

DUPLICATE



**CITY OF SAN DIEGO
FLAT RATE LEASE**

BY AND BETWEEN

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

AND

**AMERICAN INSTITUTE OF ARCHITECTS SAN DIEGO
CHAPTER, A NON-PROFIT 501 (C) 6**

DOCUMENT NO. **RR-312451**
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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

CITY OF SAN DIEGO FLAT RATE LEASE

THIS CITY OF SAN DIEGO FLAT RATE LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), and AMERICAN INSTITUTE OF ARCHITECTS SAN DIEGO CHAPTER, a non-profit 501 (C) 6 ("LESSEE"), to be effective when signed by the parties and approved by the CITY Attorney (the "Effective Date").

RECITALS

- A. The American Institute of Architects San Diego Chapter issued a Letter of Intent to the City of San Diego on June 12, 2018, to lease approximately 3,424 square feet of a former restaurant with approximately 1,602 square feet of patio area adjacent to 1220 Third Avenue, San Diego, CA 92101.
- B. LESSEE will develop and operate a facility within the Premises and adjacent patio called the San Diego Center for Architecture and Design (CFA). Primarily, the CFA will encompass a multiuse venue able to support a range of programs and activities, aimed at public and private audiences, that are mainly connected to the domains of architecture, design, planning, sustainability and community development. The space will be activated by the lessee as well as by a collaborating group of local non-profits active in the targeted domains. Lectures, workshops, small conferences, meetings, programs, events and rotating exhibitions are all contemplated. These would be scheduled year-round, during the day & evenings, weekdays and weekends, as needed.

In addition, the CFA will welcome casual visitors weekdays (and perhaps weekends, depending on operational experience) by offering suitable exhibits, walking tours of downtown San Diego, visitor information, a public seating area and a fast/casual café concept operated by a well-regarded, local, special-events catering company. All food will be prepared off-site. Beverages will include coffee, tea, soft drinks, beer & wine.

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

SECTION 1: PREMISES; USES

- 1.1 Leased Premises. CITY leases to LESSEE and LESSEE leases from CITY all of that portion of CITY-owned real property located at 1220 Third Avenue, San Diego, California 92101, that was formerly operated as Downtown Johnny Brown's, consisting of approximately 3,424 square feet of building area and an adjacent patio area consisting of approximately 1,602 square feet which may have minor adjustments (the "Premises") and is more particularly described and depicted in **Exhibit A: Site Plan** attached hereto.

- 1.2 Allowed Uses. LESSEE may use the Premises for the following purposes and no other purposes whatsoever, specifically LESSEE may use the Premises to develop and operate the San Diego Center for Architecture and Design (CFA), which will offer lectures, workshops, small conferences, general meeting space to host meetings, programs, events and rotating exhibitions, visitor information, walking tours of downtown San Diego, special event rental space, all for the purposes of furthering the domains of architecture; design, planning, sustainability and community development, as well as the operation of an outside coffee/snack cart selling beverages (including beer and wine with proper licenses), light refreshments, and pre-packaged food items to the general public..

Notwithstanding the foregoing, and subject to the prior written approval of CITY in each instance, which approval shall be at CITY's sole discretion, other reasonably related and incidental uses may be requested. Combined, all the authorized uses shall hereinafter be referred to as the "Allowed Uses".

- 1.3 Early Termination. Notwithstanding the foregoing, in the event LESSEE is unable to obtain any license or permit necessary to lawfully use the Premises for the Allowed Use, in the manner desired by the LESSEE, **or if LESSEE discovers hidden defects during redevelopment within the initial ninety (90) days from the Effective Date of the Lease that causes an economic hardship,** LESSEE may terminate this Lease upon sixty (60) days written notice to CITY.
- 1.4 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits, and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest. If LESSEE's use of the Premises is or becomes inconsistent or incompatible with a preexisting, superior interest, LESSEE shall take such actions and pay all costs and expenses necessary to remove such inconsistency or incompatibility to the satisfaction of the holder of the superior interest.
- 1.5 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, maintenance, or restoration of the Premises. Discretionary action includes without limitation re-zonings, variances, environmental clearances, and all other required governmental approvals.
- 1.6 CITY's Consent, Approval. Unless otherwise expressly provided herein, CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), which shall not be unreasonably withheld or delayed. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided herein.

- 1.7 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages, including any consequential damages. There shall be determined and stated in writing by CITY, a proportionate reduction of the rent for the period or periods during which LESSEE is prevented from having the quiet possession of all or a portion of the Premises, and such reduction in rent shall be LESSEE's sole remedy for any temporary dispossession.
- 1.8 Reservation of Rights.
- 1.8.1 Mineral Rights. CITY reserves all rights, title, and interest in and to any and all subsurface natural gas, oil, minerals, and water on or within the Premises.
- 1.8.2 Easements. CITY reserves the right to grant, establish, and use easements and rights-of-way over, under, along, and across the Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- 1.8.2 Repairs. CITY may at all reasonable times enter the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.8.3 Noninterference. CITY shall not unreasonably interfere with LESSEE's use of the Premises and shall repair or reimburse LESSEE for reasonable costs incurred by LESSEE to repair any physical damages to the Premises or LESSEE's personal property directly caused by CITY's exercising its rights reserved in this section. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.8.4 Public Safety; Homeland Security. CITY reserves the right to install, repair and replace, at its own expense, secured-access video surveillance equipment for the purposes of public safety and homeland security. CITY shall have access to existing roof tops, light poles, existing electrical power and/or other structures on the Premises necessary to support this objective. CITY shall give LESSEE reasonable notice prior to entering upon the Premises for this reserved right. CITY shall pay all costs and expense related to the installation, repair and replacement of such video surveillance equipment.
- 1.9 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all applicable local, state and federal laws, rules and regulations, and in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with

generally accepted accounting principles consistently applied and absent financial malfeasance.

