

ORIGINAL



THE CITY OF SAN DIEGO

AND

SAN DIEGO THEATRES, INC.

PUBLIC PURPOSE LEASE

DOCUMENT NO. 00-20236

FILED JAN 08 2013

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO PUBLIC PURPOSE LEASE

[SAN DIEGO THEATRES, INC.]

THIS CITY OF SAN DIEGO PUBLIC PURPOSE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and SAN DIEGO THEATRES, INC., a California 501(c)(3) nonprofit public benefit corporation ("LESSEE"), as lessee, to be effective as of Feb. 23, 2013 (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney, as follows:

RECITALS

- A. CITY is the owner of the San Diego Civic Theatre located at 1110 Third Avenue, San Diego, California ("Civic Theatre").
- B. This Lease is for a public purpose. The Civic Theatre is a cultural resource providing venues for the performing arts, including Broadway and San Diego Opera productions. LESSEE is a non-profit public benefit corporation, established to manage and operate publicly-owned performing arts theatres in the San Diego community, thereby benefiting CITY by assuming certain financial responsibility for the provision, maintenance and operation of the CITY's Civic Theatre, subject to the terms and conditions of this Lease. Additionally, LESSEE is benefiting the San Diego community through Lessee's advancement of a vibrant downtown theatre district and its advocacy, awareness and promotion of a wide-spread participation in the performing arts within the San Diego community.
- C. CITY and LESSEE are parties to that certain San Diego Civic Theatre Operating Agreement effective March 1, 2010 through February 28, 2013 ("Operating Agreement"). LESSEE has extensive and unique qualifications and experience managing and operating the Civic Theatre, including years of performance of its obligations pursuant to the current and previous Operating Agreement.
- D. LESSEE's mission is the effective stewardship of CITY-owned performing arts venues, including the continued concurrent operations of the Civic Theatre and the historic Balboa Theatre.
- E. LESSEE's continued operation of the Civic Theatre as a civic entity on behalf of the community furthers LESSEE's mission and benefits the CITY and the San Diego community, and CITY and LESSEE desire to pursue a significant renovation of the Civic Theatre and a long term lease agreement.
- F. CITY and LESSEE want to terminate the Operating Agreement and enter into this Lease to allow LESSEE to continue operating the Civic Theatre and pursue a significant renovation/enhancement of this cultural resource.

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

1. Termination of Operating Agreement. By the execution and delivery of this Lease, CITY and LESSEE hereby terminate the Operating Agreement as of the Effective Date of this Lease; and as of the Effective Date, the Operating Agreement shall be of no further effect except as to any rentals and fees that may have accrued, or any rights and remedies accrued or granted thereunder.
2. Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that certain real property situated at 1110 Third Avenue, San Diego, California, currently consisting of a theatre building that includes seating for 2,967 people and comprising approximately 115,000 square feet of interior building space that includes the basement area directly underneath the Civic Theatre (with the exception of the pump room, which is depicted in Exhibit A-1) and the side annex building, commonly known collectively as the Civic Theatre ("Theatre"), and described in Exhibit A-1 attached hereto. The real property and Additional Premises set forth in paragraph 2.1 below are hereinafter collectively called the "Premises."

2.1 Additional Premises.

- a. Until completion of the Renovation set forth in Section 4, LESSEE shall have exclusive use of certain spaces in the San Diego Community Concourse ("Concourse") facility located at 202 "C" Street, San Diego, California 92101. The term "Concourse" as used throughout this Lease excludes the City Administration Building (CAB). The spaces within the Concourse for which LESSEE has exclusive use (except where otherwise indicated) are as follows:

Ticketing – Concourse ticketing box office, ticketing management office, ticketing telephone operation rooms (Room 215 & 216), comprising approximately 1,600 square feet, as set forth on Exhibit A-1.

Concessions Support – Concourse basement concessions-support space adjacent to the Mechanical Room as set forth on Exhibit A-1, comprising approximately 700 square feet.

Equipment Storage – Concourse basement fenced-off equipment storage area adjacent to the Electrical Room, comprising approximately 1,500 square feet, and Storage Room adjacent to Mechanical Room as set forth on Exhibit A-1.

Workshops—the workshop adjacent to the showers to be used as a carpenter's shop and the workshop adjacent to the Storage Room to be used as a metal, electrical, and mechanical workshop as set forth on Exhibit A-1.

Kitchen— non-exclusive use of Concourse basement kitchen adjacent to the concession office and concession workspace walk-in cooler to be used as a lay-out concession work space plus dishwasher use on an as needed basis as set forth on Exhibit A-1.

- b. LESSEE shall also have exclusive use of office space across from the showers in the basement of the City Administration Building (CAB) for management of staff monitoring and operating the Central Power.
- c. LESSEE shall also have non-exclusive use of the Central Power control room located in the basement of the City Administration Building (CAB) for monitoring and operating the Central Power twenty-four hours a day, seven days a week, subject to CITY's right to reasonable access, for such time as LESSEE is responsible for the Central Power under Section 35 of the Lease.
- d. Should City elect to redevelop the Concourse or CAB prior to LESSEE's Renovation, LESSEE'S use of the additional premises defined above may be revoked by the CITY upon twelve (12) months written notice to LESSEE, provided that in consideration for such early termination of LESSEE's right of use, the CITY shall reimburse LESSEE for the cost of any LESSEE-paid leasehold improvements within ninety (90) days of receipt of LESSEE's written request and an invoice therefor.

2.2 Non-Exclusive Use Area and Exclusive Event Space.

LESSEE shall also have non-exclusive use of the exterior Concourse Plaza area at the north and east of the Premises, containing approximately 26,000 square feet ("Plaza Area"), as described in Exhibit A-2 for unimpeded ingress and egress to the Theatre at all times. LESSEE shall have the right to the exclusive use of that portion of the Plaza Area adjacent to the Theatre as described in Exhibit A-3 (the "Exclusive Event Space") as a pre-Theatre event and intermission audience gathering area, and for Theatre event-related activities for attendees of such Theatre events, on all days on which Theatre events are held, during the period of time from two (2) hours prior to the commencement of each Theatre event until one (1) hour following the conclusion of such Theatre event (the "Exclusive Use Period"). The use of the Exclusive Event Space shall be subject at all times to the right of a coffee cart-related business to operate within that portion of the Exclusive Event Space identified on Exhibit A-3 for such coffee-cart use and for the general public to access such business, consistent with any applicable lease with the CITY for the operation of such a business. LESSEE acknowledges that non-attending members of the public shall have ingress and egress to the public facilities and areas surrounding the Exclusive Event Space through or around the Exclusive Event Space during the Exclusive Use Period. However, any enlargement of the Exclusive Event Space shall be subject to the prior approval of City Council. The Exclusive Event Space does not include any portion of the disabled access ramp near the intersection of Third Avenue and B Street, or any portion of the sidewalk or the public restrooms adjacent to the Theatre along Third Avenue. To the extent that any depictions in Exhibit A-3 are inconsistent or appear to conflict with the description of the Exclusive Event Space as stated in this Section 2.2, the language of Section 2.2 shall prevail.

“Theatre event” shall mean, collectively, any performing arts, cultural or other event or activity held by LESSEE at the Theatre and any scheduled reception, gathering or activity occurring prior to or following such event or activity (including, without limitation, wine and cheese receptions, catered dinners for patrons, Theatre tours and “meet and greets” with performers). During the Exclusive Use Period, LESSEE shall have the right to take measures to prevent loitering, panhandling, harassment or pestering of attendees of Theatre events, public protests and other gatherings within the Exclusive Event Space by non-attendees, so long as LESSEE’s measures are in compliance with applicable law. At all times other than the Exclusive Use Period, LESSEE’s use of the Exclusive Event Space shall be non-exclusive. LESSEE shall diligently coordinate with the operator of Golden Hall regarding Concourse Plaza area event bookings to avoid scheduling conflicts with Golden Hall events. For this purpose, LESSEE shall provide the operator of Golden Hall a minimum of three (3) months prior written notification of LESSEE’s Concourse Plaza area event schedule. If LESSEE and the operator of Golden Hall are unable to resolve a scheduling conflict, CITY’s Real Estate Assets Department (READ) shall make the final decision in its reasonable discretion, which shall be binding upon LESSEE. LESSEE shall not permanently alter the Non-Exclusive Use Area or the Exclusive Event Space without prior written consent from the CITY.

3. Authorized Uses of the Premises. It is expressly agreed that the Premises are leased to LESSEE solely and exclusively for its management, marketing, and operation as a public assembly venue for performing arts, entertainment, educational, community, convention, corporate, and civic activities. LESSEE’s use shall allow for the presentation and/or production of public, private, invitational, and ticketed events. Such events will be produced through LESSEE’s renting or licensing the use of the Premises to individuals, organizations or corporations or through LESSEE’s in-house production, and providing ancillary services required for these events.

Such ancillary services may be provided by LESSEE or LESSEE’s contractors and may include: food and beverages, concessions, novelties, merchandise, recordings, broadcasting, and other services associated with these events. It is further agreed that LESSEE may operate ancillary services and a concession in the Civic Theatre, and in the Plaza Area but only in conjunction with events occurring in the Civic Theatre, and sell to the general public beverages and light refreshments, packaged food items, novelties, and articles which primarily relate to the events conducted in the Civic Theatre, including, but not limited to recordings, broadcasting, and related articles and services. LESSEE may obtain a license to sell and serve alcoholic beverages on the Premises.

Renting or licensing use of the Premises is a primary activity of LESSEE and subcontracting for the provision of ancillary services at these events are specifically authorized functions of LESSEE and therefore not considered Subleasing, Subletting, or an Assignment under the terms of this Lease.

LESSEE covenants and agrees to continuously occupy and use the Premises throughout the term of this Lease for the above-specified purposes and to diligently conduct the business consistent with its status as a nonprofit public benefit corporation. Failure to continuously use the Premises for said purposes, or the use of the Premises for purposes not expressly authorized herein, or otherwise approved by the Mayor, shall constitute a default, provided that LESSEE shall be entitled to the notice and cure periods set forth in Section 24(a)(ii) below before CITY may terminate this Lease or exercise any other remedies for a LESSEE breach of this Lease. Notwithstanding the foregoing or any provision in this Lease to the contrary, CITY acknowledges and agrees that performing arts events held at the Premises cannot, by their inherent nature, be literally continuous, and that so long as LESSEE hosts and manages such events with reasonable frequency, LESSEE's occupancy and use of the Premises shall be deemed to be continuous.

