

CITY OF SAN DIEGO
USE AND OCCUPANCY PERMIT

THIS CITY OF SAN DIEGO USE AND OCCUPANCY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), and **CALIFORNIA COAST CREDIT UNION**, a California corporation ("PERMITTEE"), to be effective as of August 10, 2016, ~~2016~~, when signed by the parties and approved by the San Diego City Attorney (the "Effective Date").

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

1. Definitions. As used in this Permit, the following terms shall be defined as follows:

- 1.1 **"ATM Location"** shall mean the location at the City-owned property located at the San Diego Community Concourse, 202 C Street, San Diego, California 92101 ("Concourse") as more particularly depicted in **Exhibit A: ATM Location**, attached hereto.
- 1.2 **"Permit Use"** shall mean exclusive use of the ATM Location for the installation and operation of one (1) automated teller machine ("ATM") and incidental equipment and for no other purpose whatsoever.
- 1.3 **"PERMITTEE's Address for Notices"** shall be:

CALIFORNIA COAST CREDIT UNION
Attention: Kathy Cady
PO Box 502080
San Diego, CA 92150-2080
858-636-4256

- 1.4 **"Permit Processing Fee"** shall mean a one-time, non-refundable permit processing fee in the amount of Nine Hundred Eighty Dollars (\$980.00).
 - 1.5 **"Security Deposit"** Security Deposit under this permit will be waived by the City of San Diego.
 - 1.6 **"Term"** shall mean three (3) years, commencing on the first day of the month following the Effective Date.
2. Occupancy. Subject to the terms and conditions of this Permit, CITY hereby grants permission to PERMITTEE and its officers, employees, agents and contractors to enter upon and occupy the Permit Area solely for the Permit Use.

3. Use of Permit Area. PERMITTEE may use the Permit Area solely for the Permit Use and for no other purpose whatsoever without CITY's prior written consent in each instance. PERMITTEE shall continuously occupy and use the Permit Area throughout the Term.
 - 3.1 PERMITTEE shall use its best effort to operate the ATM during any and all Concourse operating hours. PERMITTEE shall have the right; however, to suspend operation for periodic maintenance inspections, balancing adjustments, servicing operation or other maintenance purposes. CITY and PERMITTEE acknowledge that despite PERMITTEE's best efforts, the ATM may be rendered inoperative for various periods of time due to breakdowns, operation failures or other reasons. PERMITTEE shall have the right to service the ATM at all times. PERMITTEE may engage an independent contractor to perform PERMITTEE's maintenance or service obligations. CITY shall grant access to the ATM Location either to PERMITTEE or PERMITTEE's representative at all reasonable times, so that PERMITTEE may maintain the ATM.
4. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to PERMITTEE or to any governmental agent, board, commission or agency with regard to any other discretionary action relating to PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area. "Discretionary action" includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.
5. CITY's Consent, Discretion. CITY's consent or approval under this Permit shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise required by law or expressly provided herein, and shall be made in the Mayor's discretion, subject to all applicable laws, rules, regulations and directives of competent governmental authorities.
6. Revocable License. This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) if for PERMITTEE's breach or default of any of PERMITTEE's obligations under this Permit or in case of an emergency, immediately upon written notice delivered to PERMITTEE; and (b) if for CITY's convenience, upon ninety (90) days prior written notice delivered to PERMITTEE. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.
7. Holdover. If PERMITTEE continues to occupy the Permit Area after the expiration or earlier termination of this Permit, such occupancy shall neither constitute a renewal or extension of this Permit, nor give PERMITTEE any rights in or to the Permit Area.
8. Termination. PERMITTEE or CITY may terminate this Permit for any reason upon ninety (90) days prior written notice delivered to either party.
9. Restoration of Permit Area. Except as otherwise provided in this Permit, prior to the expiration or within 30 days after termination of this Permit, PERMITTEE shall finish its

efforts to restore the Permit Area to its condition on the Effective Date, normal wear and tear excepted.