SECTION 2: TERM

- 2.1 Term. The term of this Lease shall be for ten (10) years commencing on the Effective Date and expire on 7/31/29.
- 2.2 Option to Extend. LESSEE shall have two (2) five (5) year options to extend the Term ("Extended Terms"), provided that LESSEE is not and has not been in default of any condition, term, or provision of this lease in the twenty-four months prior to exercising an option for an Extended Term. LESSEE shall exercise its option for an Extended Term by providing written notice to City of intention to exercise the option no later than one-hundred eighty (180) days prior to the expiration of the Term or the Extended Term if the first option has already been exercised. Any Extended Term shall be subject to the same terms and conditions of this Lease, with the exception that upon receiving written notice that LESSEE intends to exercise the Term, the City shall determine the current market rent as of the date the written notice was given and City will have the right to adjust the rent to current market rent by providing notice of the determination. Any rent increases following this market-rent adjustment at the beginning of the Extended Term will be done according Section 4.1 Rent.
- 2.3 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. The occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent in an amount which is two times that of the rent in effect upon expiration or earlier termination of the Lease, in addition to fifty percent (50%) of the sublease revenue referenced in Section 5.2.5 of this Lease.
- 2.4 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender it to CITY free and clear of all liens and encumbrances, and in a decent, safe, and sanitary condition, reasonable wear and tear excepted. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute, acknowledge, and deliver to CITY, within thirty (30) days after CITY's demand, a valid and recordable quitclaim deed covering all of the Premises at LESSEE's sole costs. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice of termination of the leasehold interests reciting LESSEE's failure to perform this Lease provision, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.
- 2.5 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. Each party represents and warrants that this Lease is binding upon such party in accordance with its terms.

SECTION 3: OPERATIONS ON THE PREMISES

- 3.1 Operation of Facilities. Following the issuance of a Certificate of Occupancy for the CFA, LESSEE shall conduct its business and operate the Premises continuously and without interruption during the Term. LESSEE will open the CFA to the public for forty (40) hours per week with flexible days and hours during the week. LESSEE may increase the hours it is open to the public without obtaining the consent of the CITY, provided that any additional hours are consistent with applicable laws and regulations relating to businesses operating hours; however, LESSEE may not reduce the hours it is open to the public without first obtaining the CITY's written consent to do so, and such consent will be granted in the sole discretion of the CITY. LESSEE shall diligently furnish services to the public in a creditable manner, but may apply appropriate restrictions (for example, requiring shoes and shirts for service/entry into the CFA)
- 3.2 Trash, Refuse and Recycling. LESSEE shall utilize containers provided by the City at no charge.
- 3.3 Single Use Plastic Reduction Ordinance. Unless an exception applies, Lessee will comply with the Single Use Plastic Reduction Ordinance codified in San Diego Municipal Code sections 66.0901 through 66.0907. By signing this Lease, Lessee certifies that it will comply with the requirements of the Single Use Plastic Reduction Ordinance throughout the Term.

SECTION 4: RENT

- 4.1 Rent. LESSEE shall pay to CITY monthly rent ("Monthly Rent") in the amount of One Thousand Three Hundred Seventy Dollars and no cents (\$1,370.00), each month during the Lease term. Monthly rent shall be increased by three percent (3%) annually on the Effective Date of the Lease. The first month's Monthly Rent shall be due and owing as of the Effective Date of this Lease. LESSEE shall thereafter pay the Monthly Rent in advance, on or before the first day of each month, during the Lease term.
- 4.2 Time and Place of Payment. All payments to be paid by LESSEE under this Lease shall be made payable to "City Treasurer" and be mailed to:

The Office of the City Treasurer
City of San Diego
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.

- 4.3 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records, and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records, and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole reasonable discretion, to protect CITY's rights under this Lease.

- 4.3.1 Audit Cost. The full cost of each CITY audit shall be borne by CITY, unless one or both of the following conditions exists, in which case LESSEE shall reimburse CITY for all costs of the audit:

4.3.1.1 For any given lease year, if an audit reveals an underpayment of additional consideration of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or

4.3.1.2 LESSEE failed to maintain true, accurate, and complete books, records, accounts, and supporting source documents as required by this Lease.

Any deficiency determined by the audit shall be considered delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest, against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 4.4.1 Default. LESSEE'S failure to keep complete and accurate records by means of double entry bookkeeping and make them available for CITY inspection is, like all other failures to comply with covenants of this Lease, a breach of this Lease and cause for termination.

- 4.5 Delinquent Monthly Rent. If LESSEE fails to pay Monthly Rent when due, LESSEE shall pay, in addition to the unpaid Monthly Rent, five percent (5%) of the delinquent Monthly Rent. If the Monthly Rent is still unpaid after fifteen (15) days past due, LESSEE shall pay an additional five percent (5%) (being a total of ten percent [10%]), which is agreed by the parties to be appropriate to compensate CITY for the cost of servicing the delinquent account. In no event shall the charge for late payments of Monthly Rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE'S default with respect to late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity.

SECTION 5: ENCUMBRANCES; ASSIGNMENT & SUBLETTING; LICENSING

- 5.1 Leasehold Encumbrances. LESSEE may not encumber LESSEE's leasehold estate by deed of trust or other security instrument.
- 5.2 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease and shall not sublet the Premises or any part of the Premises without CITY's prior written consent. Any such consent shall not be deemed a consent to any subsequent assignment, subletting, occupation, or use by another person. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent. "Assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals, or controlling shareholders.
- 5.2.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the assignment, sublease or other grant of rights be subject and subordinate to each and every provision of this Lease.
- 5.2.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its sublessees and assignees shall make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in this Lease and the precise nature of all interests of all persons therein. Pursuant to City Charter Section 225, every person or entity which will have an interest in this Lease must be reviewed and approved by CITY.
- 5.2.3 Additional Consideration to CITY from LESSEE. LESSEE and CITY agree that in the event of an assignment, in the event of a subletting of the majority portion of the Premises, or in the event of a refinancing creating an encumbrance against the Premises, LESSEE shall pay to CITY two percent (2%) of the gross amount paid to LESSEE in connection with an approved assignment of the Lease, two percent (2%) of any amount paid LESSEE in consideration of an approved sublease of all

or a majority portion of the Premises, or two percent (2%) of the amount of any increased loan or encumbrance against the Premises over and above the amount of the then existing balance(s) of the existing encumbrances(s). The amount upon which the two percent (2%) shall be based shall be the total consideration resulting from the transaction including total cash payments and the market value of noncash consideration, including but not limited to stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee, or refinancing agency as to the amount due CITY. The sum due CITY shall be payable in full to CITY concurrent with the completion of the transaction, be it an assignment, a sublease, or a refinancing. Any assignment, subletting, or refinancing in violation of the terms and conditions of this section shall be void. The provisions of this section shall not apply to:

5.2.3.1 an assignment or transfer of a beneficial interest in the Premises resulting from devise, bequest, intestate succession, or by operation of law for the benefit of the spouse or descendants (i) of LESSEE (if an individual) or (ii) of LESSEE's principal owner or chief executive office (if LESSEE is other than an individual); or

5.2.3.2 such other assignment for which CITY determines that the legal and equitable ownership interests in the Premises have remained unchanged, such as a change in the legal or fictitious name of the LESSEE without any other change in the equity in beneficial use of, or legal title to, the Premises as an asset or the income produced thereby.