4. Renovation. LESSEE is developing a plan involving extensive renovation of the Theatre, including commercial spaces which may be subleased by LESSEE for restaurant or other commercial uses to generate revenue to service the debt incurred in connection with the renovation and support Theatre operations ("Renovation") or to support LESSEE's continued operation of the Theatre, in the event that LESSEE does not have any debt service needs. Subject to all the terms and provisions of this Lease and CITY's approval of the Renovation as provided herein, LESSEE agrees to invest and expend a minimum of \$30 million towards creation and implementation of the Renovation. CITY agrees that LESSEE's use of the Premises shall include the right to implement and process the Renovation to completion during the Term hereof, subject to the CITY's approval pursuant to paragraph 68 of the Lease and provided that LESSEE obtains any and all necessary approvals and permits. CITY hereby agrees to assign a specific individual to oversee and facilitate the permitting process for all plans and documents submitted in connection with the Renovation. Such individual shall act as a single point of contact for all necessary CITY permitting for and with respect to the Renovation. The approval and execution of this Lease shall not constitute, or be construed in any manner whatsoever to be, an approval of any permits and/or entitlements for the Renovation. LESSEE acknowledges and agrees with the above statement and agrees that LESSEE is required to obtain all permits and entitlements necessary for the Renovation, including, but not limited to, having to conduct all required environmental review for any such renovation(s). In the event that LESSEE should obtain the necessary permits and entitlement for any such proposed future renovation(s), CITY agrees, at that time, to negotiate with LESSEE in good faith to amend the Lease, if necessary, in an attempt to accommodate LESSEE's possible need for additional square footage/expanded footprint in accordance with such entitlements and permits.

Subject to the CITY's discretion and approval, the Renovation shall include LESSEE's extrication from the Central Power facilities ("Central Power") located within the basement of the Concourse, which provides power, heating, ventilation and air conditioning to CITY buildings in the Premises, including the Theatre. In the event that the Theatre is no longer connected to the Central Power following the completion of the Renovation, LESSEE's obligation to operate the Central Power facilities shall terminate as of the date that such connection is severed except that the parties shall negotiate and

adhere to a written orderly plan of transition prior to the date such connection is severed to ensure the uninterrupted and continuous operation of Central Power. The side annex building will be removed from the Premises if required by the CITY for redevelopment of the Plaza Area, City Administration Building (CAB), or Concourse area. The side annex building, which serves as the Theatre's dressing rooms and is essential to the Theatre's operation, may also be replaced in the Renovation. In the event of such replacement, the side annex building shall remain available for LESSEE's use until the Renovation is completed. LESSEE will be required to raise sufficient capital funding prior to implementing the Renovation. If, and when LESSEE has in place sufficient funding and/or financing commitments to implement and complete the CITY-approved Renovation, it shall give CITY a written Notice of Intent to Proceed, whereupon the Premises shall be exempted from any plan to develop the Charles M. Dail Civic Center Complex which includes the Theatre. In any event, LESSEE shall commence construction associated with the Renovation no later than January 1, 2023 (the "Renovation Commencement Date"), unless such date is extended by the Mayor or designee in writing upon the mutual consent of both parties. Such an extension may be granted by the Mayor or designee provided that any delay shall not have been caused by LESSEE and is based on an adequate showing of good cause and due diligence by LESSEE in the performance of the Lease and in progressing with the Renovation.. Failure by LESSEE to commence construction associated with the Renovation by the Renovation Commencement Date may be deemed a material default of the Lease, subject to Paragraph 24(a)(ii) below.

5. Term. The term of this Lease shall be fifty (50) years commencing on the Effective Date, which is defined as the first day of the calendar month following execution by the Mayor or his designee ("Term"). "Lease Year" as used in this Lease shall mean the twelve (12) month period commencing on the first day of the calendar month following the execution of this Lease by the Mayor or his designee and each twelve (12) month period thereafter, prior to the expiration of the Lease.
6. Rent. LESSEE shall pay to CITY rent in the amount of Three Thousand Two Hundred and Fifty Dollars (\$3,250.00) per Lease Year paid annually in advance to offset administrative costs incurred for CITY staff services that are of benefit to LESSEE. LESSEE shall pay rent within thirty (30) days after the Effective Date, and thereafter on each annual anniversary of the Effective Date. The rent shall be adjusted upward every five (5) years, based on increases in the Consumer Price Index as provided below. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment dates.
 - a. CPI Adjustments. On each fifth (5th) anniversary of the Effective Date, the rent shall be adjusted to reflect any net increase in the Consumer Price Index for "All Urban Consumers" for Los Angeles/Riverside/Orange County, California ("CPI") based on the average of the then three most recently published monthly indices

just prior to each adjustment. If the CPI is no longer published, the index for adjustment shall be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the CPI.

- i. If rent adjustment is calculated using an index from a different base year than 1982-84, which equaled a base figure of 100 for the CPI, the base figure used shall first be converted under a formula supplied by the Bureau of Labor Statistics or its successor.
- ii. If the Department of Labor indices are no longer published, CITY in its sole and absolute discretion may use another index deemed by CITY to be reasonably comparable to the CPI, which shall then constitute the CPI under this Lease.
- iii. CITY's failure to deliver timely notice of any rent adjustment shall not constitute a waiver by CITY of its rights hereunder.

- b. CPI Adjustment Computation. Every five (5) years, rent shall be calculated as follows:

The "adjustment multiplier" shall be calculated by dividing the "current index" by the "base index" as defined below:

- i. The "current index" shall be the average of the three monthly indices most recently published before the adjustment date ("Current Indices").
- ii. The "base index" shall be the average of the same months' indices published five (5) years prior to the Current Indices.

The "base figure" for calculating rent shall be the dollar amount of rent for the year immediately preceding the adjustment date. The "base figure" is then multiplied by the "adjustment multiplier" to determine the new rent, as follows:

$$(\text{CURRENT INDEX} \div \text{BASE INDEX}) \times \text{BASE FIGURE} = \text{NEW RENT}$$

- c. Delinquent Rent. If LESSEE fails to pay all or any part of the rent or other rent when due, LESSEE shall pay, in addition to the unpaid amount, five percent (5%) of the unpaid amount. If the rent is still unpaid at the end of fifteen (15) days, LESSEE shall pay an additional five percent (5%) of the unpaid amount [for a total of ten percent (10%)], which is hereby mutually agreed by the parties to be appropriate to compensate CITY for loss resulting from the delinquency, including lost interest, lost opportunities, legal costs, and the cost of servicing the delinquent account. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25) each time. Further notwithstanding the foregoing, in no event shall any penalties or default

interest rates charged to LESSEE exceed the amount permitted under applicable law.

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

San Diego City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

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

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

7. Sublease Income. In addition to the annual rent set forth above, LESSEE shall pay to CITY, monthly in arrears, and prior to the last day of the calendar month following that month in which the revenue was earned, a sum of money equal to fifty percent (50%) of the excess rent, if any, for the sublet of the Premises as agreed to by CITY and LESSEE, or any part thereof. Prior to entering into any sublease for the Premises, or any part thereof, LESSEE shall seek prior written consent from CITY as set forth in Section 11 of this Lease. "Excess rent" shall mean any rent revenues received by LESSEE in excess of the rent payable by LESSEE hereunder, after subtracting any broker's commissions, transaction costs, marketing costs, design and construction costs (including permits and approvals), tenant improvement allowances, free rent periods and any other expenses incurred by LESSEE in connection with each particular sublease.

Notwithstanding the foregoing or any provision in this Lease to the contrary, this section shall not apply to any LESSEE income generated in accordance with its Authorized Uses pursuant to paragraph 3 of this Lease.

8. Inspection of Records. LESSEE shall keep and maintain accurate and complete records and accounts in accordance with generally accepted accounting principles consistently applied, showing all revenue derived from use of the Premises. LESSEE shall make such records and accounts available to CITY for inspection at all reasonable times. Such records and accounts shall be made available to CITY at the Premises during the Term and in a location within San Diego County after the expiration or earlier termination of this Lease. LESSEE shall maintain such records and accounts and make them available to CITY for inspection for five (5) years after the date such records are produced.

9. Unauthorized Use Charge. LESSEE shall pay CITY one hundred percent (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, but shall not be used to offset any rent otherwise required under this Lease. The existence of such unauthorized use charge and CITY'S acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY'S rights under this Lease.
10. Competent Management. LESSEE shall provide competent management of the Non-Exclusive Use Area and Exclusive Event Space during the times when LESSEE is using such area and of the Premises at all times during the term of this Lease to CITY's reasonable satisfaction in performing its obligations under this Lease. "Competent management" shall mean demonstrated ability in the management and operation of a public theatre and related activities in a fiscally responsible manner to serve the greatest number of members of the community.
11. CITY'S Consent. Whenever required under this Lease, CITY's consent or approval shall mean the written consent or approval of the San Diego Mayor or his or her designee ("Mayor"), which consent or approval shall not be unreasonably withheld, conditioned or delayed. CITY'S discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise required by City policy, legally required, or expressly provided in this Lease.
12. 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, CITY shall not be liable to LESSEE for any loss or resulting damages.
13. Reservation of Rights.
 - a. 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.
 - b. 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 at no cost or liability to CITY, provided that such easements and rights-of-way shall not unreasonably interfere with LESSEE's use or occupancy of the Premises or LESSEE's operation or management of the Theatre.
 - c. Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.

- d. Non-interference. CITY shall not substantially and 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 Premises or LESSEE'S personal property directly caused by CITY's exercising of 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.
14. Political Activities. LESSEE may make the Premises available for political activities by contracted users on a non-discriminatory basis at standard and established rates, terms, and conditions.
15. Public Use. The general public shall have access to the Premises for the uses allowed under this Lease during LESSEE's hours of operation, subject to the terms of licensed use such as, but not limited to, the payment of an admission fee or invitation by the Licensee and subject to LESSEE's reasonable security requirements. So long as such security requirements and restrictions on the public's use of the Premises are in compliance with any and all applicable law, LESSEE may apply reasonable restrictions for the general public's use of the Premises in accordance with LESSEE's use of the Premises as allowed by this Lease, and the general public's access to the Premises shall be expressly subject to LESSEE's rights with respect to the Exclusive Event Space and the Non-Exclusive Use Area set forth in Section 2.2 above. Notwithstanding the foregoing, LESSEE's limitation on access to the Premises to ticket holders, invitees and attendees of performing arts events during such events shall be expressly permitted and shall not constitute a violation of the requirement of public access to the Premises.
16. Public Signage. As of the commencement date of this Lease, the signage in place adjacent to the northeast exterior of the Premises is considered to be in compliance with the Lease. In any case, LESSEE shall, at all times during the Lease term, maintain a prominent CITY-approved sign identifying the property as CITY-owned and available for public use consistent with the terms of this Lease. The sign shall be installed by LESSEE at a location approved by CITY.

LESSEE shall at all times when erecting or displaying any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the exterior of the Premises, comply with all applicable laws, statutes, ordinances and regulations of city, county, state and federal governments at LESSEE's sole cost and expense. If any display is found not to comply as required by this section, LESSEE agrees to remove the item at its expense within twenty-four (24) hours notice by CITY, or CITY may remove the item at LESSEE's cost.