10. Permit Fee. PERMITTEE shall pay rent to CITY in the amount of \$450.00 which will be paid by the 1st of each month.

- 10.1 Unauthorized-Use Charge. PERMITTEE shall pay CITY one hundred (100%) of the Gross Revenue from any use of the ATM Location that is not allowed by this Permit, regardless of any related penalties charged PERMITTEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after PERMITTEE receives such Gross Revenue. The unauthorized use charge shall be considered a "fee" under this Permit, and shall be subject to all costs and penalties for delinquent payments hereunder. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Permit.

11. Invoicing Courtesy. CITY may invoice PERMITTEE for amounts payable under this Permit. However, any such invoicing shall be deemed a courtesy only; PERMITTEE shall make all payments under this Permit on or before each applicable due date, regardless of being invoiced. No grace period shall apply to any amount payable under this Permit.

12. Place of Payment. All payments to be paid by PERMITTEE under this Permit shall be made payable to "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 PERMITTEE. 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.

13. Default and Delinquent Payments. If PERMITTEE fails to make any payment under this Permit when due, PERMITTEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be included in the additional Minimum Fee for that pay period. If any amount of such payment remains unpaid after fifteen (15) days past due, PERMITTEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be included in the additional

Minimum Fee for that pay period. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Permit may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. PERMITTEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of PERMITTEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, PERMITTEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

14. Maintenance of the Permit Area. PERMITTEE shall, at PERMITTEE's sole cost and expense, maintain the Permit Area and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY.
15. Service and Utilities. CITY shall furnish to the ATM Location electricity required by PERMITTEE for the use and operation of the ATM. CITY shall keep the area in the vicinity of the ATM Location well lit at all times. CITY shall maintain all areas adjacent to or in the vicinity of the ATM Location. PERMITTEE shall be responsible for the installation and all costs and fees of phone/data lines required to operate the ATM.
16. Signs. PERMITTEE may, at its sole expense, erect at the ATM Location PERMITTEE's normal and customary signs identifying and advertising the ATM. PERMITTEE may also, at its sole expense, place appropriate signage at the ATM Location with PERMITTEE's name and ATM networks. Appropriate directional or informational signage (i.e. window stickers and decals) may also be placed on the windows at the entrance to the Concourse building. Such directional or informational signage requires approval by the CITY, and may be rejected, in its sole discretion. No other signs shall be displayed on the ATM Location without the prior written consent of the CITY. Except as set forth in this paragraph, the ATM Location shall not be used for advertising.
17. Removal of ATM. Upon expiration or termination of this Permit, PERMITTEE shall remove any and all improvements, fixtures, structures and installations or additions to the Permit Area that were constructed or installed on the Permit Area by PERMITTEE ("PERMITTEE Improvements"). PERMITTEE shall, at PERMITTEE's sole cost and expense, remove PERMITTEE Improvements as soon as practicable, but in no event later than thirty (30) days after the expiration or earlier termination of this Permit. PERMITTEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of PERMITTEE Improvements as required by this Permit. If PERMITTEE fails to remove PERMITTEE Improvements as required, CITY may, at its option, remove them at PERMITTEE's sole cost and expense.

Notwithstanding any provision of this Permit to the contrary, PERMITTEE shall pay rent to CITY for any period of time after the expiration or termination of this Permit needed to

remove PERMITTEE Improvements or personal property as required by this Permit, whether by CITY or PERMITTEE. Such rent shall be calculated on a per diem basis using the rental rate in effect for the Term immediately preceding the expiration or termination of this Permit.

18. Insurance. PERMITTEE shall obtain and maintain throughout the term of this Permit, at its sole cost and expense, all insurance required by this Permit. PERMITTEE's liabilities under this Permit, including without limitation PERMITTEE's indemnity obligations, shall not be deemed limited in any way to the insurance coverage required herein. PERMITTEE's maintenance of the required insurance coverage is a material consideration for this Permit. Notwithstanding any provision of this Permit to the contrary, if PERMITTEE fails to maintain or renew the insurance coverage required herein, or fails to deliver evidence of same to CITY, PERMITTEE shall be in default of this Permit. PERMITTEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss. PERMITTEE shall obtain and deliver to CITY's Real Estate Assets Department a current certificate of insurance and relevant endorsements for (and subject to CITY's written approval of same):