Additional Consideration to CITY from Subleases. As a condition to CITY's approval of any sublease or other rental agreement as allowed under this Lease for a portion of the Premises, LESSEE shall pay to CITY fifty percent (50%) of the income owed, including rent, to LESSEE under any sublease or other rental agreement for the Premises.

5.3 Licensing. LESSEE shall be permitted to license the use of the Premises without the prior written consent of the City in each instance subject to the following requirements:

5.3.1 LESSEE shall develop a standard agreement that LESSEE will use to license the Premises, which shall be subject to the approval of the City. Once approved, LESSEE shall require that each licensee execute the standard agreement prior to permitting a licensee to use the Premises. Such license or agreement must contain a statement that it is subordinate to this Lease and must require that Licensee comply with the terms of the Lease including the Allowed Uses, the insurance requirements and the Indemnity and Hold Harmless Provisions, and all other

provisions of this Lease which would be applicable to the rights acquired under the license. It must also require that the Licensee execute a Waiver, substantially in the form of the Waiver attached as Exhibit B. The Parties agree that the Waiver may need to be modified once the LESSEE has developed its standard agreement.

- 5.3.2 LESSEE shall not license the use of the Premises for any purposes other than the Allowed Uses as defined in this Lease.
- 5.3.3 Prior to any use by a licensee, LESSEE shall forward a copy of the signed Waiver to CITY for its file.

SECTION 6: DEFAULT AND REMEDIES

- 6.1 **Default.** LESSEE shall be in default of this Lease if any of the following occurs:
 - 6.1.1 LESSEE fails to make any payment required under this Lease when due;
 - 6.1.2 LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
 - 6.1.3 LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law;
 - 6.1.4 LESSEE is adjudicated a bankrupt; or
 - 6.1.5 LESSEE makes a general assignment for the benefit of creditors.
- 6.2 **Remedies.** Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a written "Three Day Notice to Pay or Quit," or CITY may terminate the Lease and all rights of LESSEE, and all persons claiming rights through LESSEE, to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:
 - 6.2.1 the worth at the time of any unpaid rent that was due at the time of termination;
 - 6.2.2 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;

- 6.2.3 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;
- 6.2.4 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
- 6.2.5 all other amounts in addition to or in lieu of those previously stated as may be permitted from time to time by California law.

As used in clauses 6.2.1 and 6.2.2, above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause 6.2.3, 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.

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

- 6.3.1 CITY may correct the default and charge the costs to the account of LESSEE, which charge shall be due and payable on the date that the rent is next due after CITY's notice of such costs to LESSEE, and mortgagee or beneficiary;
- 6.3.2 CITY may correct the default and pay the costs from the proceeds of any insurance fund held by CITY, CITY and LESSEE, or by CITY and mortgagee or beneficiary, or CITY may use the funds of any faithful performance or cash bond on deposit with CITY, or CITY may call on the bonding agent to correct the default or to pay the costs of correction performed by or at the direction of CITY; and
- 6.3.3 CITY may terminate this Lease as to the rights of LESSEE by assuming or causing the assumption of liability for any trust deed or mortgage. LESSEE shall assume and pay any and all penalties or bonuses required by the beneficiaries, trustees or mortgagees as a condition of early payoff of the related obligations by CITY. CITY may, as an alternative, substitute the terminated LESSEE with a new lessee reasonably satisfactory to the mortgagee or beneficiary. LESSEE shall pay to CITY all reasonable costs incurred by CITY in re-leasing to a new lessee.

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

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

6.5 Waiver. Any waiver by CITY of a breach or default by LESSEE shall not be a waiver of any other breach or default. No waiver shall be valid and binding unless in writing and executed by CITY. CITY's delay or failure to enforce a right or remedy shall not be a waiver of that or any other right or remedy under this Lease. The enforcement of a particular right or remedy for a breach or default shall not waive any other right or remedy for the same breach or default, or for any other or later breach or default. CITY's acceptance of any rents shall not be a waiver of any default preceding such payment. LESSEE acknowledges that the Premises are a part of publicly-owned property held in trust for the benefit of the citizens of the City of San Diego, and that any failure by CITY to discover a breach or default, or take prompt action to require the cure of any breach or default, shall not result in an equitable estoppel, but CITY shall at all times, have the legal right to require the cure of any breach or default. CITY's acceptance of a partial payment of rent shall not constitute a waiver of the balance of the rent payment due.

SECTION 7: EMINENT DOMAIN

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

7.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.

7.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for

continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.

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

SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. Lessee will protect, defend, indemnify, and hold City and its elected officials, officers, employees, representatives, and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to Lessee's officers, employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with this Lease or Lessee's occupancy, use, development, maintenance, restoration, or improvement of the Premises, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that Lessee's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or willful misconduct of City and its elected officials, officers, employees, representatives, and agents. 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 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 will pay the City for all costs related thereto, including, without limitation, reasonable attorneys' fees and costs
- 8.2 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, LESSEE shall pay all reasonable costs related thereto, including without limitation reasonable attorney fees and costs.

- 8.3 **Insurance.** Prior to the Effective Date LESSEE shall not begin operating under this Lease until it has: (a) obtained, and upon CITY's request provided to CITY, insurance certificates reflecting evidence of all insurance as set forth herein; however, CITY reserves the right to request, and LESSEE shall submit, copies of any policy upon reasonable request by CITY; (b) obtained CITY approval of each insurance company or companies; and (c) confirmed that all policies contain the specific provisions required below. LESSEE's liabilities, including but not limited to LESSEE's indemnity obligations, under this Lease, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of the Lease and LESSEE's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Lease may be treated as a material breach of contract by CITY.

