsible for maintaining the Premises in a clean and safe condition.

1.2.1 Political Activities. LESSEE shall not use the Premises to promote, endorse, or campaign for the nomination or election of any individual to any public office, be it partisan or nonpartisan; however, LESSEE may allow use of the Premises as a forum for open public debate by two or more candidates of different political parties, such as occurs at a candidate forum and similar events.

- 1.3 **Noise.** PERMITTEE must comply with CITY's Noise Abatement and Control Ordinance (San Diego Municipal Code section 59.5.0101 *et seq.*, as may be amended from time to time).
- 1.4 **Governmental Approvals.** LESSEE represents that it has made its own investigation with the CITY's Development Services Department to ensure the Allowed Use complies with applicable zoning and all other applicable City development regulations. By entering into this Lease, neither CITY nor the 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 or improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

1.3.1 LESSEE shall, at its sole cost and expense, obtain any type of license or permit necessary in order to lawfully engage or host any specific type of public gathering. By granting this Lease, CITY is not approving any specific type of public gathering or event to be held by LESSEE on the Premises, and this Lease shall not be interpreted by any decision-maker on any CITY-issued (or any other governmental agent, board, commission or agency issued) permit or approval to override or dictate the outcome of any findings required for any permit, license, or development approval.

LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any improvement of the Premises or any aspect thereof.

- 1.5 **CITY's Consent, Approval.** CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise required by law or 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, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- 1.7.3 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's use of the Premises.

SECTION 2: TERM

- 2.1 Term. The term of this Lease ("Term") shall be for one (1) year, commencing on the Effective Date. If the Effective Date is other than the first day of a calendar month, the partial month after the Effective Date shall be included in the following full calendar month to compose the first month of the Term so that the second month of the Term will start on the first day of a calendar month. **Notwithstanding the foregoing, in the event LESSEE is unable to obtain any license or permit necessary to lawfully use the Premises for the Allowed Use, in the manner desired by the LESSEE, LESSEE may terminate this Lease upon thirty (30) days written notice to CITY.**
- 2.1.1 Option to Renew. LESSEE may request to renew this Lease under the same terms and conditions for two additional terms of one (1) year each ("Renewal Terms"), by notifying CITY in writing sixty (60) days prior to the end of the current Term (or Renewal Term) of said request for renewal. CITY's consent to the request for renewal shall be at CITY's sole discretion. CITY shall notify LESSEE in writing within thirty (30) days of receiving said request whether it will consent to the renewal of the Lease.
- 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. LESSEE's occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect.
- 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 condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

SECTION 3: RENT & SECURITY DEPOSIT

- 3.1 Monthly Rent. Rent shall be waived provided that LESSEE holds a minimum of four (4) community events annually, with one to be held each quarter of the year, and maintains the Premises.
- 3.2 Security Deposit. Upon execution of this Lease, LESSEE shall provide CITY a Security Deposit for faithful performance of all terms and conditions of the Lease, in the amount of One Thousand dollars (\$1,000).
- 3.3 Processing Fee: A non-refundable Processing Fee shall be paid in the amount of Nine Hundred Eighty Dollars (\$980) upon Lease Execution by LESSEE.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 4.1 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.
- 4.2 Leasehold Encumbrances. Subject to CITY's written consent, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of improving, repairing or maintaining the Premises. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest.
- 4.3 Assignment and Subletting. **LESSEE shall not assign this Lease or any interest in this Lease, and shall not sublet the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person, except employees, agents, and guests of LESSEE, to use or occupy the Premises, or any part thereof, without CITY's written consent in each instance.** 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 in each instance. As used in this Lease "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.

- 4.3.1 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 sublease be subject and subordinate to each and every provision of this Lease.
- 4.3.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees and subtenants (if applicable) shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Each and every person/entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.

