

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT dated as of September 17, 2019 (this "Agreement"), is entered into by and between NTCF Liberty Station 1, LLC ("Licensor"), and THE CITY OF SAN DIEGO, a California municipal corporation ("Licensee"), with reference to the following:

RECITALS

WHEREAS, Licensor is the owner of that certain building with an address of 2640 Historic Decatur Road; Suite 107, San Diego, California, commonly known and identified as Building 200 (the "**Building**").

WHEREAS, Licensor and Licensee wish to enter into this Agreement in order to memorialize the terms relating to Licensee's use of that certain space (the "**Licensed Area**") in the Building as more particularly identified in **Exhibit A** attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), for the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

AGREEMENT

1. **Grant and Duration of License.** Subject to the terms and conditions hereof, Licensor hereby grants to Licensee a revocable license (the "**License**") to use the Licensed Area for the sole purpose of general office use by Licensee's police officers, and for no other use or purpose. The License shall commence on the date (the "**Commencement Date**") of the full execution and delivery of this Agreement and continue until the earliest to occur of (a) the date that is three (3) years following the Commencement Date; or (b) at the election of Licensor, an Event of Default, as defined herein. **Either Licensor or Licensee may terminate this Agreement with a ninety (90) day prior written notice.**

In addition to the License, Licensee shall have the right, on a non-exclusive basis and subject to Licensor's reasonable rules, regulations and/or security requirements relating to the same, to use the Building.

2. **No Monthly License Fee.** Licensee shall have no obligation to pay any fee to Licensor for the use of the Licensed Area nor shall Licensee be obligated to pay for any utilities, janitorial services and other costs allocable to the Licensed Area during the term of the License; however, in no event shall Licensor be liable for any interruption or failure in the supply of any such utility services to Licensee and the Licensed Area.

3. **Parking.** Subject to reasonable parking regulations, conditions and provisions as may from time to time be prescribed by Licensor, Licensee may use up to (2) parking spaces in the Building's parking facilities (in the location as shown on **Exhibits B** and **B-1**) at no

additional charge during the term of the License. Licensor shall not be responsible for enforcing Licensee's parking rights against any third parties. Licensee acknowledges and agrees that Licensor may, without incurring any liability to Licensee, from time to time, close-off or restrict access to the parking area, or relocate Licensee's parking spaces to other parking areas within a reasonable distance of the Licensed Area, for purposes of permitting or facilitating any such construction, alteration or improvements with respect to the parking area or to accommodate or facilitate renovation, alteration, construction or other modification of the Building.

4. **No Representations or Warranties.** Licensee accepts and shall use the Licensed Area in its AS-IS condition, with all faults. Licensee represents, warrants and agrees that Licensor has not made and shall at no time in the future be deemed to have made any express or implied representations or warranties with respect to the condition of the Licensed Area, its suitability for Licensee's intended use or its compliance with applicable laws, regulations or orders.

5. **Maintenancce, Cleaning and Repair.** Licensee, at its sole cost and expense, shall keep the Licensed Area in broom clean condition. Any other maintenance and repair of the Licensed Area **including a five (5) day per week Janitorial cleaning service with trash removed nightly** shall be performed by Licensor at Licensor's sole cost and expense, subject to the penultimate paragraph of Section 7, below. At the expiration or earlier termination of this Agreement, Licensee shall terminate its use of the Licensed Area and shall surrender the Licensed Area to Licensor in the same or better condition than as received, reasonable wear and tear excepted.

6. **Alterations and Improvements.** Licensee shall not make any alterations or improvements to the Licensed Area without the prior written consent of Licensor, which may be withheld in Licensor's sole and absolute discretion. If Licensor commences construction of improvements or performs any other work in the Licensed Area while the Licensee is occupying the Licensed Area, Licensee agrees to cooperate with Licensor's contractors, agents and employees so that Licensee's occupancy does not interfere with Licensor's work.