Further, LESSEE shall not modify any policy or endorsement thereto which increases CITY's exposure to loss for the duration of this Lease.

- 8.4 **Types of Insurance.** At all times during the Term, LESSEE shall maintain insurance coverage as follows:

- 8.4.1 **Commercial General Liability.** Commercial General Liability (CGL) Insurance written on an ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all personal injury or property damage in the amount of \$2 million per occurrence and subject to an annual aggregate of \$4 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured vs. insured claims or contractual liability. All defense costs shall be outside the limits of the policy.
- 8.4.2 **Commercial Automobile Liability.** For all of LESSEE's automobiles including owned, hired and non-owned automobiles, LESSEE shall keep in full force and effect, automobile insurance written on an ISO form CA 00 01 12 90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. Insurance certificates shall reflect coverage for any automobile.
- 8.4.3 **Workers' Compensation.** For all of LESSEE's employees who are subject to this Lease and to the extent required by the applicable state or federal law, LESSEE shall keep in full force and effect, a Workers' Compensation policy. The policy shall provide a minimum of \$1 million of employers' liability coverage, and LESSEE shall provide an endorsement that the insurer waives the right of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives.

- 8.4.4 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or located at the Premises in an amount to cover one hundred percent (100%) of the replacement cost. LESSEE shall deliver a certificate of said insurance to CITY's Real Estate Assets Department.
- 8.5 Deductibles. All deductibles on any policy shall be the responsibility of LESSEE and shall be disclosed to CITY at the time the evidence of insurance is provided.
- 8.6 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Lease shall only be carried by insurance companies with a rating of at least "A-, VI" by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by CITY. CITY will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Eligible Surplus Lines Insurers (LESLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.
- 8.7 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 8.8 Required Endorsements. The following endorsements to the above policies of insurance are required:

8.8.1 Commercial General Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by LESSEE or on LESSEE's behalf, (b) LESSEE's products, (c) LESSEE's work, including but not limited to LESSEE's completed operations performed by LESSEE or on LESSEE's behalf, or (d) premises owned, leased, controlled or used by LESSEE.

PRIMARY AND NON-CONTRIBUTORY COVERAGE. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of the City of San Diego and its elected officials, officers, employees, agents and

representatives as respects operations of the Named Insured. Any insurance maintained by the City of San Diego and its elected officials, officers, employees, agents and representatives shall be in excess of LESSEE's insurance and shall not contribute to it.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that the LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

8.8.2 Automobile Liability Insurance Endorsements.

ADDITIONAL INSURED. To the fullest extent allowed by law including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Additional Insured the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of LESSEE.

SEVERABILITY OF INTEREST. The policy or policies must be endorsed to provide that LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

8.8.3 Worker's Compensation and Employer's Liability Insurance Endorsements.

WAIVER OF SUBROGATION. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against CITY and its respective elected officials, officers, employees, agents and representatives for losses paid under the terms of the policy or policies which arise from work performed by the Named Insured for CITY.

8.9 Additional Insurance. LESSEE may obtain additional insurance not required by this Lease.

8.10 Excess Insurance. All policies providing excess coverage to CITY shall follow the form of the primary policy or policies including but not limited to all endorsements.

8.11 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.

8.12 Waste, Damage, or Destruction. LESSEE agrees to give notice to CITY of any fire or other damage that may occur on the Premises within two (2) days of such fire or damage. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public

or private nuisance at the Premises, to keep the Premises clean and clear of refuse and obstructions, and to dispose of all garbage, trash, and rubbish in a manner satisfactory to CITY. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy, and sanitary, LESSEE agrees to make or cause to be made full repair of said damage and to restore the Premises to the condition which existed prior to said damage; or, at CITY's option, LESSEE agrees to clear and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications submitted to CITY and approved in writing in order to replace in kind and scope the operation which existed prior to such damage, using for either purpose the proceeds from the insurance required by this Lease.

LESSEE agrees that preliminary steps toward performing repairs, restoration, or replacement of the Premises shall be commenced by LESSEE within thirty (30) days of any fire, flood, or damage event, and the required repairs, restoration, or replacement shall be completed within a reasonable time thereafter.

SECTION 9: IMPROVEMENTS; ALTERATIONS; REPAIRS; MAINTENANCE

- 9.1 Waste, Damage, or Destruction. LESSEE must immediately give notice to CITY of any fire or any other damage that occurs on the Premises at any time during the Term of this Lease. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises. LESSEE 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 make, or cause to be made, full repair of the damage and restore the Premises to their prior condition. LESSEE shall commence preliminary steps toward performing repairs and/or restoration of the Premises as soon as practicable, but no later than ten (10) calendar days after the occurrence of the fire or damage, and shall complete the required repairs and/or restoration of the Premises within sixty (60) calendar days after such occurrence, provided that any and all governmental approvals and permits required for such repairs and/or restoration have been obtained by LESSEE and LESSEE has diligently acted to obtain such approvals and permits. Failure to timely repair damage to the Premises will be considered a default under the Lease.
- 9.2 Acceptance of Premises. LESSEE represents and warrants that LESSEE has independently inspected the Premises, made all tests, investigations, and observations necessary to satisfy itself of the conditions of the Premises. LESSEE agrees that it is relying solely on its independent inspections, tests, investigations, and observations in entering in to this Lease. LESSEE acknowledges that the Premises is in the conditions called for herein and that LESSEE shall not hold CITY responsible for any defects, whether apparent or latent, at the Premises. LESSEE acknowledges that it will 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 been given the opportunity to investigate the Premises for any Hazardous Substances, including without limitation the opportunity to perform soil boring

and other tests. LESSEE shall notify CITY if LESSEE's investigations indicate the presence of an Hazardous Substances on the Premises. Lessee waives any claims against CITY which may result from the presence of Hazardous Substances on the Premises.