SECTION 5: DEFAULT AND REMEDIES

- 5.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:
- 5.1.1 LESSEE fails to make any payment required under this Lease when due and fails to cure the breach within ten (10) days following written notice thereof from CITY; or
 - 5.1.2 LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion; or
 - 5.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter; or
 - 5.1.4 LESSEE is adjudicated a bankrupt; or
 - 5.1.5 LESSEE makes a general assignment for the benefit of creditors.
- 5.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a thirty (30)-day written Notice of Intent to Terminate the Lease. If LESSEE does not cure the default within the thirty-day period, 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:

5.2.1 Any amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and

5.2.2 All other amounts as may be permitted at law or in equity.

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

5.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;

5.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and

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

5.3.4 If the default is non-curable by LESSEE, then any lender holding a beneficial interest in the Premises, whose qualifications as an assignee have been approved by CITY, shall have the absolute right to substitute itself to the estate of LESSEE hereunder and to commence performance of this Lease. If the mortgagee or beneficiary gives notice in writing of its election to substitute itself within the thirty (30) day period after receiving CITY's written notice of a default, and the default, if curable, is cured by the mortgagee or beneficiary, then this Lease will not terminate pursuant

to the default. In that event, CITY consents to the substitution and authorizes the mortgagee or beneficiary to perform under this Lease with all the rights and obligations of LESSEE, subject to the curing of the default, if possible, by mortgagee or beneficiary. In that event, LESSEE shall assign to mortgagee or beneficiary all of its interest in and to the leasehold estate under this Lease.

- 5.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.
- 5.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of Rent shall not constitute a waiver of the balance of the Rent payment due.

SECTION 6: EMINENT DOMAIN

- 6.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 6.1.1 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.
- 6.1.2 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.

- 6.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 6.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Lease.
- 6.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 7: INDEMNITY; HOLD HARMLESS; INSURANCE

- 7.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease, the granting of 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 attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents.
- 7.2 Insurance. LESSEE shall obtain and maintain throughout the term of this Lease, at its sole cost and expense, all insurance required by this Lease. LESSEE's liabilities under this Lease, including without limitation LESSEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. LESSEE's maintenance of the required insurance coverage is a material consideration for this Lease. Notwithstanding any provision of this Lease to the contrary, if LESSEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, LESSEE

shall be in default of this Lease. LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. LESSEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

- 7.2.1 Commercial General Liability Insurance ("CGL") 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, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). 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;
- 7.2.2 Commercial Automobile Liability Insurance, providing coverage for all bodily injury, including death, and property damage on an *ISO form CA 00 01 12 90* or a later version of such form or an equivalent form providing coverage at least as broad for a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease; and
- 7.2.3 Workers' Compensation Insurance, as required by applicable laws, for all of LESSEE's employees who are subject to this Lease, with employers' liability coverage with a limit of at least One Million Dollars (\$1,000,000), and an endorsement that the insurer waives the right of subrogation against The City of San Diego and its elected officials, officers, employees, representatives and agents.

7.3 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" 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 without limitation LESSEE's completed operations performed by LESSEE or on LESSEE's behalf; or (d) the Premises.

7.4 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its

elected officials, officers, employees, representatives and agents shall be in excess of LESSEE's insurance and shall not contribute to it.

- 7.5 Severability of Interest. Each policy must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.
- 7.6 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may 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 (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 7.7 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 7.8 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 7.9 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and 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.
- 7.10 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 Lease. 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.

- 7.11 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 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's Real Estate Assets Department.

SECTION 8: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 8.1 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).
- 8.2 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 has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof. LESSEE further acknowledges that the Premises are in the condition called for by this Lease and that LESSEE does not hold CITY responsible for any defects, whether apparent or latent, in the Premises, including the presence of any Hazardous Substances as defined in this Lease.
- 8.3 Improvements/Alterations. LESSEE may utilize temporary removable landscaping in pots and/or planters, temporary removable seating, portable shading, and a temporary removable performance area, as necessary for community gatherings and events. LESSEE shall not install or construct any permanent improvements, structures or installations on the Premises, and the Premises may not be altered, by LESSEE without CITY's written approval. If LESSEE obtains said written consent of CITY, LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. All contractors and subcontractors conducting any improvements on the Premises shall be licensed and duly bonded. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 8.3.1 Fence. LESSEE shall at its sole cost and expense, either rent the current rental fence which is installed around the perimeter of the property (the "Perimeter

Fence”) directly from South Bay Fence, Inc., or LESSEE shall have a fence installed around the property of similar or better quality than the Perimeter Fence.