7. **Insurance.** At Licensee's sole cost and expense, Licensee shall maintain for the duration of this Agreement the following coverages in the following amounts:

(a) Commercial General Liability Insurance covering the insured against claims of bodily injury, personal injury and property damage arising out of Licensee's operations, assumed liabilities or use of the Licensed Area, liquor liability (if Licensee serves or stores alcohol on the Licensed Area), including a Commercial General Liability endorsement covering the insuring provisions of this Agreement and the performance by Licensee of the indemnity agreements set forth in Section 8 of this Agreement with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollars (\$2,000,000) aggregate limit and excess umbrella liability insurance in the amount of Five Million Dollars (\$5,000,000).

(b) Physical Damage Insurance covering all office furniture, trade fixtures, office equipment, merchandise and all other items of Licensee's property on the Licensed Area installed by, for, or at the expense of Licensee. Such insurance shall be written on a cause of loss

– special form (“all risks”) basis, for 100% of the replacement cost value new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance and shall include (a) coverage for wind, flood, earthquake and terrorism, (b) boiler and machinery coverage, if applicable, (c) a vandalism and malicious mischief endorsement, (d) sprinkler leakage coverage, and (e) earthquake sprinkler leakage coverage.

(c) Business interruption, loss of income and extra expense insurance in such amounts as will reimburse Licensee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent occupants or attributable to prevention of access to the Licensed Area or to the Building as a result of such perils.

(d) Workers’ compensation insurance in accordance with statutory law, with a waiver of subrogation in favor of Licensor, and employers’ liability insurance with a limit of not less than \$1,000,000 per accident, \$1,000,000 disease policy limit and \$1,000,000 disease limit per each employee.

(e) Licensee shall carry and maintain during the entire term of the License, at Licensee’s sole cost and expense, increased amounts of the insurance required to be carried by Licensee pursuant to this Section 7, and such other reasonable types of insurance coverage and in such reasonable amounts covering the Licensed Area and Licensee’s operations therein, as may be reasonably requested by Licensor, but in no event shall such increased amounts of insurance or such other reasonable types of insurance be in excess of that required by owners of comparable Class “A” buildings located in downtown San Diego.

The minimum limits of policies of insurance required of Licensee under this Agreement shall in no event limit the liability of Licensee under this Agreement. Such insurance shall: (i) name Licensor, and the parties specified on Exhibit B attached hereto, as an additional insured; (ii) specifically cover the liability assumed by Licensee under this Agreement, including, but not limited to, Licensee’s obligations under Section 8 of this Agreement; (iii) be issued by an insurance company (a) having a rating of not less than A-X in Best’s Insurance Guide or which is otherwise acceptable to Licensor, (b) licensed to do business in the State of California, and (c) domiciled in the United States; (iv) with respect to the commercial general liability insurance described in Section 7(a) above, be primary insurance as to all claims thereunder and provide that any insurance carried by Licensor is excess and is non-contributing with any insurance requirement of Licensee; (v) provide that said insurance shall not be canceled or coverage changed unless thirty (30) days’ prior written notice shall have been given to Licensor and any mortgagee of Licensor; and (vi) contain a cross-liability endorsement or severability of interest clause acceptable to Licensor. Licensee shall deliver said policy or policies or certificates thereof to Licensor on or before the Commencement Date and at least thirty (30) days before the expiration dates thereof. In the event Licensee shall fail to procure such insurance, or to deliver such certificate, Licensor may, at its option, procure such policies for the account of Licensee, and the costs of such policies (and any other costs incurred and/or damages suffered by Licensor in connection with Licensee’s failure to procure such insurance) shall be paid to Licensor within five (5) days after delivery to Licensee of bills therefor. Licensee shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms of this Section 7 in a blanket policy, provided such blanket policy expressly affords coverage to the Licensed Area and to Licensor as required by this Agreement.