- 9.3 Asbestos. If either CITY or LESSEE makes improvements, alterations or repairs to the Building or the Premises, the party causing such improvements, alterations or repairs shall be responsible for any asbestos removal, management, or containment, and shall pay all costs associated therewith. Asbestos removal, management or containment shall be conducted in accordance with all applicable laws and as approved by CITY. CITY reserves the right to inspect any improvements, alterations or repairs to the Premises or the Building made by LESSEE. CITY may, at its discretion, station supervisory personnel at the work site to ensure that LESSEE's obligations under this section are fulfilled. Each party shall coordinate with the other any improvement, alteration or repair, and except in the event of an emergency, the party responsible for such work shall provide written notice to the other party at least fifteen (15) days prior to commencing the work.
- 9.4 Entry and Inspection. CITY may at all times enter and inspect the Premises and the operations conducted on the Premises.
- 9.5 Maintenance. LESSEE shall maintain the Premises in a decent, safe, healthy, and sanitary condition reasonably satisfactory to CITY, including without limitation performing all maintenance and repair to the structural components of the Premises, such as interior wall supports, exterior wall supports, the roof, floor supports, and building-wide mechanical systems.
- 9.6 Improvements/Alterations. No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by LESSEE without CITY's prior written approval. Once consent is given for any specific improvement/alteration, LESSEE shall not make any structural or architectural design alterations to said approved improvements, structures, or installations on the Premises without CITY's additional prior written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 9.7 Utilities. LESSEE shall order, obtain, and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 9.8 Performance Bond. If LESSEE constructs any type of improvements/alterations on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction

shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY.

- 9.9 **Payment Bond.** Prior to the commencement of any work on the Premises, LESSEE shall deliver to CITY a payment bond (materials and labor bond) in an amount not less than one hundred percent (100%) of the total amount payable under the contract for construction to satisfy claims of material suppliers and of mechanics and laborers employed on the Premises. The bond shall be provided in compliance with California Civil Code sections 9550-9566. The bond shall be executed by an admitted surety, consistent with California Code of Civil Procedure section 995.670, that is authorized by the State of California Department of Insurance to transact surety insurance in the State. LESSEE shall maintain the bond in full force and effect until all improvements for the Premises are accepted by CITY and until all claims for materials and labor are paid, and must otherwise comply with the Government Code. Should the bond become insufficient, LESSEE shall renew, or cause the renewal of, the bond within ten (10) calendar days after receiving notice from CITY.
- 9.10 **Liens.** LESSEE shall protect, defend, indemnify, and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations, or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorneys' fees. If LESSEE causes improvements, alterations, or repairs to be made to the Premises, and a lien or notice of lien is filed against the property, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash, or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.
- 9.11 **Taxes.** LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use, or occupancy of the Premises.
- 9.12 **Signs.** LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without CITY's prior written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.

9.13 Ownership of Improvements and Personal Property.

9.13.1 Improvements. During the term of this Lease, LESSEE shall own all improvements, fixtures, structures, and installations or additions to the Premises constructed or installed on the Premises during the term of this Lease by LESSEE. Upon expiration or termination of this Lease, all such improvements, fixtures, structures, and installations or additions shall be deemed a part of the Premises and thereafter shall be owned by CITY. Notwithstanding the foregoing, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures, and installations or additions removed by LESSEE 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.

9.13.2 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures, and other items of personal property upon the expiration of the Term, or as soon as practicable after termination, but in no event later than thirty (30) days after the expiration or earlier termination of this Lease. Any such items which LESSEE fails to so remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

9.13.3 Late Removal. Notwithstanding any provision of this Lease to the contrary, LESSEE shall pay rent to CITY for any period of time after the expiration or termination of this Lease needed to remove improvements or personal property as required by this Lease, whether by CITY or LESSEE. Such rent shall be calculated on a per diem basis using the then-current fair market rental rate as determined by qualified CITY staff.

9.13.4 CITY's Right to Acquire Personal Property. If LESSEE wants to dispose of any of its personal property used in its operations on the Premises upon expiration or termination of this Lease, CITY shall have the first right to acquire such personal property.

9.14 Unavoidable Delay. Except as otherwise expressly set forth herein, in the event either party hereto shall be delayed or hindered in, or prevented from, the performance of any act or rendering any service required under this Lease, by reason of strikes, inability to procure materials, riot, insurrection, war or other reasons of a similar nature which are beyond the

reasonable control of the party (collectively referred to herein as "Event"), then the performance of any such act or rendering of any such service shall be excused for the period equivalent to the period of such delay. Notwithstanding the foregoing, nothing contained in this section shall be applied so as to: (i) permit any delay or time extension due to shortage of funds, or (ii) excuse any nonpayment or delay in payment of any type of rent. It shall be a condition to either party's claim of the benefit of this section that such party ("Claiming Party") notify the other in writing within 48 hours after the occurrence of the Event, and within 24 hours after request shall advise the other party in writing of its good faith estimate of the time which will be required until the delay is ended. Claiming Party shall advise the other in writing whenever Claiming Party learns that any material additional time shall be required, and promptly upon request shall advise the other party of any latest estimated time of cure of the delay and the actions being taken to cure the delay.

- 9.15 Hazardous Substances. LESSEE shall not allow the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Premises. LESSEE and LESSEE's agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Premises without CITY's prior written consent. LESSEE shall obtain and maintain all required licenses and permits from applicable regulatory agencies, including without limitation the San Diego County Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

9.15.1 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances.

9.15.2 "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.

9.15.3 Remediation. If LESSEE's occupancy, use, development, maintenance, or restoration of the Premises results in a release of a hazardous substance, or petroleum related substance or its chemical constituents, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules, and regulations of governmental authorities.

- 9.15.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes to the Premises, LESSEE and/or LESSEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Premises. LESSEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device requiring disposal or removal as required by this provision.
- 9.15.5 Indemnity. LESSEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities resulting from LESSEE's occupancy, use, development, maintenance, or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.
- 9.15.6 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.
- 9.15.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance, or restoration of the Premises 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 on, in, from or under the Premises, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by city, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with environmental law and regulations are achieved, and LESSEE shall pay all costs and expenses therefore.