17. [Intentionally Omitted.]
18. 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 LESSEE shall then pay to CITY fair market rent determined by an appraisal prepared by READ.

19. 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. 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.
20. Time of the Essence. Time is of the essence of each term, covenant, and condition of this Lease.
21. Successors. Each term, covenant, and condition of this Lease shall jointly and severally apply to, benefit, and bind the successors and assigns of the respective parties.
22. Assignment and Subletting. LESSEE shall not assign this Lease or any interest therein during the term of this Lease. Except as provided herein, LESSEE 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 the prior written consent of the Mayor, which consent shall not be unreasonably withheld or delayed. LESSEE shall seek the CITY's consent for subletting any restaurant or other commercial space on the Premises created pursuant to the implementation of the Renovation. CITY's consent to subletting, occupation, or use by any other person shall not be deemed to be consent to any subsequent subletting, occupation, or use by another person or entity. Any subletting without consent shall be void and shall, at the option of CITY, terminate this Lease.

"Assignment" for the purposes of this clause shall include any transfer of any ownership interest in this Lease by LESSEE or by any partners, principals, or stockholders, as the case may be, from the original LESSEE, its general partners, or principals.

Approval of any sublease shall be conditioned upon the sublessee agreeing in writing that it will assume the rights and obligations thereby subleased and that it will keep and perform all covenants, conditions, and provisions of this Lease which are applicable to the rights acquired. The Mayor may require, as a condition to approval of any sublease of the majority portion of the leasehold, that this Lease or the requested sublease otherwise be revised to comply with standard CITY lease requirements that are then current. The Mayor may also require, as a condition to approval of any sublease of a commercial nature (e.g., food vending or telecommunications installations), that LESSEE pay CITY fair market rents for the uses. Pursuant to City Charter Section 225, the Mayor must

review and approve every person or entity which will have an interest in this Lease as a sublessee.

The renting or licensing of the Premises by LESSEE for events is a primary activity of LESSEE and the subcontracting for the provision of ancillary services at these events are specifically authorized functions of LESSEE as set forth in paragraph 3 of this Lease and therefore not considered Subleasing or Subletting under the terms of this Lease.

LESSEE's renting or licensing the use of the Premises or the provision of ancillary services as set forth in paragraph 3 of this Lease shall not be considered as an assignment or subletting as stipulated in this section.

23. Encumbrance. Subject to prior written consent by CITY, which shall not be unreasonably withheld, LESSEE may encumber this lease, its leasehold estate, and its improvements thereon by deed of trust, mortgage, chattel mortgage, or other security instrument to assure the payment of a promissory note or notes of LESSEE, upon the express condition that the proceeds of such loan or loans be devoted exclusively to the purpose of developing the Leased Premises in accordance with Section 68, "Implementation of Renovation." However, a reasonable portion of the loan proceeds may be disbursed for payment of incidental costs of construction, including but not limited to the following: off-site improvements for service of the Premises; on-site improvements; escrow charges; premiums for hazard insurance or other insurance or bonds required by CITY; title insurance premiums; reasonable loan costs such as discounts, interest, and commissions; and architectural, engineering, and attorneys' fees and other normal expenses incidental to such construction. Any subsequent encumbrances on the Premises or on any permanent improvements thereon must first have the approval in writing of the Mayor. Subsequent encumbrances shall also be for the exclusive purpose of development of the Premises during the term of the Lease. LESSEE understands and specifically agrees that the Mayor, shall have the right to approve, disapprove, or condition any proposed subsequent encumbrance including, but not limited to, amending the Lease to provide then-current rents and provisions.

In the event any approved deed of trust or mortgage or other security-type instrument should at any time be in default and be foreclosed or transferred in lieu of foreclosure, CITY will accept the approved mortgagee or beneficiary thereof as its new tenant under this Lease with all the rights, privileges, and duties granted and imposed in this Lease.

Upon prior written approval by CITY, the mortgagee or beneficiary may assign this Lease to its nominee, if nominee is a reputable, qualified, and financially responsible person or entity in the opinion of CITY. Any deed of trust, mortgage, or other security instrument shall be subject to all of the terms, covenants, and conditions of this Lease and shall not be deemed to amend or alter any of the terms, covenants, or conditions hereof. Pursuant to City Charter Section 225, the Mayor must review and approve every person or entity which will have a financial interest in this Lease.

24. Default and Remedies.

- a. Default. LESSEE shall be in default of this Lease if any of the following occurs:
 - i. LESSEE fails to make any payment required under this Lease when due, and thereafter fails to cure such default within five (5) business days of written notice of such failure from CITY;
 - ii. 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 reasonably curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - iii. LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - iv. LESSEE is adjudicated a bankrupt; or
 - v. LESSEE makes a general assignment for the benefit of creditors.
- b. 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:
 - i. the worth at the time of award of any unpaid rent that was due at the time of termination;
 - ii. 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;
 - iii. 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;
 - iv. 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

- v. 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 b(i) and b(ii), 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 b(iii), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two percent (2%). As used in this section, the term "rent" shall include rent and any other amounts payable by LESSEE under this Lease.

- c. Default if Leasehold is Encumbered. If there is a CITY-approved deed of trust or mortgage on the 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; provided, however, CITY shall deliver a commercially reasonable non-disturbance agreement from any such mortgagee in favor of LESSEE as an express condition to LESSEE's obligations hereunder. 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:
 - i. 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;
 - ii. 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
 - iii. CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

If the default is incurable 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, privileges, 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.

- d. Abandonment by LESSEE. If LESSEE breaches the Lease and 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 but not limited to the right to recover the rent as it becomes due, plus damages.
- e. Waiver. Neither party's failure to insist upon the strict performance of any of the other party's obligations under this Lease, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. Any waiver by one party of a breach or default by the other party shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by the party providing the waiver. Neither party's delay or failure to enforce a right or remedy shall 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 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.

25. 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) will be as follows:

- a. 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, and any advance rents paid to CITY shall be prorated based upon the actual number of calendar days the Premises was held by LESSEE.

- b. Partial Taking - Remainder Unusable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are unsuitable for the Lease operation, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
 - c. 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.
 - d. 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. Notwithstanding the foregoing, LESSEE shall be entitled during the term of the Lease to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements of LESSEE, the value of all leasehold improvements constructed by LESSEE, and LESSEE's trade fixtures and relocation expenses. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
 - e. 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.
 - f. 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.
26. Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents and employees 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 and LESSEE's use, development, or maintenance 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 harmless shall not include any liability arising from the established gross negligence or intentional misconduct of CITY, its elected officials, officers, representatives, agents and employees. CITY may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If the City elects to conduct its own defense, participate in its own

defense, or obtain independent legal counsel in defense of any claim related to this indemnification, LESSEE shall pay the City for all costs related thereto, including, without limitation, attorney's fees and costs. CITY shall protect, defend, indemnify and hold LESSEE, and its officers, representatives, agents and employees 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 connection with CITY's breach of this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, CITY's duty to indemnify and hold harmless shall not include any liability arising out of the established gross negligence or intentional misconduct of LESSEE or its officers, representatives, agents and employees. LESSEE, may, at its own discretion, conduct the defense, or participate in the defense, of any claim related in any way to this indemnification. If LESSEE elects to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, CITY shall pay LESSEE for all costs related thereto, including, without limitation, attorney's fees and costs.

The indemnity obligation contained herein shall survive the termination or expiration of this Lease to the extent that any alleged or actual claim or liability arises from the action, inaction, or conduct of either party during the time that this Lease was in effect as well as during time period during which LESSEE is providing services as set forth in Section 35(e) of this Lease. The foregoing survival of liability for indemnity obligations under this Lease shall be subject to applicable statutes of limitation with respect to the bringing of actions under this Lease, and no statutes of limitation applicable to such actions shall be deemed extended or waived under this Section 26 or otherwise under this Lease.

27. Insurance.

- a. LESSEE shall deliver to READ a current certificate of insurance and relevant endorsements for:
 - (1) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least Five Million Dollars (\$5,000,000) per occurrence, subject to an annual aggregate of at least Five Million Dollars (\$5,000,000) (such limits may be satisfied on a combined basis through primary and umbrella policies);
 - (2) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a 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. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
 - (3) Workers' Compensation Insurance, as required by the laws of the State of

California 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).

- (4) Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
- b. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies issued to the named insured including, but not limited to, coverage under endorsement CG2010 (11/85) or its equivalent.
- c. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- d. Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- e. 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.
- f. 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. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and immediately obtain replacement insurance or do so as soon as required by CITY. Failure to do so constitutes a major default under this Lease subject to immediate termination of the Lease upon proper written notice.
- g. Modification. To ensure protection from and against the kind and extent of risk existing with the Lease Use or the Premises, CITY, at its reasonable discretion,

may require the revision of amounts and coverage at any time during the Term by giving LESSEE thirty (30) days prior written notice, so long as such coverage is commercially reasonable and commercially available. 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 this Lease or the Premises.

- h. Accident Reports. LESSEE shall immediately report to the READ Director any accident causing property damage or injury to persons and related to this Lease or the Premises. 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.
 - i. Failure to Comply. If LESSEE fails or refuses to take out and maintain the required insurance or fails to provide the proof of coverage, CITY has the right to obtain the insurance. LESSEE shall reimburse CITY for the premiums paid with interest at the maximum allowable legal rate then in effect in California. CITY shall give notice of the payment of premiums within thirty (30) days of payment stating the amount paid, names of the insurer(s), and rate of interest. The reimbursement and interest shall be paid by LESSEE on the first (1st) day of the month following the notice of payment by CITY. Notwithstanding any other provision of this Lease to the contrary, if LESSEE fails or refuses to obtain or maintain insurance as required by this Lease, or fails to provide proof of insurance at any time and from time to time as reasonably requested by CITY, CITY may terminate this Lease after five (5) business days' prior written notice to LESSEE. Upon such termination, LESSEE shall immediately cease its use of the Premises and commence and diligently pursue the removal of its property from the Premises.
 - j. 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 this Lease in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver to CITY a certificate of such insurance.
28. Property Insurance Costs. CITY shall obtain and maintain property insurance for fire, property, and extended coverage that includes coverage of the Premises. LESSEE shall reimburse CITY for its pro-rata share of the cost to obtain and maintain such insurance, as determined by CITY. Upon completion of the Renovation or when any improvements have been put to their intended use, LESSEE shall obtain and maintain at its sole cost and expense property insurance for fire, property, and extended coverage that includes coverage of the Premises in an amount sufficient to cover the replacement cost of the improvements and the Premises.
29. 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 at its sole cost and expense restore the Premises to the condition which existed prior to the waste, damage, or destruction within a reasonable time.