Licensors and Licensees agree to have their respective insurance companies issuing property damage and loss of income and extra expense insurance waive, by special endorsement (if required by such lender), any rights of subrogation that such companies may have against Licensors or Licensees, as the case may be. The provisions of the foregoing shall not apply in those instances in which waiver of subrogation would cause either party's insurance coverage to be voided or otherwise made uncollectible. Notwithstanding anything in this Agreement to the contrary, Licensors and Licensees hereby waive any right that either may have against the other on account of any loss or damage if such loss or damage is insured by the property damage or loss of income and extra expense insurance (or in the event either party elects to self insure any such coverage) required to be in effect at the time of such loss or damage (this waiver extends to deductibles under such insurance); however, in the event any damage to the Licensed Area, the Building or common areas occurs as a result of the negligence or willful misconduct of Licensee and/or its agents, contractors, employees and/or invitees, Licensee shall reimburse Licensors, promptly on demand, for the cost of incurred by Licensors in repairing such damage and the provisions of this paragraph shall not apply to such reimbursement obligation.

Notwithstanding anything to the contrary in this Agreement, so long as the Licensee hereunder is "The City of San Diego," Licensee may fulfill the insurance obligations of this Section 7 via self-insurance, with the Additional Insured Requirements provided in Exhibit C.

8. Indemnification; Compliance with Laws. Licensee shall defend, indemnify, and hold Licensors, and its employees, partners, affiliates, subsidiaries, directors agents and representatives harmless from any and all actions, adjudications, awards, causes of action, claims, losses, costs (including reasonable attorneys' fees and expenses), damages, liens, and liabilities whatsoever (collectively, "**Claims**"), which Licensors may incur or suffer as a consequence of Licensee's negligence, willful misconduct, use of the Licensed Area, Licensee's (or its invitees', employees', contractors', or agents') entry onto or removal of anything from the Licensed Area, or Licensee's failure to perform any of Licensee's obligations as and when required by this Agreement. This indemnification clause shall survive the termination or revocation of the License granted herein. At all times during the term of the License granted herein and at Licensee's sole cost and expense, Licensee shall comply with all laws, ordinances, regulations, orders and judgments pertaining to (a) the use of the Licensed Area, and (b) the placement or removal of any improvements or personal property from all or any part of the Licensed Area, including without limitation, all laws, ordinances, regulations, orders and judgments relating to the use, generation, disposal, transportation or storage of hazardous wastes, toxic substances or related materials (such as the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801; and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.) (collectively, "**Hazardous Materials**"). Licensee shall not use, generate, dispose of, transport or store any Hazardous Materials on, at or under the Licensed Area under any circumstances whatsoever.

9. Transfer. Notwithstanding any other provision hereof, the License shall automatically terminate upon Licensee's assignment, sublicense, pledge, sale, mortgage, grant of any license or any other transfer (collectively, "**Transfer**") of all or any part of Licensee's rights or benefits under this Agreement whether the Transfer is voluntary, involuntary, or by operation of law. Any such purported Transfer shall be void and of no force and effect. Licensee

acknowledges and agrees that its agreement to be bound by the foregoing prohibition on Transfers constitutes a material portion of Licensor's consideration for entering into this Agreement and that Licensor would not have entered into this Agreement but for such agreement by Licensee. Licensor agrees to be bound by the terms, covenants and conditions contained herein only so long as Licensor owns any interest in the Licensed Area. Notwithstanding anything to the contrary contained herein, effective immediately upon transfer by Licensor of Licensor's interest in the Licensed Area, Licensor shall be released from all obligations and liabilities arising out of this Agreement.

10. Events of Default and Remedies; Termination. Any breach of any of Licensee's obligations under this Agreement shall be an "**Event of Default**" hereunder and shall entitle Licensor to immediately terminate this Agreement and revoke the License and pursue all damages, rights and remedies under this Agreement, at law or in equity. Notwithstanding anything to the contrary contained in this Agreement, either party shall have the right to terminate this Agreement upon ninety (90) days prior written notice to the other.

11. Holdover. If after the expiration or earlier termination of the term hereof, Licensee remains in possession of the Licensed Area, Licensee shall protect, defend, indemnify and hold Licensor harmless from any and all Claims resulting from retention of possession by Licensee, including, without limiting the generality of the foregoing, any claims made by any succeeding tenant or occupant founded upon such failure to surrender and any lost profits to Licensor resulting therefrom. The provisions of this Section shall not constitute a waiver by Licensor of any right of re-entry as otherwise available to Licensor, nor shall receipt of any portion of the License Fee or any other act appearing to affirm the occupancy of Licensee operate as a waiver of the right to terminate this Agreement for a breach by Licensee hereof.