SECTION 10: GENERAL PROVISIONS

- 10.1 Notices. Any notice required or permitted to be given under this Lease shall be in writing and may be served personally or by United States mail, postage prepaid, addressed as follows:

If to LESSEE:

AMERICAN INSTITUTE OF ARCHITECTS SAN DIEGO CHAPTER
Attention: Bastiaan Bouma, Executive Director, CEO
233 A Street, Suite 200
San Diego, CA 92101
(619) 232-0109

If to CITY:

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

- 10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules, regulations, and requirements of competent legal authority at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all notices received from a competent legal authority alleging that LESSEE, or the Premises, is in violation of applicable laws, rules, regulations, and requirements, and LESSEE shall provide CITY documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE's fire-suppression equipment in the Premises) or cure of the alleged violation.

- 10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the CPRA.
- 10.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth. Upon CITY's request, LESSEE shall submit a current Workforce Report and, if required, an Equal Opportunity Plan which set forth the actions LESSEE will take to achieve the CITY's goals for the employment of African Americans, Native Americans, Asians, Latinos, women, and people with disabilities. LESSEE shall cause the foregoing provisions to be inserted in all subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each sublessee and contractor. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.
- 10.5 Equal Benefits. Lessee will comply with San Diego Municipal Code sections 22.4301-22.4308, as may be amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with registered domestic partners. By signing this Lease, Lessee certifies that it will maintain such equal benefits throughout the term of this Lease. Lessee's failure to maintain equal benefits will be a default of this Lease.
- 10.6 Equal Pay Ordinance. Unless an exception applies, Lessee will comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. By signing this Lease, Lessee certifies that it will comply with the requirements of the Equal Pay Ordinance throughout the Term.
- 10.6.1 Lessee and Sublessee Requirement. The Equal Pay Ordinance applies to any sublessee of the Premises to the same extent as it would apply to Lessee. Lessee will require sublessees to certify compliance with the Equal Pay Ordinance in their subleases.
- 10.6.2 Notice Requirement. Lessee must post a notice informing its employees of their rights under the Equal Pay Ordinance in their workplace or job site.

- 10.7 Accessibility Compliance. Lessee will, as applicable to the Premises and Lessee's possession, use, and occupancy of the Premises, comply with all accessibility requirements under California Government Code sections 11135-11139.5; Title 24 of the California Code of Regulations; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and all other applicable state and federal laws, rules, and regulations of competent governmental authority protecting the rights of individuals with disabilities. When a conflict exists between any federal or state accessibility requirements, Lessee will follow the most restrictive accessibility requirement (i.e., that which provides the most access). Lessee's compliance will include without limitation the following:

Lessee will not discriminate against qualified individuals 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.

No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Lessee.

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

Lessee will post a statement addressing the requirements of the ADA in a prominent place at the work site.

Where required by law, all improvements, fixtures, structures, or installations on the Premises will comply with municipal, state, and federal accessibility requirements by bringing up to code and making accessible any areas of the Premises which deny access to individuals with disabilities. All improvements and alterations will be at Lessee's sole expense.

Lessee's failure to comply with the accessibility requirements of this section 10.7 or submitting false information in response to these accessibility requirements, or both, will be a default of this Lease.

- 10.8 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which will run with the land, that Lessee or any person claiming under or through Lessee will not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, gender identity, gender expression, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use or occupancy of the Premises or

in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.

- 10.9 Water Quality – Best Management Practices. City and Lessee are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Premises in a manner which aids in the protection of City's precious water resources. It is Lessee's responsibility to identify and implement an effective combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, Lessee will, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a). It is ultimately Lessee's responsibility to prevent pollutant discharges to the storm drain system. Therefore, Lessee will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

- 10.10 Drug-free Workplace. LESSEE shall abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

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

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

10.10.3 The dangers of drug abuse in the workplace;

10.10.4 LESSEE's policy of maintaining a drug-free workplace;

10.10.5 Any available drug counseling, rehabilitation, and employee assistance programs; and

10.10.6 The penalties that may be imposed upon employees for drug abuse violations.

LESSEE shall include in each of its subleases and contracts related to this Permit language obligating each sub-licensee and contractor to comply with the provisions of this section to maintain a drug-free workplace. LESSEE, and each of its subleases and contractors, shall be individually responsible for their own drug-free workplace program.

- 10.11 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months

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

- 10.12 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.
- 10.13 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status, or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees in the Premises.
- 10.14 Accessibility Assessment. In accordance with California Civil Code section 1938, City hereby states that the Premises have been inspected by a Certified Access Specialist (CASP), and there have been no modifications or alterations completed or commenced between the date of the inspection and the date of this Lease that would impact the Premises compliance with construction-related accessibility standard. LESSEE acknowledges that the CITY provided LESSEE a copy of the Access Law Design Compliance Survey dated July 11, 2016, prior to the execution of this Lease. Additionally, CITY and LESSEE agree that any repairs or modifications necessary to correct violations of construction-related accessibility standards that are noted in the CASP Report are the responsibility of the LESSEE at the LESSEE's sole costs and expense; CITY shall not be required to make any repairs or modifications, nor shall CITY be required to reimburse LESSEE for any costs or expenses associated with such repairs."
- 10.15 Cumulative Remedies. Except as expressly provided in this Lease, CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.16 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.17 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.

- 10.18 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.
- 10.19 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.
- 10.20 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.

[Remainder of page intentionally left blank.]

10.21 Authority to Contract. Each individual executing this Lease on behalf of another person or legal entity represents and warrants that they are authorized to execute and deliver this Lease on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Lease is binding upon such person or entity in accordance with its terms. Each person executing this Lease on behalf of another person or legal entity represents and warrants such entity is a valid, qualified corporation, limited liability company, partnership, or other unincorporated association in good standing in its home state and that such entity is qualified to do business in California.

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

AMERICAN INSTITUTE OF ARCHITECTS
SAN DIEGO CHAPTER, a non-profit 501 (C) 6

By: Bastiaan Bouma
Bastiaan Bouma
Executive Director, CEO

THE CITY OF SAN DIEGO,
a California municipal corporation

By: Cybele L. Thompson
Cybele L. Thompson
Director, Real Estate Assets

Approved as to form this 1st day

of August, 2019.