30. 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.
31. Entry and Inspection. LESSEE may quietly enjoy the Premises, free from unreasonable interference by CITY, except as reasonably required in emergency situations. During such an emergency, CITY may at all times enter and inspect the Premises and the operations conducted on the Premises. For all non-emergency situations, CITY may at all reasonable times, but only upon reasonable prior notice to LESSEE, enter and inspect the Premises and the operations conducted on the Premises. In the event that entry or inspection by CITY discloses that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY shall have the right, but not the obligation, after ten (10) days written notice to LESSEE, to have any necessary maintenance work done at the expense of LESSEE, and LESSEE hereby agrees to pay promptly any and all costs incurred by CITY in having the necessary maintenance work done, in order to keep the Premises in a decent, safe, healthy, and sanitary condition. Further, if at any time CITY determines that the Premises are not in a decent, safe, healthy, and sanitary condition, CITY may at its sole option, without additional notice, require LESSEE to file with CITY a faithful performance bond to assure prompt correction of any condition which is not decent, safe, healthy, and sanitary. The bond shall be in an amount adequate in the opinion of CITY to correct the unsatisfactory condition. LESSEE shall pay the cost of the bond. The rights reserved in this section shall not create any obligations on CITY or increase obligations elsewhere in this Lease imposed on CITY.
32. Maintenance. LESSEE shall be responsible for the on-going regular maintenance and upkeep of the interior of the Premises at all times during the term of this Lease. LESSEE shall also be responsible for maintaining the Non-Exclusive Use Area and the Exclusive Event Space during the periods of time that LESSEE utilizes such areas, provided that LESSEE shall only be required to perform such janitorial and other maintenance acts as are reasonably required to return the Non-Exclusive Use Area and the Exclusive Event Space utilized by LESSEE to substantially the same condition as existed prior to LESSEE's use thereof. Subject to the foregoing, LESSEE shall, at its sole cost and expense, and to CITY's satisfaction, maintain these areas at such times in a decent, safe, healthy, and sanitary condition. CITY shall be responsible for the repair and replacement of the exterior of the Premises. CITY shall be responsible for all required major capital improvements and infrastructure systems prior to the implementation of the Renovation. Upon commencement of the Renovation, LESSEE shall assume responsibility for the

repair or replacement of the exterior of the Premises and for major capital and infrastructure within the Premises, except shared infrastructure such as the Central Power in the event that LESSEE does not extricate from the Central Power.

33. Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without prior written approval by the Mayor, which approval shall not be unreasonably delayed or withheld. Further, LESSEE agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the Mayor and that the approval shall not be unreasonably delayed or withheld. This provision shall not relieve LESSEE of any obligation under this Lease to maintain the Premises in a decent, safe, healthy, and sanitary condition, including structural repair and restoration of damaged or worn improvements. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations.

34. Utilities.

- a. Gas, Electric & Trash Collection Costs. CITY is currently billed for gas, electricity, and trash collection services used by all CITY-owned buildings in the San Diego Civic Center (the "Civic Center", of which the Premises, including the Theatre, are a part). CITY shall pay all such billings. LESSEE shall reimburse CITY for such costs as follows, which the parties agree is LESSEE's fair share of such costs:
- (1) Twelve and Fifteen One- Hundredth percent (12.15% of Civic Center gas and electric costs; and
 - (2) Three Hundred Thirty-Four Dollars (\$334) per month for trash collection services.
- b. Water and Sewer Costs. CITY is currently billed for water and sewer services used by all CITY-owned buildings in the Civic Center. CITY shall pay all such billings. LESSEE acknowledges that its fair share of such services is eighteen percent (18%). LESSEE shall pay to CITY One Thousand Four Hundred Dollars (\$1,400) per month for such water and sewer services ("Water & Sewer Reimbursement"). At least 30 calendar days prior to the end of each year during the Term, CITY shall deliver to LESSEE an accounting of the actual, paid water and sewer billings for the most recent twelve-month period, together with an estimate of the water and sewer billings for the next year of the Term. The Water & Sewer Reimbursement shall then be adjusted to reflect such estimate. LESSEE shall thereafter pay to CITY such adjusted Water & Sewer Reimbursement.

Annually, LESSEE and CITY shall review the usage, costs, and reimbursements to determine if there should be any adjustment for the coming year. In the event of any disputes regarding any adjustments, the READ Director shall have final

decision-making authority to determine the necessary adjustment. The parties acknowledge and agree that the shared utility expense provisions under this Paragraph 34 shall terminate and be of no further force or effect upon the completion of the Renovation and disconnection of the Premises from the Central Power facility and CITY's utilities.

- c. Late Payments. If an invoiced amount remains unpaid after forty-five (45) days past its due date, LESSEE shall pay to CITY a late-payment fee equal to the greater of ten percent (10%) of the unpaid amount and Twenty-Five Dollars (\$25), plus interest on the unpaid amount at the rate of twelve percent (12%) simple interest per annum from the due date until paid.

35. Reimbursement of LESSEE for Central Power Staff and Maintenance for Central Power and Concourse.

- a. CITY acknowledges that, consistent with its prior operating agreement with CITY for the Civic Theatre, LESSEE is responsible for providing staffing to monitor and operate the Central Power twenty-four hours a day, seven days a week and for providing labor to maintain and repair all electrical, plumbing, or mechanical issues associated with the Concourse, including but not limited to, the fan rooms, the large boiler plant on the Concourse roof, and all restrooms in the Concourse except for the restrooms in Plaza Hall. LESSEE shall also provide labor to address the electrical, plumbing or mechanical needs to support events in the Concourse. LESSEE shall perform all of these services in compliance with applicable labor laws. For such services, CITY shall reimburse LESSEE for 84.7% of the actual cost for salaries, benefits, and related expenses for the staffing of Central Power. Employees or agents of LESSEE furnishing labor for Central Power and Concourse pursuant to this Lease shall not be construed in any manner whatsoever to be employees of CITY. CITY may upon sixty (60) days prior written notice to LESSEE elect to assume the performance of any or all such services from LESSEE, other than services for Central Power as to which CITY must elect to assume performance of all such services (subject to Section 4). Effective upon CITY's assumption of the performance of any or all such services such that LESSEE is no longer required to perform same under this Lease, CITY's obligation to reimburse LESSEE for such services assumed by CITY shall terminate other than with respect to reimbursement for services performed by LESSEE prior to CITY's assumption thereof. In such event, the parties shall (i) meet and confer regarding the transition of such services and the determination of the percentage of expense reimbursement payable by LESSEE for CITY's performance of such services assumed from LESSEE, and (ii) negotiate and adhere to a written orderly plan of transition prior to the date such services are transferred to CITY.
- b. LESSEE shall be responsible for the routine repair and maintenance of the Central Power. CITY shall reimburse LESSEE for 88.75% of actual costs of routine repair and maintenance of Central Power, including supplies and materials.

- c. CITY shall delineate staffing requirements and retain the right to assume responsibility for Central Power staff and maintenance, provided that such staffing requirements shall be reasonable.
 - d. Annually, LESSEE and CITY shall review the usage, costs, and reimbursements to determine if there should be any adjustment for the coming year. In the event that any dispute arises regarding any adjustments, LESSEE and CITY shall use best, good faith efforts to resolve such dispute within thirty (30) days. In the event that any dispute cannot be resolved within such thirty (30)-day period, the READ Director shall have final decision-making authority to reasonably determine the necessary adjustment.
 - e. In order to ensure the uninterrupted operation of Central Power and the Concourse, the obligations set forth in this Section 35 shall survive the termination or expiration of this Lease for a period in CITY's discretion of up to one hundred twenty (120) calendar days after the effective date of such termination or expiration. The event of termination or expiration of the Lease and upon actual vacation of the Premises by LESSEE, CITY shall reimburse LESSEE for all costs actually incurred by LESSEE for salaries, benefits and related expenses for the staffing of Central Power.
36. Invoices. Each of LESSEE and CITY shall deliver invoices for which such party is entitled to reimbursement or payment to the other party promptly, and in no event later than sixty (60) days following the date on which the applicable costs were incurred.
37. Extrication from Central Power. Upon extrication of the Theatre and other portions of the Premises from the Central Power, LESSEE shall be solely responsible for and shall pay any and all utilities associated with the Theatre and such portions of the Premises extricated from the Central Power. Upon the extrication of the Theatre and other portions of the Premises from the Central Power, CITY and LESSEE shall adjust the payment of utilities and reimbursements set forth in sections 34 and 35 of the Lease to accurately reflect the extrication from Central Power as determined by CITY. Any late payments by CITY to LESSEE shall be subject to the same delinquent charges applicable to delinquent rent as set forth in Section 6(c).
38. Evan V. Jones Parkade.
- a. Civic Theatre Event Parking Revenues. CITY shall pay to LESSEE all Evan V. Jones Parkade ("Parkade") parking revenues solely generated from LESSEE's events held in the Theatre, net of related costs such as cashier personnel.
 - i. CITY shall pay LESSEE all Parkade parking revenues generated solely from LESSEE's presale of pre-paid parking vouchers for parking at the Parkade. Such pre-

paid parking vouchers are to be sold by LESSEE prior to the scheduled event time taking place in the Theatre. LESSEE shall only allow attendees to purchase such pre-paid parking vouchers at the same time for which tickets for scheduled events held in the Theatre are purchased.

ii. CITY shall also pay LESSEE all Parkade parking revenues generated solely from non-prepaid Civic Theatre event parking, net of any cashier personnel costs, if any. CITY shall reasonably determine and advise LESSEE of the procedures to be implemented to appropriately track, account for, and compensate LESSEE for the non-prepaid parking revenues generated from LESSEE's events. Should CITY elect to change or modify such procedures, CITY shall notify LESSEE ninety (90) days in advance of any change or modification.

iii. CITY anticipates the installation of new equipment within the Parkade that may automate the operation of the Parkade such that no personnel is needed to receive or obtain payment for event parking in the Parkade. In advance of that installation, CITY shall determine and advise LESSEE of the procedures to be implemented to appropriately track, account for, and compensate LESSEE for the parking revenues generated from LESSEE's events. If it is not feasible to determine such a procedure for non-prepaid event parking, CITY may elect to remit to LESSEE a fee equal to the average amount generated over the past three years of actual results based upon attendance. The amount of such a fee shall be applied to actual attendance, remitted quarterly based upon attendance for that quarter, and adjusted to reflect any increases in event parking rates.

b. Parkade Monthly Parking Passes. CITY shall provide LESSEE the opportunity to secure up to sixteen (16) monthly Parkade passes for LESSEE employees at the monthly rate charged to CITY employees.

39. Construction Bond. If LESSEE enters into a construction contract for the construction of improvements on the Premises that will cost more than \$1,000,000 (the "Bond Threshold Amount"), 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, upon a failure of LESSEE to complete such construction following applicable notice and cure periods, at the option of CITY that the uncompleted construction shall be removed by LESSEE and the Premises restored to a condition satisfactory to CITY, all to be done at LESSEE's sole cost and expense. 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. This requirement is not intended to be duplicative of a construction bond otherwise required of LESSEE. The Bond Threshold Amount shall be subject to a CPI increase every five (5) years, and all of the same terms and procedures applicable to rent increases pursuant to Paragraph 6 above shall apply to increases in the Bond Threshold Amount. Notwithstanding the foregoing,

LESSEE shall name CITY as an additional insured/obligee for any construction bond obtained by LESSEE, including any bond that LESSEE elects to (but is not required to) obtain under this Paragraph 39.