12. Notices. Any notice or other communication hereunder (a "**Notice**") from Licensor or Licensee to the other shall be in writing and shall have been duly given or furnished upon personal delivery or, if mailed, upon mailing by first class mail, postage prepaid, return receipt requested, addressed to Licensor or Licensee, as applicable, as follows:

Licensor:

NTCF Liberty Station 1, LLC
c/o NTC Foundation
2820 Roosevelt Road, Suite 201
San Diego, CA 92106
Attn: Lisa Johnson

and:

RiverRock Real Estate Group
2640 Historic Decatur Road, Suite 106
San Diego, CA 92106
Phone: 619-458-8215
Attn: Property Manager

Licensee:

The City of San Diego
c/o Real Estate Assets
1200 Third Avenue; Ste 1700
San Diego, CA 92101
Attn: Corporate Services

Either party may designate any other or additional address by a Notice given pursuant hereto.

13. Interpretation. It is the intent of both parties hereto that this Agreement shall not be construed to convey to Licensee any interest or estate whatsoever in the Licensed Area. No action whatsoever of Licensor, or its successors, transferees, or assignees shall be deemed to constitute implied consent to extend the duration of this Agreement or to allow Licensee to continue to occupy the Licensed Area beyond the term described in Section 1 of this Agreement. The headings to sections of this Agreement are for convenient reference only and shall not be used in interpreting this Agreement. This Agreement contains the entire agreement and understanding between the parties concerning the subject matter of this Agreement and supersedes all prior agreements, terms, understandings, conditions, representations and warranties, whether written or oral, concerning the matters that are the subject of this Agreement. All amendments, supplements and other modifications to this Agreement must be in writing and executed by the parties.

14. Choice of Law; Severability; Time of the Essence. This Agreement shall be construed in accordance with and governed by the laws of the State of California. If any provision of this Agreement or application thereof shall be deemed to be invalid, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement can only be modified by a writing executed by Licensor and Licensee. Time is of the essence with respect to each term of this Agreement.

15. Waiver. No term, condition or provision of this Agreement may be waived except by an express written instrument to such effect executed by the party to whom the benefit of such term, condition or provision runs. The waiver by any party of any term, covenant, agreement or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition contained in this Agreement, nor shall any custom or practice that may develop between the parties in the administration of the terms and conditions of this Agreement be construed to waive or to lessen the right of any party to insist upon the performance by the other party in strict accordance with the terms and conditions of this Agreement.

16. Successors. Subject to the Transfer provisions of this Agreement, the terms of this Agreement shall apply to, bind and inure to the benefit of the heirs, successors, executors, legal and personal representatives, administrators and assigns of the parties, as the case may be.

17. Brokers. Licensee hereby represents and warrants to Licensor that Licensee has not entered into any agreement or taken any other action that might result in any obligation on the part of Licensor to pay any brokerage commission, finder's fee or other compensation with

respect to this Agreement, and Licensee agrees to protect, defend, indemnify and hold Licensor harmless from and against any and all Claims in any way arising or resulting from or in connection with or related to any breach or inaccuracy of such representation and warranty.

18. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Licensor and Licensee have caused their duly authorized representatives to execute this Agreement as of the date first above written.

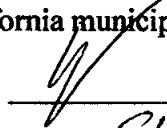
"LICENSOR":

NTCF Liberty Station 1, LLC

By: 
Printed Name: Lisa C. Johnson
Title: President & CEO

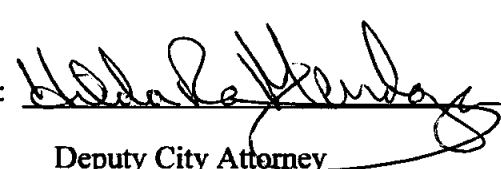
"LICENSEE":

THE CITY OF SAN DIEGO,
a California municipal corporation

By: 
Printed Name: CHELSEA ROBINSON
Title: CLERK, PUBLIC WORKS ASSETS

Approved as to form this 14th day of
October, 2019

MARA W. ELLIOTT, City Attorney

By: 
Deputy City Attorney

ENVIRONMENTAL ANALYSIS SECTION ENVIRONMENTAL CLEARANCE: *This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301 (Existing Facilities).*

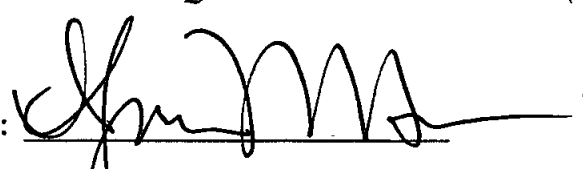
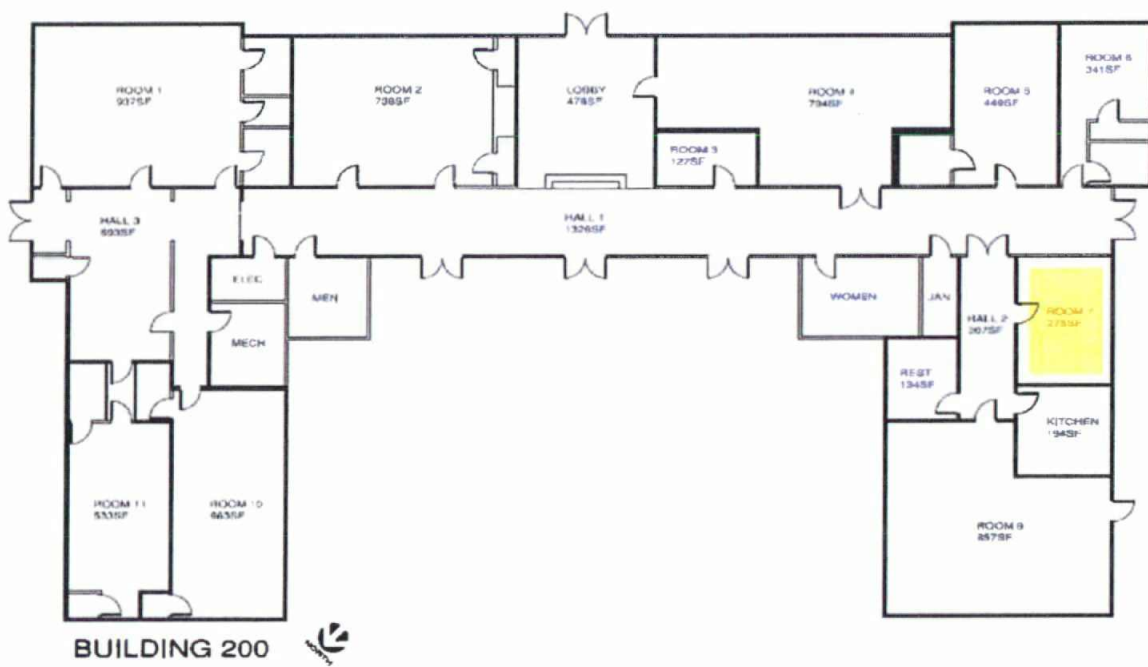
Date: 10/7/19 By: 
Alyssa Muto, Deputy Director, Planning Department

EXHIBIT A
LICENSED AREA



EXHIBITS B



EXHIBIT B-1



EXHIBIT C

Additional Insured to be included on the endorsement are as follows:

NTCF Liberty Station 1, LLC

NTC Foundation

NTC Tenant, LP

NTC Liberty Station, LLC

NTC Manager, Inc.

City of San Diego, solely in its capacity as the designated successor agency to the Redevelopment Agency of the City of San Diego, a former public body, corporate and political, and all of its officers, agents, and employees, and the City of San Diego, a municipal corporation, and all of its officers, agents and employees.

Liberty Station Community Association

RiverRock Real Estate Group – 2640 Historic Decatur Road, Suite 106

Certificate Holder shall read:

NTCF Liberty Station1, LLC

RiverRock Real Estate Group

2640 Historic Decatur Road, #106

San Diego, CA 92106