18.1 Commercial General Liability Insurance ("CGL") written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury, including death, and property damage with limits of at least Two Million Dollars (\$2,000,000) per occurrence, subject to an annual aggregate of at least Four Million Dollars (\$4,000,000). There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

18.2 Additional Insureds. To the fullest extent allowed by law, including without limitation California Insurance Code section 11580.04, each policy must be endorsed to include as an insured "The City of San Diego and its elected officials, officers, employees, representatives and agents" with respect to liability arising out of: (a) ongoing operations performed by PERMITTEE or on PERMITTEE's behalf; (b) PERMITTEE's products; (c) PERMITTEE's work, including without limitation PERMITTEE's completed operations performed by PERMITTEE or on PERMITTEE's behalf; or (d) the Permit Area.

18.3 Primary & Non-Contributory. Each policy must be endorsed to provide that the insurance afforded by Commercial General Liability policies is primary to any insurance or self-insurance of The City of San Diego and its elected officials, officers, employees, representatives and agents as respects operations of the named insured. Any insurance maintained by The City of San Diego and its elected officials, officers, employees, representatives and agents shall be in excess of PERMITTEE's insurance and shall not contribute to it.

18.4 Severability of Interest. Each policy must be endorsed to provide that PERMITTEE's insurance shall apply separately to each insured against whom claim is made or suit is bought, except with respect to the limits of the insurer's liability and shall provide

cross-liability coverage.

- 18.5 Qualified Insurer(s). Except for the State Compensation Insurance Fund, all insurance required by this Permit shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY may accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (i.e., the LESLI list). All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein. Each insurer shall be subject to CITY's approval in each instance.
- 18.6 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 18.7 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, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and shall immediately obtain replacement insurance as soon as possible.
- 18.8 Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use.
19. Indemnification & Hold Harmless. PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with this Permit or PERMITTEE's occupancy, use, development, maintenance or restoration of the Permit Area, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any established liability arising from the gross

negligence or intentional misconduct of CITY and its elected officials, officers, employees, representatives and agents. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, PERMITTEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

20. Revocable Permit: This Permit is not a lease. It is a license to use CITY property, and may be revoked at will by CITY, in its sole discretion: (a) immediately upon written notice delivered to PERMITTEE if PERMITTEE breaches or defaults any of PERMITTEE's obligations under this Permit, or in case of an emergency; or (b) upon reasonable prior written notice, but not less than ninety (90) days, delivered to PERMITTEE if for CITY's convenience. CITY shall not be obligated for any burden or loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit.
21. Compliance with Laws. PERMITTEE shall at all times in its use, occupancy, maintenance, and restoration of the Permit Area comply with all applicable laws, rules, regulations and directives of competent governmental authorities, and at PERMITTEE's sole cost and expense. At least annually or upon City's request, PERMITTEE shall deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to PERMITTEE (e.g., validation of periodic inspections, if applicable).
22. Permits & Approvals. PERMITTEE, at PERMITTEE's sole cost and expense, shall obtain all required permits and approvals from the applicable local, state and federal authorities, including without limitation from CITY.
23. California Public Records Act. CITY shall determine, in its sole discretion, whether this Permit or information provided to CITY by PERMITTEE pursuant to this Permit is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). PERMITTEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA. Upon CITY's request, PERMITTEE shall provide CITY with specific and detailed legal grounds, including any applicable case law, upon which CITY may rely, in CITY's sole discretion, for withholding any information requested pursuant to the CPRA. If CITY withholds disclosure of information in reliance on such legal analysis provided by PERMITTEE, PERMITTEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless for and from legal actions or challenges seeking to obtain the information from CITY and all costs incurred by CITY associated therewith, and shall defend, at PERMITTEE's sole expense, any action brought against CITY resulting from CITY's nondisclosure of the information. CITY may, at its election, conduct the defense or participate in the defense of any claim related in any way to this indemnification. If CITY chooses at its own election to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim

related to this indemnification, PERMITTEE shall pay all of the costs related thereto, including without limitation reasonable attorney fees and costs.