40. 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 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. Notwithstanding the foregoing, LESSEE shall have the right to contest any such liens, but shall nevertheless be required to take the above action while contesting any such lien.
41. Taxes. Subject to the provisions of Article XIII, Section 3(d) of the California Constitution and Section 202.2 of the California Revenue and Taxation Code, LESSEE shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon LESSEE or the Premises, including the land, any buildings, structures, machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by LESSEE or levied by reason of the business or other LESSEE activities related to the Premises, including without limitation licenses and permits. 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 the leasehold interest, and that LESSEE shall pay all possessory interest taxes. LESSEE's payment of taxes, fees, and assessments shall not reduce any rent due the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
42. Ownership of Improvements; Removal of Improvements and Personal Property.
- a. Improvements. Prior to expiration or termination 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 owned by CITY free of all liens and claims. 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 any improvements, fixtures, structures, and installations or additions made to the Premises after the Effective Date removed by LESSEE at the end of the Term. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later 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.

- b. 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.
 - c. 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 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 an appraisal prepared by competent CITY staff.
 - d. 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.
43. 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 five (5) calendar days after the beginning of any claimed delay.
44. Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, maintenance, 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 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 maintaining 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.

- a. 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. "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. A copy of the presently effective EPA and the State lists is on file in the Office of the City Clerk as Document 769704 and is hereby incorporated into this Lease.
- b. Remediation. If LESSEE or LESSEE's agents and contractors cause a release of a hazardous substance, or petroleum related substance or its chemical constituents in, on, under, or from the Premises in violation of applicable law, LESSEE shall at its sole cost and expense pay all costs of remediation and removal to the CITY's satisfaction for reuse of the Premises at the same level of use as existed prior to such release, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- c. Removal. If LESSEE or LESSEE's contractors or agents receive approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and LESSEE's contractors and agents shall remove all hazardous substances and hazardous wastes in any type of container approved or suitable for such use, 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.
- d. Indemnity. The Indemnification and Hold Harmless provision under Section 26 of the Lease shall apply to LESSEE's performance of its obligations under Section 44 of this Lease and any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's Operations on the Premises, including, but not limited to, costs of environmental assessments, costs of remediation and removal, any necessary response costs, damages for injury to natural resources or the public, and costs of any health assessment or health effect studies.
- e. Notice of Release. If LESSEE knows or has reasonable cause to believe that a hazardous substance or petroleum related substance or its chemical constituents has been released on, from, or beneath the Premises, LESSEE shall immediately

notify CITY and any appropriate regulatory or reporting agency per California Administrative Code 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.

- f. 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 city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, which would not allow the same level of use as existed prior to such release, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to permit re-use at the same level of use as existed prior to such release 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 reasonable discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that re-use of the Premises at the same level of use as existed prior to such release and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefor.
- g. Sewage Leakage. CITY acknowledges that a sewage leakage occurred at the connection of the sewer line from the Premises to the main sewer line under "C" Street due to deterioration of the line. CITY agrees it shall continue to provide a quarterly clean-out and a semi-annual photographic inspection of the line. City shall be solely responsible and liable for this condition and any and all claims, costs and expenses related to environmental liabilities resulting from this condition, excepting those claims, costs and expenses directly resulting from the gross negligence, sole negligence, or sole willful misconduct of LESSEE, its officers, representatives, agents, contractors, or employees.

45. Asbestos Disclosure. CITY discloses to LESSEE that portions of the structural components of the Premises may contain asbestos. LESSEE acknowledges having received notice from CITY of the presence of asbestos in accordance with Health and Safety Code Section 25915. LESSEE shall disclose the existence of asbestos on the Premises, as required by Health and Safety Code Section 25915. LESSEE agrees to indemnify and hold CITY harmless from any loss or claim which may result from the existence of asbestos on the Premises following the commencement of the Renovation, provided that LESSEE's indemnification obligation shall not apply prior to the commencement of the Renovation.
46. Asbestos. CITY, as owner of the Premises, shall be fully responsible and liable for asbestos, including its removal and/or abatement, until LESSEE commences the Renovation or other alterations that require demolition of the walls or structure of any portion of the Premises (but as to such other alterations, only the portion(s) of the Premises affected by such demolition) ("Demolition Work"). CITY shall indemnify, hold harmless and defend LESSEE against any claims or causes of action arising out of the presence, removal and/or abatement of asbestos prior to the commencement by LESSEE of the Renovation or any Demolition Work. LESSEE is responsible for advising CITY of LESSEE-desired improvements or alterations of the Premises that may affect, disturb or require the removal or abatement of asbestos. In connection with any LESSEE-desired improvements or alterations of the Premises, or any portion of the Renovation or any Demolition Work, LESSEE shall assume responsibility for the removal and abatement of impacted asbestos, including LESSEE's retention of licensed abatement contractors and licensed abatement monitors, as may be required by federal or state regulations. After the commencement of the Renovation, LESSEE will be responsible for any and all asbestos removal and/or abatement.
47. 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:

SAN DIEGO THEATRES, INC.
Attn: President & CEO
1110 Third Avenue
San Diego, California 92101

If to CITY:

THE CITY OF SAN DIEGO
Real Estate Assets Department
Attention: Director, Real Estate Assets Department
1200 Third Avenue, Suite 1700, MS 51A

48. Compliance with Law. LESSEE shall at its sole cost and expense comply with all rules, regulations, and laws, and all direction by competent authority, which now or hereafter pertain to LESSEE's occupancy, use, development, maintenance, and restoration of the Premises. In addition, LESSEE shall comply with any and all notices issued by the Mayor or his authorized representative under the authority of any law, statute, ordinance, or regulation.
49. No Discrimination. LESSEE shall not discriminate in any manner against any person or persons on account of race, color, religion, gender, sexual orientation, medical status, national origin, age, marital status, or physical disability in LESSEE's use of the Premises, including but not limited to the providing of goods, services, facilities, privileges, advantages, and accommodations, and the obtaining and holding of employment.
50. Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. LESSEE will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Agreement from local residents and firms as opportunities occur. LESSEE shall hire qualified local residents and firms whenever feasible.
51. Drug-free Workplace. LESSEE shall comply with San Diego City Council Policy 100-17. LESSEE shall adopt and enforce a policy to maintain a drug-free workplace by doing all of the following:
 - a. 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
 - b. Establish a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) LESSEE's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
52. Compliance with CITY'S Equal Employment Opportunity Contracting Program. LESSEE acknowledges and agrees that it is aware of, and will comply with, City Council

Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. LESSEE and all of its subcontractors are individually responsible to abide by its contents.

LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended by Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. LESSEE shall not discriminate, and shall require its subcontractors not to discriminate, against any employee or applicant for employment on any basis prohibited by law.

LESSEE shall submit to CITY a current Work Force Report and if requested by the Equal Opportunity Contracting (EOC) staff, an Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that LESSEE will take to achieve the CITY's commitment to equal employment opportunities.

LESSEE agrees to insert the foregoing provisions in all subcontracts for any work covered by this Lease so that the provisions will be binding upon each subcontractor. LESSEE agrees that compliance with EEO provisions flowing from the authority of both parties will be implemented, monitored, and reviewed by the CITY's EOC Program staff.

LESSEE understands that failure to comply with the above requirements 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.

53. CITY Employee Participation Policy. Pursuant to City Council Policy 300-11, CITY, at its reasonable discretion, may unilaterally and immediately terminate the Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding employment, did in his or her capacity as a CITY officer or employee participate in, negotiate with, or otherwise have an influence on the recommendation made to the City Council in connection with this Lease or selection of LESSEE.
54. Disabled Access Compliance. CITY, as owner of the Premises, is responsible for physical compliance of the Premises in accordance with the American with Disabilities Act and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities. CITY shall indemnify, hold harmless and defend LESSEE against any claims or causes of action related to physical compliance of the Premises pertaining to ADA or Title 24. Notwithstanding the foregoing, LESSEE shall be responsible for any ADA compliance work triggered by LESSEE's alterations to the Premises.

Upon commencement of the Renovation, LESSEE shall be responsible for those improvements to be in conformance with ADA and Title 24 of the California Code of Regulations (Building Code) as defined in Section 18910 of the California Health and Safety Code, and any other applicable federal, state, or local regulations hereafter enacted protecting the rights of people with disabilities. Additionally, upon commencement of the Renovation, LESSEE shall assume all responsibility for physical compliance of those LESSEE-improved areas of the Premises and LESSEE shall indemnify, hold harmless and defend CITY against any claims or causes of action related to physical compliance of the Premises pertaining to ADA or Title 24.

55. Living Wage Ordinance. LESSEE shall comply, and shall require its subcontractors to comply, with the provisions of the City's Living Wage Ordinance, codified in San Diego Municipal Code sections 22.4201 et seq., in performing its obligations and/or duties under this Lease.
56. 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.
57. Water Quality Assurances. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") Permit No. R9-2007-0001, and any subsequent versions of this NPDES permit that become effective during the Term of this Lease. LESSEE shall comply with San Diego Municipal Code Chapter 4, Article 3, Division 3: Storm Water Management and Discharge Control (the "Storm Water Code"), as amended from time to time, and employ "Best Management Practices" including a "Storm Water Pollution Prevention Plan" as those terms are defined by the Storm Water Code (collectively, "Prevention Plan") and as approved by CITY under its Storm Water Management Program. Within the first thirty (30) days of the Term, LESSEE shall submit a Prevention Plan satisfactory to CITY that will control any "Pollutants," as defined by the Storm Water Code, discharged from the Premises. CITY may review the Prevention Plan periodically. Within thirty (30) days after written notice from CITY requesting an update of the Prevention Plan, LESSEE shall submit an updated Prevention Plan to CITY's satisfaction. LESSEE shall implement all changes to the Prevention Plan as required by CITY and to ensure compliance with all applicable laws, ordinances, and regulations. LESSEE shall inform its employees, contractors, subcontractors, agents and vendors of the Prevention Plan and ensure their compliance therewith. LESSEE shall at all times keep and maintain Best Management Practices required by the Prevention Plan in a manner which controls and prevents discharge of Pollutants to the Maximum Extent Practicable. LESSEE understands and agrees that storm water Pollution prevention requirements may change from time to time by regulation of the San Diego Regional Water Quality Control Board, and LESSEE expressly agrees that it will at its sole cost and expense maintain compliance with applicable regulations notwithstanding any change in law relating to storm water management.