- 8.4 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 attorney 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 Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 8.5 Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Premises during the Term. Except for the Perimeter Fence, upon expiration or termination of this Lease, all improvements, fixtures, structures and installations on the Premises shall be removed by LESSEE. CITY may, at its option, require LESSEE to remove the Perimeter Fence, which shall be done as soon as practicable upon receipt of written notice of the same, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE shall 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 in this section, CITY may, at its option, remove them at LESSEE’s sole cost and expense.
- 8.5.1 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 of this Lease. Any such items which LESSEE fails to 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.
- 8.6 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 a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.

- 8.7 Entry and Inspection. Upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's use of the Premises.
- 8.8 Maintenance. LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 8.9 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.
- 8.10 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.
- 8.11 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of Hazardous Substances or otherwise regulated substances in, on, under or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate or sell any Hazardous Substance on the Premises without CITY's written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing or any other presence of a Hazardous Substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment or device which holds or incorporates a Hazardous Substance or hazardous waste.

- 8.11.1 Definitions. A “release” shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. “Hazardous Substances” shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.
- 8.11.2 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 and regulations of competent governmental authority
- 8.11.3 Removal. If LESSEE or LESSEE’s contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.
- 8.11.4 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.
- 8.11.5 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the

knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

- 8.11.6 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 may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 9 GENERAL PROVISIONS

- 9.1 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 Postal Service, postage prepaid and addressed as follows:

If to LESSEE:

El Cajon Boulevard Business Improvement Association
Attention: Beryl Forman
3727 El Cajon Blvd.

San Diego, CA 92105

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

- 9.2 Compliance with Law. LESSEE shall at all times in the occupancy, use, development, maintenance or restoration of the Premises comply with all applicable laws, rules and regulations 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 fire-suppression equipment).
- 9.3 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. 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 California Public Records Act.
- 9.4 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 laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 9.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain

such equal benefits throughout the Term. LESSEE's failure to maintain equal benefits shall be a default of this Lease.

9.6 Disabled Access Compliance. LESSEE shall 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 protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:

9.6.1 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.

9.6.2 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.

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

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

9.6.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply all applicable building codes and accessibility regulations by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.

LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

9.7 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:

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

9.7.2 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.

9.7.3 LESSEE shall include in each of its sublicenses 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 sub-licensees and contractors, shall be individually responsible for their own drug-free workplace program.

9.8 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 of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

9.9 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.

9.10 Water Quality Assurances. 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 storm water management. LESSEE acknowledges and agrees that such legal requirements may change at any time and from time to time.

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

- 9.10.2 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.
- 9.11 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, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 9.12 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.
- 9.13 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.
- 9.14 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 9.15 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.
- 9.16 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.
- 9.17 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 and LESSEE’s occupancy, use, development, maintenance and restoration of the Premises. Any modification,

alteration or amendment of this Lease shall be in writing and signed by all the parties hereto.

- 9.18 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.

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- 9.19 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.

Date: 04/12/16

El Cajon Boulevard Business Improvement Association, a California non-profit corporation

BY: [Signature]

Name: Mark Thomas

Title: Board President

Date: 01/13/16

THE CITY OF SAN DIEGO, a California municipal corporation

Date: _____

BY: [Signature]

Cybele Thompson
Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Sections 15301, and 15304 (e).

Date: _____

BY: _____

Name: _____

Title: _____

Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: [Signature]

Name: Melissa Atkins

Title: Deputy City Attorney

Date: 5/13/16

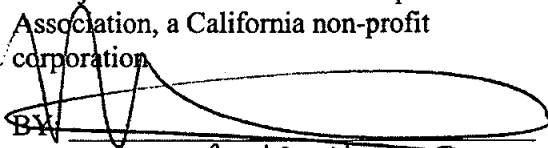
Exhibit A: Premises

9.19 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.

Date: 04/12/16

El Cajon Boulevard Business Improvement Association, a California non-profit corporation

BY: 
Name: Mark Thomas
Title: Board President

Date: 01/13/16

THE CITY OF SAN DIEGO, a California municipal corporation

Date: _____

BY: 
Cybele Thompson
Director, Real Estate Assets

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE:
This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Sections 15301, and 15304 (e).

Date: 5/2/16

BY: Alyssa Muto
Name: Alyssa Muto
Title: Deputy Director, Environment & Policy Planning Dept. Analyst

Approved as to form:

JAN I. GOLDSMITH, CITY ATTORNEY

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A: Premises

Exhibit A: Premises