- 23.1 CITY shall not be liable or obligated for any burden or loss (financial or otherwise) incurred by PERMITTEE as a result of CITY's disclosure or non-disclosure of this Permit or PERMITTEE information requested pursuant to the CPRA. PERMITTEE EXPRESSLY WAIVES ANY CLAIM AGAINST CITY AND ITS ELECTED OFFICIALS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS FOR ANY BURDEN, EXPENSE OR LOSS WHICH PERMITTEE INCURS AS A RESULT OF CITY'S DISCLOSURE OR NON-DISCLOSURE OF THIS PERMIT OR ANY PERMITTEE INFORMATION REQUESTED PURSUANT TO THE CPRA.
24. No Discrimination. PERMITTEE shall not discriminate in any manner against any person on account of race, color, religion, gender, gender expression, gender identity, sexual orientation, medical status, national origin, ethnicity, age, marital status or disability in PERMITTEE's use of the Permit Area, including without limitation the provision of goods, services, facilities, privileges, advantages and accommodations, and the hiring and retention of employees and contractors.
25. Equal Opportunity. PERMITTEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375 and 12086; the California Fair Employment Practices Act; and all other related and applicable federal and state laws and regulations. PERMITTEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. PERMITTEE shall cause the foregoing provisions to be inserted in all of PERMITTEE's contracts for work related to this Permit so that such provisions will be binding upon each of PERMITTEE's contractors. PERMITTEE shall fully cooperate with any investigation conducted by CITY pursuant to CITY'S Nondiscrimination in Contracting Ordinance (i.e., San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time), and upon CITY's request PERMITTEE shall submit a current Workforce Report. PERMITTEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Permit and debarment from participating in CITY contracts for a period of not less than one (1) year.
26. Equal Benefits. PERMITTEE shall comply with San Diego Municipal Code Sections 22.4301-22.4308, which require applicable parties to offer the same employment benefits to employees with spouses and employees with domestic partners. PERMITTEE shall certify that it will maintain such equal benefits throughout the term of this Permit. PERMITTEE's failure to maintain equal benefits shall be a material breach of this Permit.
27. Disabled Access Compliance. PERMITTEE shall comply with Title 24 of the California Code of Regulations (i.e., the "California Building Code"); the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable state and federal laws and regulations enacted protecting the rights of people with disabilities. PERMITTEE's compliance shall include without limitation the following:

- 27.1 PERMITTEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment;
 - 27.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of PERMITTEE;
 - 27.3 PERMITTEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site;
 - 27.4 Where required by law, PERMITTEE shall, at PERMITTEE's sole cost and in conformance with all applicable building codes and accessibility regulations, comply with applicable disabled-access requirements by making accessible any areas of the Permit Area which deny access to disabled persons; and
 - 27.5 PERMITTEE shall include language in each sublicense agreement, if any, indicating the sublicensee's agreement to abide by the foregoing provisions.
 - 27.6 PERMITTEE and each of its sublicensees shall be individually responsible for their own ADA compliance program. PERMITTEE's failure to comply with the above requirements and/or submitting false information in response to those requirements shall be a default under this Permit.
28. CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Permit if PERMITTEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a CITY officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the San Diego City Council related to the selection of PERMITTEE for this Permit. It is not the intent of this policy that these provisions apply to members of the City Council.
 29. Local Business and Employment. PERMITTEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Permit and to the extent legally possible, PERMITTEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. PERMITTEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
 30. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with PERMITTEE's use or occupancy of the Permit Area and any damages to the improvements on, under or in the vicinity of the Permit Area resulting directly or indirectly thereby.