MARA W. ELLIOTT, City Attorney

By: Melissa Ables

Name: Melissa Ables

Title: Deputy City Attorney

\\FARST\AIA\FLAT RATE LEASE 3.19.19.docx

Exhibit A: Site Plan

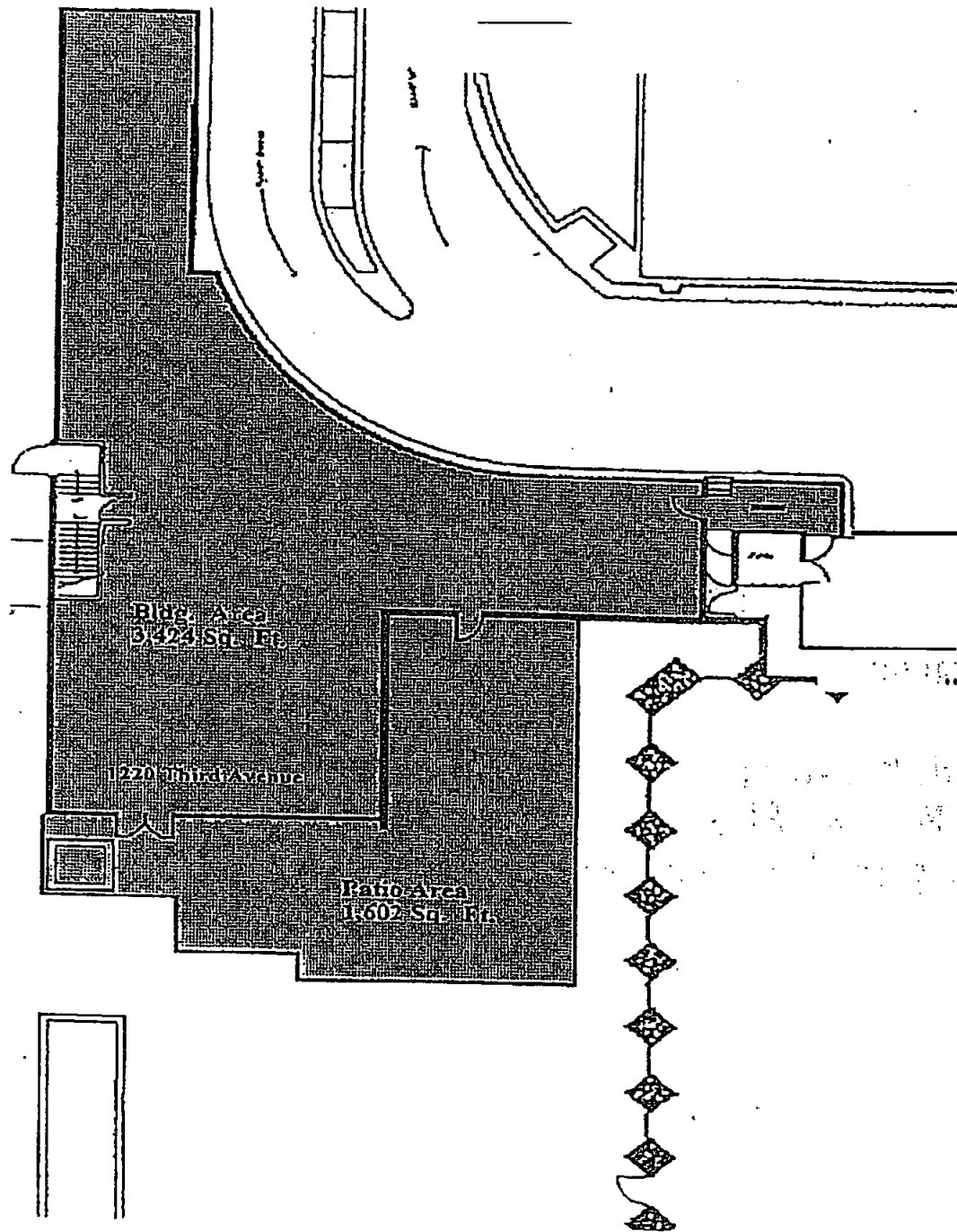


Exhibit B: Waiver

FORM OF "WAIVER"

THIS WAIVER ("Waiver") is entered into by and between AMERICAN INSTITUTE OF ARCHITECTS SAN DIEGO CHAPTER, a non-profit 501 (C) 6 ("LICENSOR"), and _____ ("LICENSEE") to be effective when signed by the parties (the "Effective Date").

This Waiver applies to the real property located as 1220 Third Avenue, San Diego, CA 92101, (Premises) which is owned by the City of San Diego and held for the benefit of the public. LICENSEE agrees that in addition to the terms of the _____ ("Defined Term") that it has entered into with LICENSOR with an effective date of _____ for the use of the Premises, that LICENSEE agrees to be bound by the following:

1. **Acceptance of Premises.** LICENSEE acknowledges that CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LICENSEE's intended use and assumes no obligation to alter or improve the Premises. LICENSEE shall not hold CITY responsible for any defects, whether apparent or latent, at the Premises. LICENSEE acknowledges that it will take possession of the Premises "as is." LICENSEE waives any claims against CITY which may result from the presence of Hazardous Substances, or any other condition on the Premises. 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.
2. **ASSUMPTION OF THE RISK.** LICENSEE KNOWINGLY AND FREELY ASSUMES ANY AND ALL RISK IN THE USE OF THE PREMISES FOR LICENSEE, ITS EMPLOYEES, AGENTS, CONTRACTORS, ASSIGNEES, GUESTS, AND INVITEES.
3. **RELEASE, AND PROMISE NOT TO SUE.** LICENSEE RELEASES AND HOLDS HARMLESS AND PROMISES NOT TO SUE THE CITY OF SAN DIEGO, its officers, agents or employees with respect to any and all such injuries suffered as a result of its use of the Premises, including, but not limited to, paralysis, dismemberment, death or loss, except that injury or loss which results from gross negligence or willful or wanton misconduct of one of those individuals.
4. **Additional Insured.** To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, all insurance policies that the LICENSEE is required to obtain to use the Premises pursuant to the "_____" entered into with LICENSOR, the policy or policies must be endorsed to include as an Insured the City of San Diego and its respective elected officials, officers, employees, agents and

representatives with respect to liability arising out of (a) ongoing operations performed by LICENSEE or on LICENSEE'S behalf, (b) LICENSEE'S products, (c) LICENSEE'S work, including but not limited to LICENSEE'S completed operations performed by LICENSEE or on LICENSEE'S behalf, or (d) premises owned, leased, controlled or used by LICENSEE.