58. 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.
59. Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
60. 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.
61. 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.
62. 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.
63. 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.
64. Governmental Approvals. By entering into this Lease, neither CITY nor CITY's City Council is obligating itself to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE's occupancy, use, development, or maintenance of the Premises. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental approvals which may be required for LESSEE's occupancy, use, development, or maintenance of the Premises.
65. Conformity. The policies established by LESSEE for the operation of the Premises shall conform to the general policies established by CITY for the use and operation of CITY-owned properties like the Premises, provided that such policies are reasonable and non-discriminatory and CITY provides LESSEE with written copies of such policies; provided, however, to the extent of any conflict between the terms and provisions of this Lease and any future policies of the CITY, the terms and provisions of this Lease shall control.
66. Use of Proceeds. LESSEE shall use all revenue received from the operation of the Premises exclusively for the continued operation, maintenance, and improvement of the Premises and purposes incidental thereto. Subject to CITY's prior written consent,

LESSEE may also use such revenue to support LESSEE's operation of other publicly owned venues currently operated by LESSEE on behalf of CITY, including the Balboa Theatre. LESSEE's compliance with this requirement shall be certified in LESSEE's annual financial report as required herein.

- a. Annual Report. Concurrently with the filing of LESSEE's Form 990 with the I.R.S. and California Franchise Tax Board for each year during the Term, LESSEE shall deliver to CITY a copy of the Form 990 filing.
 - b. Financial Records. LESSEE shall keep or cause to be kept true, accurate, and complete accounting records using generally accepted accounting principles consistently applied, including double-entry books, a profit-and-loss statement, and a balance sheet, making it possible at all times to determine the nature and amount of revenue and expenditures. All of LESSEE's expenditures and transactions shall be supported by documents of original entry such as sales slips, cash register tapes, purchase invoices, and receipts. LESSEE shall retain documents supporting its profit-and-loss statements for a minimum period of five (5) years.
 - c. Inspection of Records and Audit. LESSEE shall make all of its books, statements, documents, records, and financial data open at all reasonable times for CITY's inspection and audit upon reasonable notice. CITY may conduct an audit of LESSEE's books, statements, documents, records, and financial data, or demand and receive from LESSEE the results of a complete audit as conducted by an independent certified public accountant in the event that: (i) LESSEE's chief executive officer, executive director, or other such manager resigns, retires, or is discharged; (ii) a majority in the membership of LESSEE's governing body changes; or (iii) the purposes for which LESSEE was created are materially or substantially changed.
 - d. Proposed Budget. Upon CITY's request during the Term, LESSEE shall deliver to CITY copies of documents evidencing LESSEE's proposed programs and budget for the next fiscal year. Such documents shall be in a form and content reasonably satisfactory to CITY.
67. 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.

68. Implementation of Renovation. LESSEE shall submit a General Development Plan to CITY for review and approval prior to any renovation or rehabilitation of the Premises. The General Development Plan shall include the general contents and provisions described in Section 4 of this Lease. The General Development Plan, upon approval by CITY shall be attached hereto and made part of this Lease.

CITY shall have the authority to authorize subsequent changes to the approved General Development Plan provided that the proposed changes are consistent with the terms and conditions of this Lease, and are subject to any and all required development permit conditions and CEQA mitigation measures.

Failure by LESSEE to comply with the requirements of this Section 68 or with the approved General Development Plan shall constitute a major default, subject to Paragraph 24(a)(ii) above.

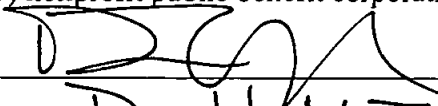
69. Change in Ownership; Right of First Refusal. Should there be a proposed change in ownership of Premises by CITY, other than for the purpose of redeveloping the Civic Center or any portion thereof, CITY shall provide the LESSEE with a proposal offering to sell the Premises to LESSEE and detailing the terms for the proposed sale. The LESSEE will have thirty (30) calendar days to agree to the terms of the sale by signing and returning the proposal to the CITY. If the LESSEE does not accept the proposal within thirty days, the CITY may sell the property within a twelve-month period to any buyer, provided that the sales price is not less than the offer rejected by the LESSEE. Prior to accepting an offer for the Premises at a lower price than the price rejected by the LESSEE, the CITY must first offer the Premises to the LESSEE at the lower offer price for a period of at least thirty (30) calendar days.
70. Naming Rights. In connection with implementation of the Renovation, LESSEE desires to enter into an agreement ("Naming Rights Agreement") with an entity ("Naming Rights Entity") pursuant to which such Naming Rights Entity would acquire the naming rights to the Premises ("Naming Rights"). LESSEE agrees that the Naming Rights Agreement, the identity of the Naming Rights Entity, and the identification signage shall be subject to the prior written approval of CITY, pursuant to resolution of the City Council, acting in its sole discretion. LESSEE agrees that the revenue LESSEE receives from the Naming Rights Agreement, including, but not limited to, any sponsorship proceeds shall be used solely in connection with financing for the Renovation.

Unless CITY otherwise agrees, in its sole discretion, in no event will the Naming Rights Entity be in violation of Council Policy 000-04 or be a Prohibited Person. For purposes of this section "Prohibited Person" means any Person that at the time of determination provided for in this Lease, (i) has been convicted, or is controlled by a Person who has been convicted, of any felony in the five years immediately preceding such determination.

71. Donor Recognition. LESSEE shall have the right and authority to implement a plan to recognize persons or entities that make significant financial contributions in support of the Renovation and theatre operations. Such plan may include installation of plaques or other recognition mementos within the interior of the Premises or identifying areas within the Premises by a donor's name.
72. Termination for Convenience. Upon ninety (90) days' prior written notice to CITY, LESSEE may terminate this Lease for any reason or no reason, which termination shall become effective as of the date specified in the notice; provided, however, in the event that any uncompleted construction work by LESSEE is in progress at the Premises at the time of such notice, LESSEE shall also deposit with CITY a performance bond in the amount of the estimated costs to complete the work in progress, and LESSEE shall cause any liens or encumbrances caused by LESSEE to be removed or bonded around. By exercising LESSEE's right to terminate this Lease for convenience, LESSEE waives any and all claims and liability against CITY, its elected officials, officers, agents, and employees for damages incurred by LESSEE to the extent such damages arise as a result of such exercise of LESSEE's right to terminate this Lease for convenience as opposed to continuing this Lease for the Term hereof. In no event shall such waiver be deemed to be a waiver of LESSEE's right to receive any monetary amounts due and payable to LESSEE pursuant to Sections 34, 35, and 38 of this Lease.
73. Obligations Upon Expiration or Termination. On the expiration or earlier termination of this Lease, all of the parties' rights and obligations hereunder shall terminate, except to the extent of any provisions that expressly survive termination. LESSEE shall surrender possession of the Premises to CITY on such date of expiration or termination in good condition, reasonable wear and tear and casualty excepted, provided that all alterations, including the Renovation work, which shall remain at the Premises and LESSEE shall have no obligation to remove such alterations or restore the Premises to its original condition. The parties shall use commercially reasonable efforts to agree to a written plan of transition to ensure the continued availability of the Theatre for parties that have entered into license or similar use agreements with respect to the Theatre. The parties shall reasonably cooperate in such transition and neither party shall interfere with the transfer of records and information relating to the operation of the Theatre, or the protection or removal of LESSEE's personal property (including furniture, fixtures and equipment, trade fixtures and business records) located in the Theatre.

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

SAN DIEGO THEATRES, INC., a California
501(c)(3) nonprofit public benefit corporation

BY: 

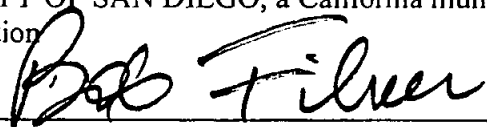
Name:

Donald M. Telford

Title:

President + CEO

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: 

Name:

BOB FILNER

Title:

Mayor

Approved as to Form and Legality:

JAN I. GOLDSMITH, City Attorney

BY: 

Name:

Kenneth So

Title:

Deputy City Attorney

Exhibit A-1: Premises

Exhibit A-2: Plaza Area

Exhibit A-3: Exclusive Event Space

EXHIBIT A-1 (page 1 of 3)

PREMISES - CIVIC THEATRE

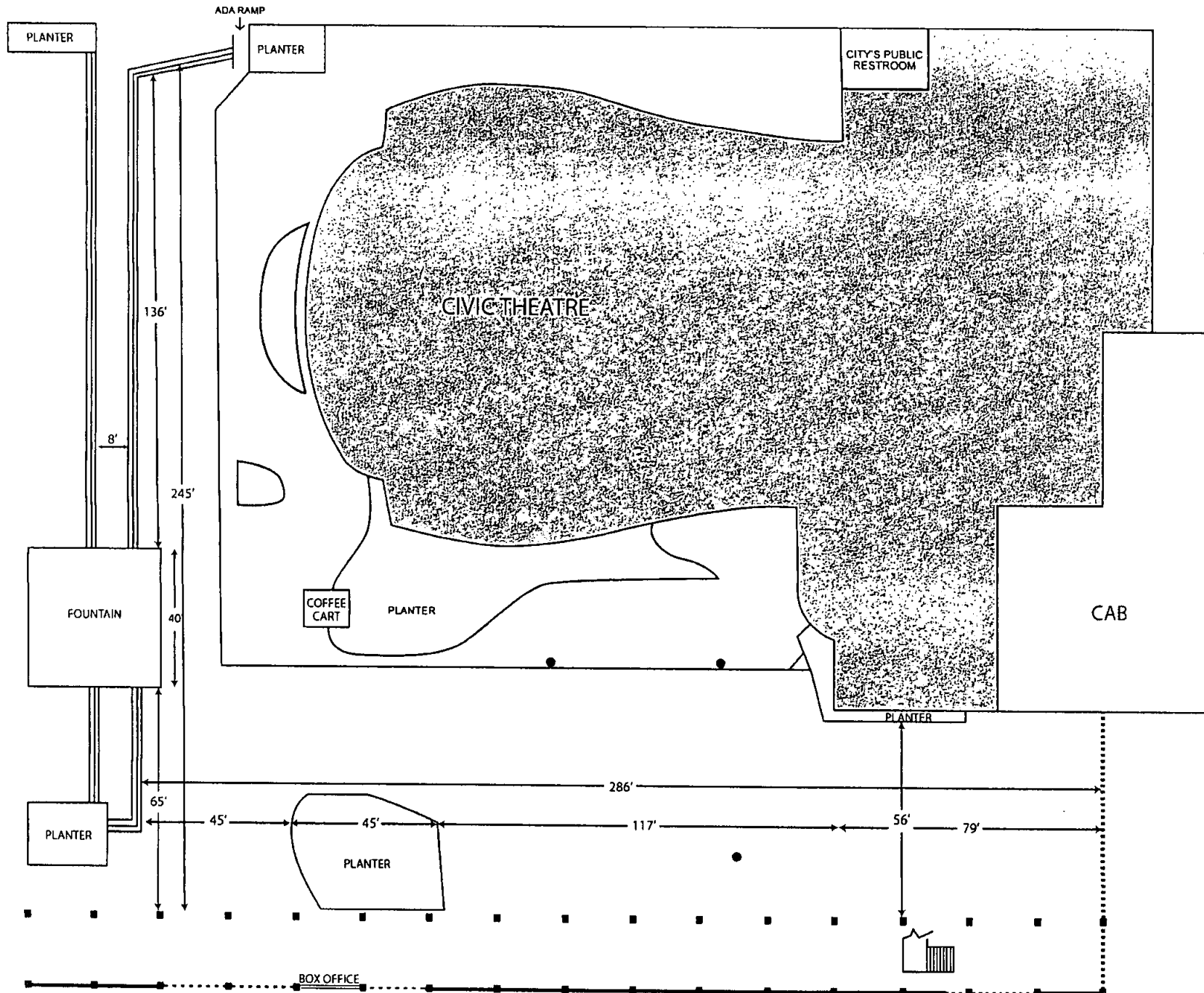


EXHIBIT A-1 (page 2 of 3)