31. No Nuisance. PERMITTEE shall not use the Permit Area in any manner which creates a nuisance or unreasonably disturbs the quiet enjoyment of persons in and to the surrounding area.
32. Assignment and Sublicense. PERMITTEE shall not assign or sublicense any rights granted by this Permit or any interest in this Permit without CITY's prior written consent in each instance. Any assignment by operation of law shall automatically terminate this Permit.
33. Encumbrances. PERMITTEE shall keep the Permit Area and the property of which it is a part (the "Property") free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with PERMITTEE'S use or occupancy of the Permit Area. PERMITTEE shall protect, defend, indemnify and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense, including without limitation all attorney fees and costs, relating to or charged against the Property in connection with such encumbrances and/or liens, including without limitation PERMITTEE'S failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons entitled to lien or encumber the Property pursuant to the California Civil Code.
34. Possessory Interest Tax. PERMITTEE recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that PERMITTEE may be subject to the payment of property taxes levied on such interest. Such tax payment shall not reduce any fee paid CITY under this Agreement. PERMITTEE shall pay any tax or assessment before it becomes delinquent.
35. Accessibility Assessment. In accordance with California Civil Code section 1938, CITY hereby states that the Permit Area has not been inspected by a Certified Access Specialist (CASP).
36. Waiver. The property constituting the Permit Area is publicly owned and held in trust for the benefit of CITY's citizens. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, 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. CITY's waiver of a default shall not be a waiver of any other default. Any waiver of a default must be in a writing executed by CITY to constitute a valid and binding waiver. CITY's delay or failure to exercise a right or seek a remedy shall not be deemed a waiver of that or any other right or remedy under this Permit, at law, or in equity. The exercise of any particular right or the use of any particular remedy for any default shall not waive the use of any other right or remedy for the same default or for another or later default. CITY's acceptance of any rents shall not be a waiver of any default preceding the rent payment. CITY's failure to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but CITY may at any and all times require the cure of the default.

37. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of California. Any lawsuit to enforce this Lease shall be filed in the Superior Court of California, County of San Diego, Central Division.
38. Cumulative Remedies. CITY's rights and remedies under this Permit are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
39. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
40. Joint and Several Liability. If PERMITTEE 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 PERMITTEE under this Permit.
41. No Affiliation. Nothing contained in this Permit shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and PERMITTEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of PERMITTEE or any other party or entity.
42. Entire Agreement. This Permit constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Permit and PERMITTEE's occupancy, use, development, maintenance and restoration of the Permit Area. Any modification, alteration or amendment of this Permit shall be in writing and signed by all the parties hereto. Each party represents and warrants that this Permit is binding upon such party in accordance with its terms.
43. Counterparts. This Permit may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument.
44. Maintenance of Records. PERMITTEE shall maintain complete and accurate records in a manner satisfactory to CITY from which CITY can determine the amounts of all income subject to percentage fee payment.
45. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or delivered by United States mail, postage prepaid, and addressed to PERMITTEE at PERMITTEE's Address for Notices, and to CITY as follows:

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

46. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Permit 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. Each party which is not a natural person represents and warrants that it is a valid, qualified corporation, limited liability company, partnership or other unincorporated association in good standing in its home state and that it is qualified to do business in California.
47. Acceptance of Permit Area. By signing this Permit, PERMITTEE represents and warrants that it has independently inspected the Permit Area and made all tests, investigations and observations necessary to satisfy itself as to the condition of the Permit Area and its suitability for the Permit Use. PERMITTEE further represents and warrants that it is not relying on any representation by CITY as to the condition of the Permit Area or its suitability for the Permit Use, and that PERMITTEE is relying solely on its own and independent inspections, tests, investigations and observations of the Permit Area in entering into this Permit. PERMITTEE accepts the Permit Area in its current condition. PERMITTEE acknowledges and agrees that unless set forth in this Permit, CITY has no obligation to improve, modify, repair, replace, alter or otherwise develop the Permit Area at any time either prior to, on or after the Effective Date. PERMITTEE shall not hold CITY responsible for any defects in the Permit Area. PERMITTEE accepts and assumes all risk of harm to all persons and property, including without limitation PERMITTEE's employees, from any defects in the Permit Area, and shall be solely responsible therefor.
48. Product Endorsement. PERMITTEE shall not publish any advertising or other promotional materials referring to the City of San Diego as a user of a product or service without the prior written consent of CITY who will insure compliance with Council Policy 000-41(2).
49. PERMITTEE Contact. The following are designated by PERMITTEE as PERMITTEE's contacts for all purposes of this Permit:

Name: Gary Oster, Facilities_____

Office Number: 858-636-5182_____

Cell Number: 760-672-4900_____

Alternate contact: Rosalyn Hawk, Support Services

Office Number: 858-636-3431

Cell Number: 619-813-3981_____

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

CALIFORNIA COAST CREDIT UNION,
a California corporation

BY: _____

Kathy Cady
COO

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Cybele Thompson, CCIM
Director, Real Estate Assets

Environmental Analysis Section Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State of California CEQA Guidelines, Section 15301.

Date: _____

BY: _____

Alyssa M. Muto
Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this 10th day of August, 2016:

JAN K. GOLDSMITH, City Attorney

BY: _____

Name: David Powell

Title: Deputy City Attorney

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

CALIFORNIA COAST CREDIT UNION,
a California corporation

BY: _____

Kathy Cady
COO

THE CITY OF SAN DIEGO, a California municipal
corporation

BY: _____

Cybele Thompson, CCIM
Director, Real Estate Assets

Planning Department — Environmental Clearance:

This activity is categorically exempt from CEQA pursuant to State of California CEQA Guidelines, Section 15301.

Date: _____

8/4/16

BY: _____

Alyssa M. Muto
Deputy Director, Environmental and Policy Analysis,
Planning Department

Approved as to form this ____ day of _____, 20__:

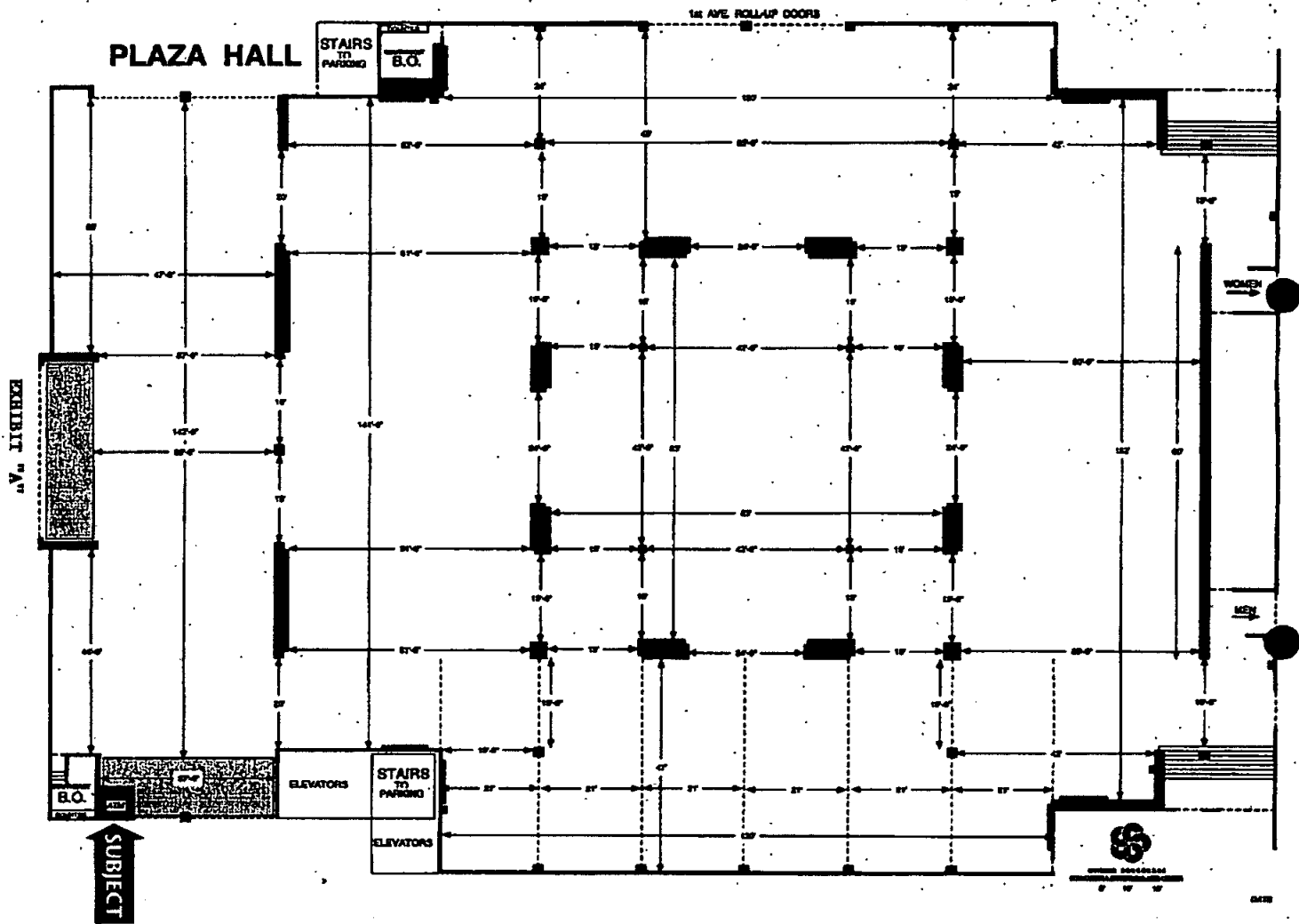
JAN I. GOLDSMITH, City Attorney

BY: _____

Name: _____

Title: _____

Exhibit A: ATM Location





Date of Notice: July 21, 2016

NOTICE OF RIGHT TO APPEAL ENVIRONMENTAL DETERMINATION

PLANNING DEPARTMENT

PROJECT NAME/NUMBER: Use and Occupancy Permit – California Coast Credit Union

COMMUNITY PLAN AREA: Downtown

COUNCIL DISTRICT: 3 (Gloria)

LOCATION: San Diego Community Concourse, 202 C Street, San Diego, CA 92101

PROJECT DESCRIPTION: Authorize the Mayor or his designee to sign a 3-year Use and Occupancy Permit allowing Permittee to use the automated teller machine (ATM) location on City-owned property for the installation and operation of one ATM and incidental equipment at the San Diego Community Concourse, in San Diego.

ENTITY CONSIDERING PROJECT APPROVAL: City of San Diego Mayor-Appointed Designee

ENVIRONMENTAL DETERMINATION: CEQA Exemption Section 15301- Existing facilities

ENTITY MAKING ENVIRONMENTAL DETERMINATION: City of San Diego Mayor-Appointed Designee

STATEMENT SUPPORTING REASON FOR ENVIRONMENTAL DETERMINATION: This activity has been determined to be exempt from CEQA pursuant to CEQA Section 15301 (Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; and where the exceptions listed in CEQA Section 15300.2 would not apply in that no cumulative impacts were identified; no significant effect on the environment were identified; the project is not adjacent to a scenic highway; no historical resources would be affected by the action, and the project was not identified on a list of hazardous waste sites pursuant to Section 65962.5 of the Government Code. This permit will allow use of a limited area within an existing facility where no environmental impacts would result.

PROJECT MANAGER: Roswitha Sanchez, SR/WA
Supervising Property Agent, Real Estate Assets Department

MAILING ADDRESS: 1200 Third Avenue, Suite 1700, MS 51A
San Diego, CA 92101

PHONE NUMBER: (619) 236-6721

On July 21, 2016, the City of San Diego made the above-referenced environmental determination pursuant to the California Environmental Quality Act (CEQA). This determination is appealable to the City Council. If you have any questions about this determination, contact the City Project Manager listed above.

Applications to appeal CEQA determination made by staff (including the City Manager) to the City Council must be filed in the office of the City Clerk within 10 business days from the date of the posting of this Notice (**August 4, 2016**). The appeal application can be obtained from the City Clerk, 202 'C' Street, Second Floor, San Diego, CA 92101.

This information will be made available in alternative formats upon request.

POSTED IN THE OFFICE OF DSD

POSTED: 7/21/2016

REMOVED: 8/5/2016

POSTED: M.Herrmann