5. Indemnification & Hold Harmless. LICENSEE will protect, defend, indemnify and hold City and its elected officials, officers, employees, representatives, agents, and volunteers harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LICENSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LICENSEE's acts or omissions in the performance of its rights and obligations under the _____ (Insert Defined Term from above) , and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LICENSEE's duty to indemnify and hold City harmless will not include any established liability arising from the sole negligence or intentional misconduct of City or its elected officials, officers, employees, representatives, agents, or volunteers. 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 to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification, Licensee will pay all of the related costs, including without limitation reasonable attorney fees and costs.

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

AMERICAN INSTITUTE OF ARCHITECTS
SAN DIEGO CHAPTER, a non-profit 501 (C) 6

By: _____
Bastiaan Bouma
Executive Director, CEO

Date: _____

By: _____
Name:
Title:

Date: _____

RESOLUTION NUMBER R- 312451DATE OF FINAL PASSAGE MAY 17 2019

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE A 10-YEAR FLAT RATE LEASE BETWEEN THE CITY OF SAN DIEGO AND THE AMERICAN INSTITUTE OF ARCHITECTS SAN DIEGO CHAPTER, A NON-PROFIT 501(C)(6) FOR THE REAL PROPERTY LOCATED AT 1220 THIRD AVENUE, SAN DIEGO, CALIFORNIA.

WHEREAS, the City of San Diego (City) owns that certain real property located at 1220 Third Avenue, San Diego, California, 92101 which is improved with an approximately 3,424 square feet building that was previously operated as a restaurant, and approximately 1,620 square feet of patio space (Property); and

WHEREAS, following the termination of the previous lease in May 2016, the City issued a Request for Proposals to lease the property and did not receive any responses; and

WHEREAS, the City selected Chris Roberson to market the Property after soliciting bids from real estate brokers to market the Property and receiving only two proposals; and

WHEREAS, following the marketing of the Property, the American Institute of Architects San Diego Chapter, a Non-profit 501(c)(6) (AIA) was the only party that desired to move forward with negotiating a lease after viewing the Property and completing the initial due diligence; and

WHEREAS, AIA has requested a lease with a term of ten (10) years, with two options to extend the lease for a period of five (5) years each, and initial monthly rent of \$1,370 which will be increased annually at the rate of 3%; and

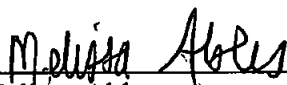
WHEREAS, the market value of the Property subject to this Lease was determined to be \$143,500 based on estimated market value and income approach appraisals; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor, or his designee, is authorized and directed to execute that certain City of San Diego Flat Rate Lease by and between the City of San Diego, a California Municipal Corporation and American Institute of Architects San Diego Chapter, a non-profit 501(c)6, more fully set forth in the Lease on file in the Office of the City Clerk as Document No. RR-312451.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to appropriate and expend the amount \$11,307.97 for the purpose of paying a one-time real estate broker's commission to Chris Roberson dba Real Investment Advisors for assistance in marketing the property for leasing, contingent upon the Chief Financial Officer furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

APPROVED: MARA W. ELLIOTT, City Attorney

By

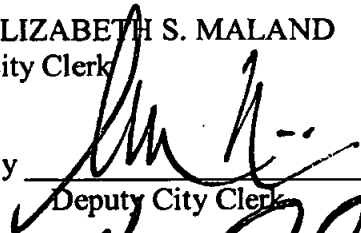

Melissa Ables
Deputy City Attorney

MDA:nja
04/25/19
Or. Dept: READ
Doc. No.: 1994921

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 14 2019.

ELIZABETH S. MALAND
City Clerk

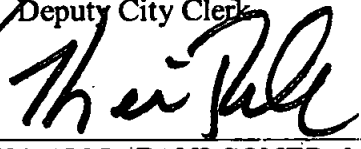
By


Deputy City Clerk

Approved:

5.17.19

(date)


KEVIN L. FAULCONER, Mayor

Vetoed:

(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 14 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	☒	☐	☐	☐
Jennifer Campbell	☒	☐	☐	☐
Chris Ward	☒	☐	☐	☐
Monica Montgomery	☒	☐	☐	☐
Mark Kersey	☒	☐	☐	☐
Chris Cate	☒	☐	☐	☐
Scott Sherman	☒	☐	☐	☐
Vivian Moreno	☒	☐	☐	☐
Georgette Gómez	☒	☐	☐	☐

Date of final passage MAY 17 2019.

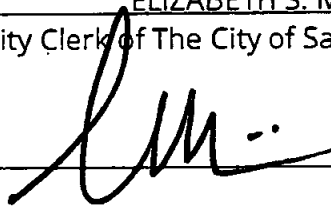
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 312451

Passed by the Council of The City of San Diego on May 14, 2019, by the following vote:

YEAS: **BRY, CAMPBELL, WARD, MONTGOMERY, KERSEY, CATE, SHERMAN,**
MORENO, GOMEZ.

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:

KEVIN L. FAULCONER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: **Matthew R. Hilario**, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of
RESOLUTION NO. **R-312451**, approved on **May 14, 2019**. The date of final passage
is **May 17, 2019**.

ELIZABETH S. MALAND

City Clerk of the City of San Diego, California

(Seal)

By: , Deputy

**AIA Rent Increases
1220 Third Avenue
San Diego, CA 92101**

Effective Date of Increase	Increased Amount	3% Annually
8/1/2019	\$ 1,370.00	
8/1/2020	\$ 1,411.10	
8/1/2021	\$ 1,453.43	
8/1/2022	\$ 1,497.04	
8/1/2023	\$ 1,541.95	
8/1/2024	\$ 1,588.21	
8/1/2025	\$ 1,635.85	
8/1/2026	\$ 1,684.93	
8/1/2027	\$ 1,735.48	
8/1/2028	\$ 1,787.54	
8/1/2029	\$ 1,841.17	