ADDITIONAL PREMISES

SAN DIEGO THEATRES

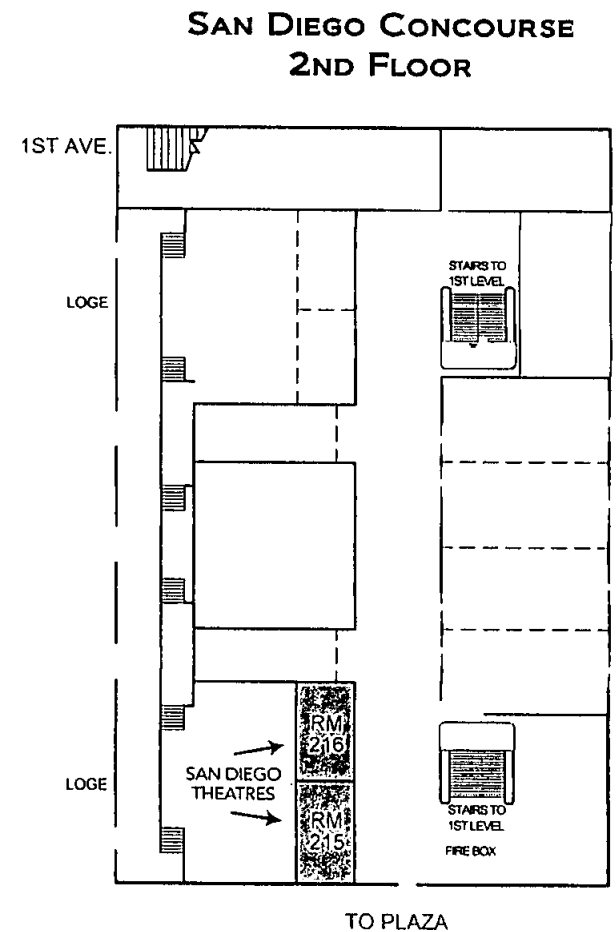
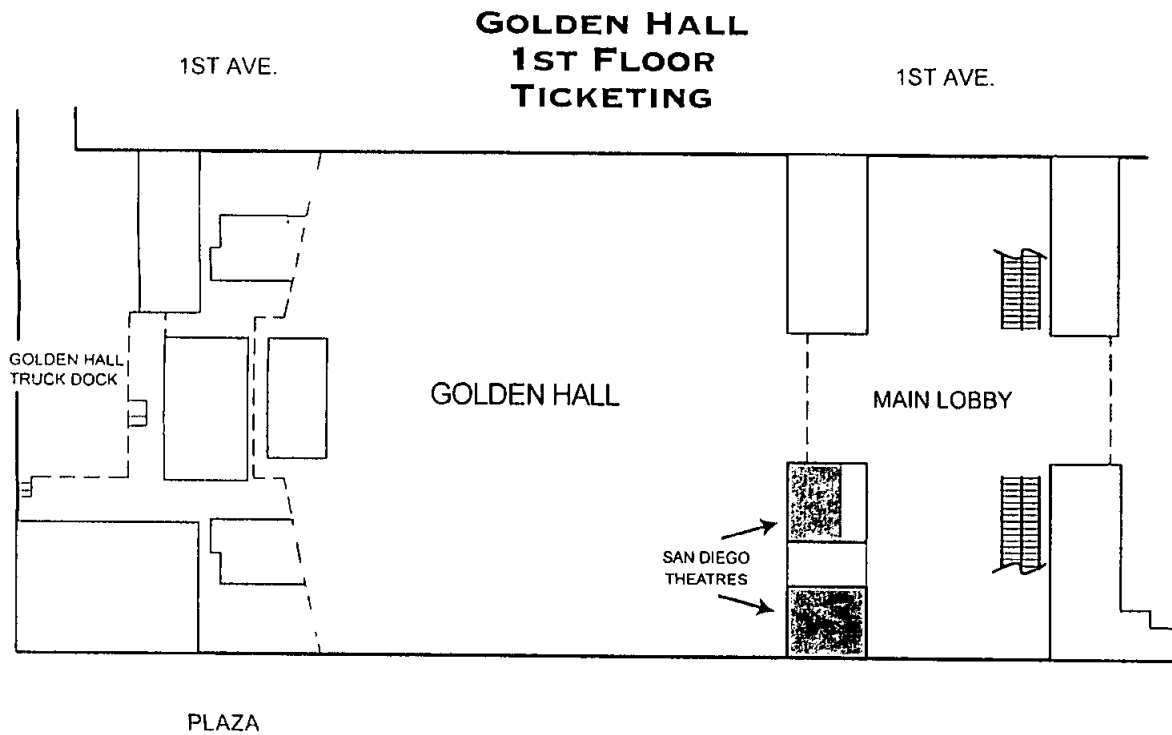


Exhibit A-1 (page 3 of 3)

ADDITIONAL PREMISES SAN DIEGO THEATRES

GOLDEN HALL BASEMENT
CENTRAL POWER
CIVIC THEATRE BASEMENT

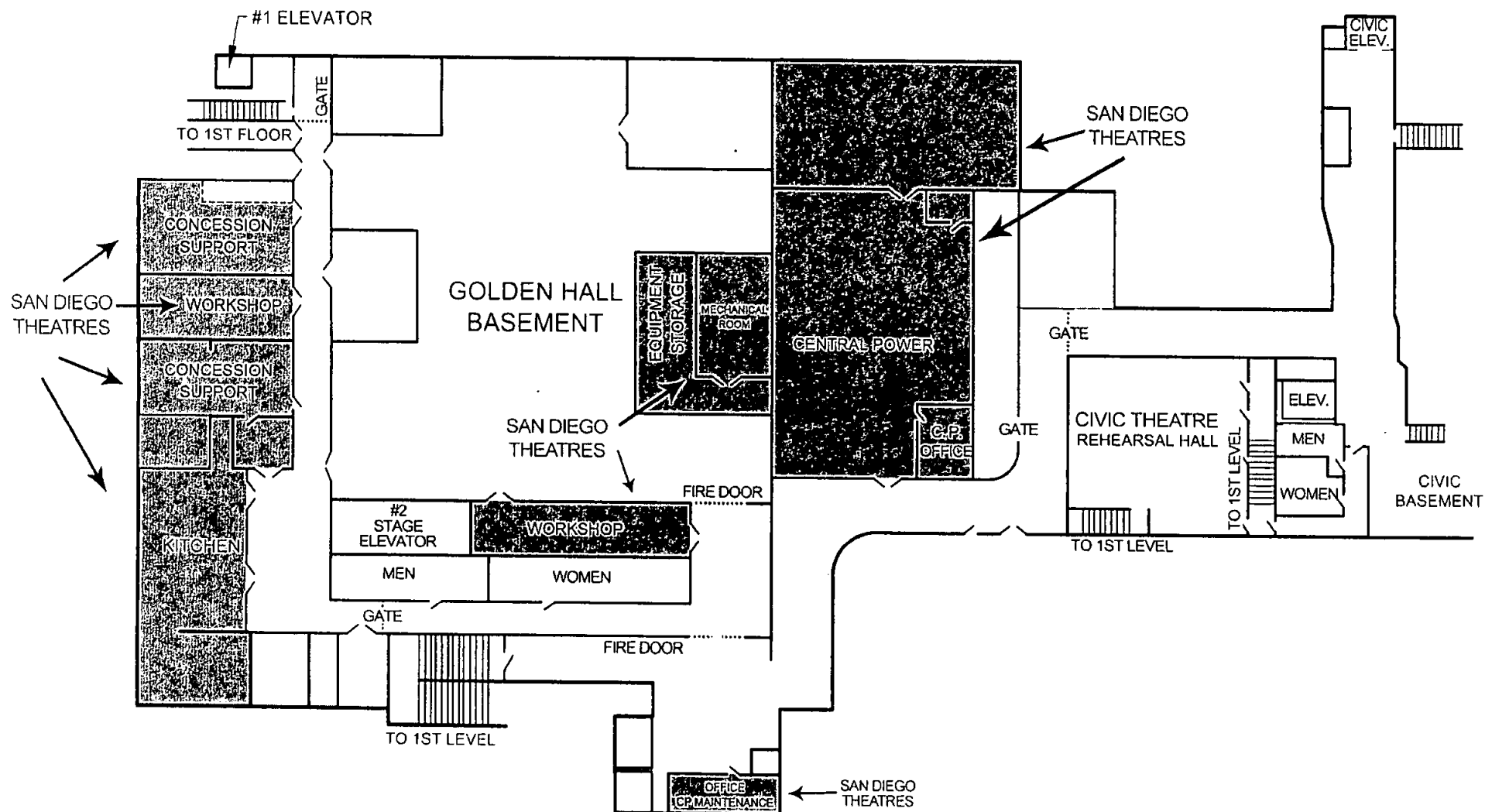


EXHIBIT A-2

Concourse Plaza Area

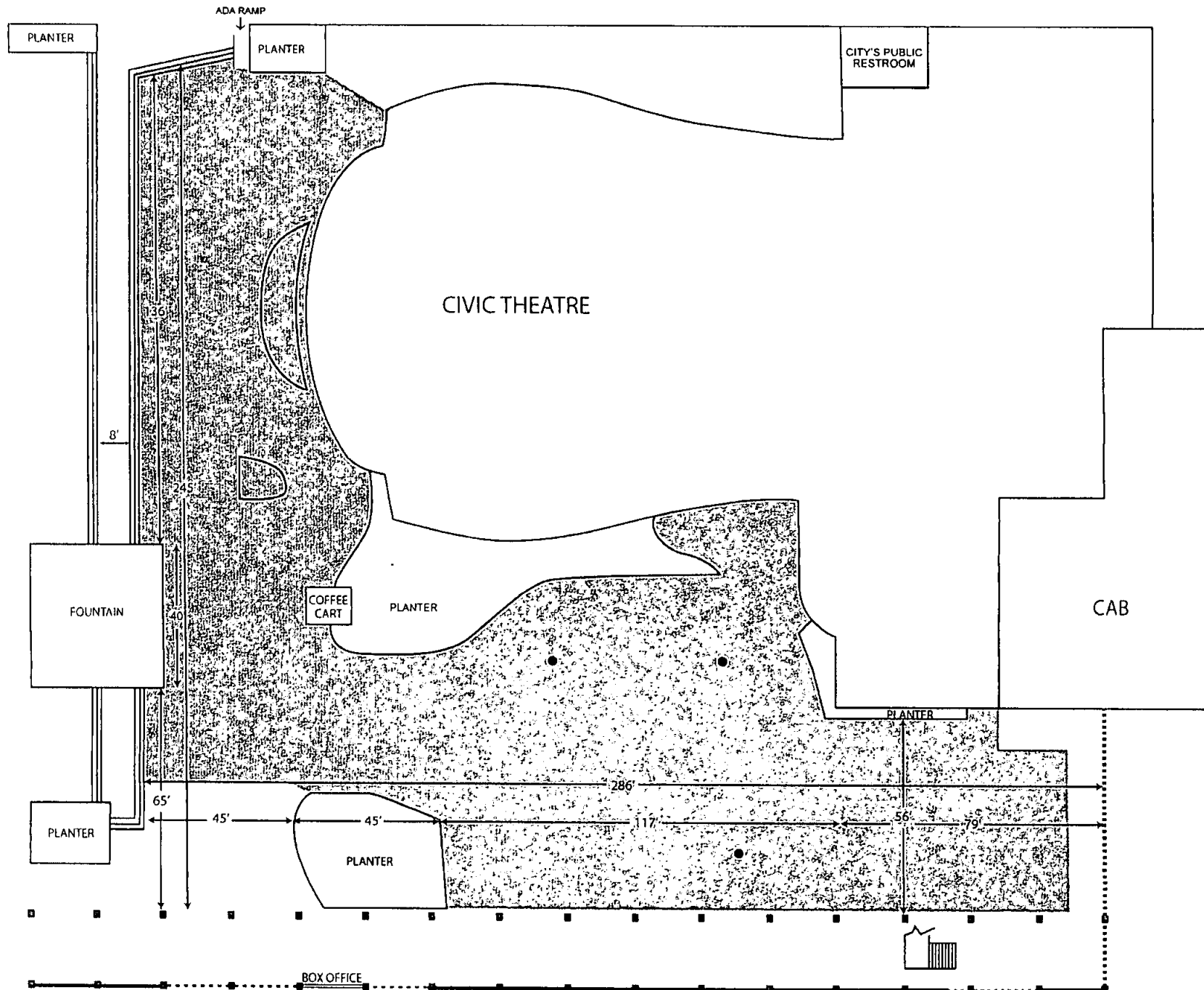
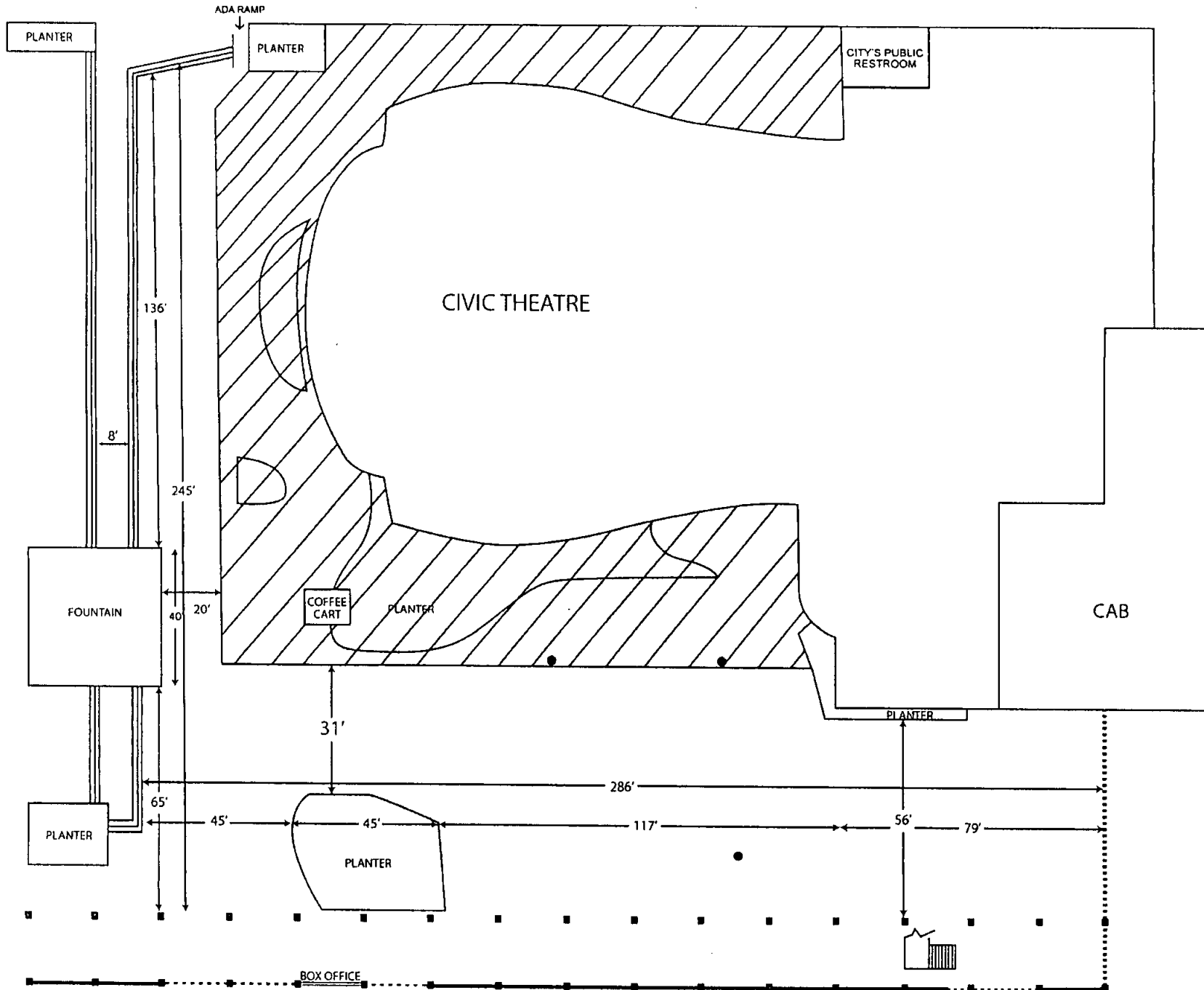


EXHIBIT A-3

EXCLUSIVE EVENT SPACE

In conjunction with Civic Theatre Events



ORDINANCE NUMBER O- 20236 (NEW SERIES)DATE OF FINAL PASSAGE JAN 23 2013

AN ORDINANCE AUTHORIZING A FIFTY YEAR PUBLIC
PURPOSE LEASE BETWEEN THE CITY OF SAN DIEGO
AND SAN DIEGO THEATRES, INC. FOR THE OPERATION
OF THE SAN DIEGO CIVIC THEATRE AND RELATED
FACILITIES.

WHEREAS, pursuant to San Diego Charter section 99, this ordinance requires a two-thirds majority vote of the Council of the City of San Diego (City Council) to pass; and

WHEREAS, the City of San Diego (City) is the owner of the San Diego Civic Theatre located at 1110 Third Avenue, San Diego, California (Civic Theatre); and

WHEREAS, San Diego Theatres Inc., a California 501(c)(3) non-profit public benefit corporation (SDTI), currently operates the Civic Theatre under an operating agreement with the City that expires on February 28, 2013; and

WHEREAS, SDTI has extensive and unique qualifications and experience managing and operating the Civic Theatre including years of performance of its obligations pursuant to the current and previous operating agreements; and

WHEREAS, SDTI was established to manage and operate publicly-owned performing arts theatres in the San Diego community; and

WHEREAS, SDTI performs a public purpose through the continued operation of the Civic Theatre as a civic enterprise on behalf of the community and through the pursuit of a significant renovation to the Civic Theatre from a major fundraising effort that will involve an investment by SDTI of at least \$30 million; and

WHEREAS, SDTI has requested a long-term fifty (50) year lease agreement to enable it to attract major donors for its fundraising effort to renovate the Civic Theatre and to allow SDTI sufficient time to recoup at least a portion of its capital investment; and

WHEREAS, under the proposed lease and consistent with the current operating agreement, the City will pay for its pro-rata share of the cost of operating Central Power situated in the basement area of Civic Theatre, which provides power and water to various City buildings including the Civic Theatre, City Administration Building, and the Concourse Building; and

WHEREAS, under the proposed lease and consistent with the current operating agreement, the City will pay SDTI all parking revenues solely generated from SDTI's events held in the Civic Theatre, net of related costs; and

WHEREAS, in compliance with all applicable labor laws, the proposed lease will also document the long-standing informal arrangement whereby SDTI will assist in the maintenance of the Concourse Building; and

WHEREAS, upon approval and execution of the proposed fifty (50) year lease, the current operating agreement will terminate; NOW, THEREFORE,

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

Section 1. That the Mayor or his designee is authorized to execute and deliver the 50 year Public Purpose Lease between the City of San Diego and San Diego Theatres, Inc., on file in the Office of the City Clerk as Document No. OO- 20236 (Lease), for the continued operation of the San Diego Civic Theatre located at 1110 Third Avenue, San Diego, California.

Section 2. That the Chief Financial Officer is authorized to appropriate and expend funds as required per the terms of the Lease, contingent upon adoption of future fiscal year appropriation ordinances by the City Council and the Chief Financial Officer certifying that funds are available.

Section 3. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Kenneth R. So
Deputy City Attorney

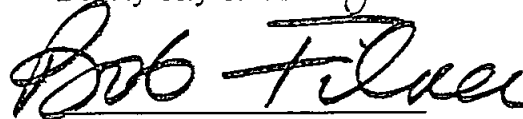
KRS:nja
11/16/2012
Or.Dept:READ
Doc. No. 466775

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 8 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 1/23/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

Passed by the Council of The City of San Diego on January 8, 2013, by the following vote:

YEAS: LIGHTNER, FAULCONER, GLORIA, KERSEY, ZAPF,
SHERMAN, ALVAREZ, & EMERALD.
NAYS: NONE.
NOT PRESENT: NONE.
RECUSED: NONE.
VACANT: DISTRICT 4.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Gil Sanchez, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-20236 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on November 27, 2012, and on January 23, 2013. The date of final passage is January 23, 2013.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy