

CITY OF SAN DIEGO

LEASE AGREEMENT

(CIVIC CENTER CAFÉ: 1200 THIRD AVE., STE. 408, SAN DIEGO, CA 92101)

This LEASE AGREEMENT (this "Lease") is dated as of April 3, 2024 ("Reference Date"), for reference purposes only, and is entered into by and between RANDY KATTOLA, an individual, doing business as "CIVIC CENTER CAFÉ" ("Tenant"), and the CITY OF SAN DIEGO, a California municipal corporation ("City"), as landlord.

CITY, FOR AND IN CONSIDERATION OF THE RENT TO BE PAID BY TENANT AND THE CONDITIONS, COVENANTS, RESTRICTIONS AND AGREEMENTS TO BE OBSERVED AND PERFORMED BY TENANT UNDER THIS LEASE, LEASES TO TENANT, AND TENANT LEASES FROM CITY, THE RENTAL SPACE (DEFINED IN SECTION 2.45) ON THE FOLLOWING TERMS:

1. **PURPOSE.** City owns that certain real property located in the City of San Diego and specifically defined in Section 2.43 as the "Property." Tenant and City desire to enter into this Lease to provide Tenant specific rights to occupy the Rental Space area of the Property solely and exclusively for the purpose of the management and operation of a delicatessen café and such other related or incidental purposes as may be first approved in writing by City, and for no other purposes whatsoever.

2. **DEFINITIONS.** In addition to the definitions of certain words or phrases set forth in the preamble to this Lease, the following words or phrases shall have the meanings set forth below in this Section 2:

2.1 **Additional Rent.** All amounts this Lease requires Tenant to pay City or any other Person, whether or not expressly called Additional Rent, except Monthly Rent. The Additional Rent includes, but is not limited to, a monthly common area maintenance cost of Sixty-Eight Dollars (\$68.00). Such common area maintenance costs is payable for the same periods and in the same manner as the Monthly Rent.

2.2 **Application.** Excluding this Lease, any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for improvement of the Rental Space or installation of any Personal Property in the Rental Space, including any application for any land use entitlement, building permit, certificate of occupancy, utility service or hookup, easement, covenant, condition, restriction, subdivision, or other instrument as Tenant may reasonably request in compliance with this Lease; or (b) to enable Tenant to seek any Approval or to use or operate the Rental Space in accordance with this Lease and Law.

2.3 **Approval.** Excluding this Lease, all licenses, permits (including building, grading, demolition, alteration, use, and special permits), approvals, consents, certificates, rulings, variances, authorizations, conditional use permits, or amendments to any of the foregoing, necessary or appropriate under any Law to commence, perform, or complete improvement of the Rental Space or installation of any Personal Property in the Rental Space.

2.4 Bankruptcy Proceeding. Any proceeding, whether voluntary or involuntary, under Title 11, United States Code, or any other or successor State or Federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

2.5 Building. Defined in Section 8.3.

2.6 Business Day. Any weekday on which City is open to conduct regular City functions with City personnel.

2.7 City. The City of San Diego, California, a municipal corporation.

2.8 City Attorney. The City Attorney of the City of San Diego.

2.9 City Parties. Collectively, City, the City Council, and all City elected officials, employees, agents, and attorneys.

2.10 City Party. Individually, City, the City Council, or each City elected official, employee, agent, or attorney.

2.11 Claim. Any claim, loss, cost, damage, expense, liability, lien, action, cause of action (whether in tort, contract, under statute, at law, in equity, or otherwise, or foreseeable or unforeseeable), charge, award, assessment, fine or penalty of any kind (including consultant and expert fees and expenses and investigation costs of whatever kind or nature, and if Tenant improperly fails to provide a defense for City or provides a defense under a reservation of rights, then City's Legal Costs) and any judgment.

2.12 Control. Possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether by ownership of Equity Interests, by contract, or otherwise.

2.13 County. The County of San Diego, California.

2.14 CPRA. Defined in Section 44.

2.15 Default. Any Monetary Default or Non-Monetary Default.

2.16 Default Interest. The lesser of eight percent (8%) annually or the maximum rate allowed by Law.

2.17 Effective Date. May 1, 2024.

2.18 Environmental Claim. All Claims, directly or indirectly, relating to or arising from any actual or alleged violation of any Environmental Law relating to the Rental Space, Tenant's Operations, or any Hazardous Substance Discharge.

2.19 Environmental Condition. Any of the following events relating to the Rental Space, arising from Tenant's Operations, or any action or failure to act of any Tenant Party: (a) an actual or alleged violation of any Environmental Law; or (b) a Hazardous Substance Discharge.

2.20 Environmental Law. All Government laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements in effect on or enacted after the Effective Date, regulating, relating to, or imposing liability or standards of conduct concerning: (a) any Hazardous Substance; (b) occupational health or industrial hygiene (to the extent relating to Hazardous Substances on, under or about the Rental Space or used in Tenant's Operations); (c) occupational or environmental conditions on, under or about the Rental Space or relating to Tenant's Operations; (d) or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use.

2.21 Equity Interest. Any equity or ownership interest (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in a Person.

2.22 Event of Default. The occurrence of any one or more of the following:

2.22.1 *Monetary Default*. A Monetary Default continuing for seven (7) days after Notice to the Party in Default, specifying in reasonable detail the amount of money not paid, including the nature and calculation of each such amount, or the evidence of insurance not delivered;

2.22.2 *Bankruptcy or Insolvency*. A Party ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to a Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within one hundred twenty (120) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all the Party's assets or the Party's interest in this Lease (unless such appointment, attachment, execution, or other seizure was involuntary, is contested with diligence and continuity, and is vacated and discharged within one hundred twenty (120) days);

2.22.3 *Tenant Transfer*. The occurrence of a Transfer, whether voluntarily or involuntarily or by operation of Law, in violation of Section 24;

2.22.4 *Non-Monetary Default*. Any Non-Monetary Default, other than those specifically addressed in Section 2.22.2 or 2.22.3, that is not cured within thirty (30) days after Notice to the Party in Default describing the Non-Monetary Default in reasonable detail. In the case of a Non-Monetary Default that cannot with reasonable diligence be cured within thirty (30) days after the date of such Notice, the Party in Default shall not be in Default if it does all the following: (a) within thirty (30) days after Notice of such Non-Monetary Default, advise the other Party of the intention of the Party in Default to take all reasonable steps to cure such Non-Monetary Default; (b) duly commence such cure; and (c) complete such cure within a reasonable time under the circumstances.

2.23 Federal. Relating or pursuant to the authority of the federal government of the United States of America.

2.24 Government. All courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever of any governmental unit (Federal, State, County, district, City, or otherwise) whether in existence on the Effective Date or subsequently established.

2.25 Hazardous Substance. Any flammable substance, explosive, radioactive material, asbestos, asbestos-containing material, polychlorinated biphenyl, chemical known to the State to cause cancer or reproductive toxicity, pollutant, contaminant, hazardous waste, medical waste, toxic substance or related material, petroleum, petroleum product, or any "hazardous" or "toxic" material, substance, or waste defined by those or similar terms or regulated as such under any Law, any matter, waste, or substance subject to any Law regulating, relating to, or imposing obligations, liability, or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property, or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor, or any form of energy, from whatever source.

2.26 Hazardous Substance Discharge. Any deposit, discharge, generation, release, or spill of a Hazardous Substance occurring at, on, under, into, or from the Rental Space, or during transportation of any Hazardous Substance to or from the Rental Space, or arising at any time from activities conducted at, on, under, or from the Rental Space, whether or not caused by a Party.

2.27 Indemnify. Indemnify, defend, and hold harmless the specified Person(s) from and against the Claim (alleged or otherwise), including all loss, cost, liability, penalties, judgments, damages and other injury, detriment or expense (including Legal Costs, interest and penalties) the Person suffers or incurs: (a) from, as a result, or on account of the Claim; or (b) in enforcing the Indemnitor's indemnity obligation regarding the Claim.

2.28 Law. Every law, ordinance, requirement, order, proclamation, directive, rule or regulation of any Government applicable to the Property or Tenant's Operations, including any development, use, maintenance, taxation, operation, occupancy of, or environmental conditions affecting or relating to the Property or Tenant's Operations, or relating to any taxes, or otherwise relating to this Lease or any Party's rights, obligations or remedies under this Lease, whether in force on the Effective Date or passed, enacted, modified, amended or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

2.29 Lease Year. Each of: (a) the period from the Effective Date to the first day of the immediately following calendar month and the subsequent twelve (12) calendar month period; provided, however, if the Effective Date is the first day of a calendar month, then Lease Year 1 is the twelve (12) months following the Effective Date; and (b) every subsequent period of twelve (12) calendar months during the Term. Each Lease Year is referred to in this Lease in consecutive chronological order, starting with "Lease Year 1", continuing with "Lease Year 2," and "Lease Year 3."

2.30 Legal Costs. In reference to any Person, all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses, and consultant and expert witness fees and expenses.

2.31 Mayor. The Mayor of City or his or her designee or successor in function.

2.32 Monetary Default. Any failure by a Party to pay or deposit, when and as this Lease requires, any amount of money or evidence of any insurance coverage required to be provided under this Lease, whether to or with a Party or a Third Person.

2.33 Monthly Rent. The following monthly rent amounts are payable by Tenant to City for each calendar month during each respective Lease Year:

Lease Year 1	\$927.00 per calendar month
Lease Year 2	\$954.84 per calendar month
Lease Year 3	\$983.48 per calendar month

2.34 Non-Monetary Default. The occurrence of any of the following events, except to the extent constituting a Monetary Default: (a) any failure of a Party to perform any of its obligations under this Lease; (b) any failure of a Party to comply with any condition, restriction, or prohibition in this Lease; or (c) any other event or circumstance that, with passage of time or giving of Notice, or both, would constitute a breach of this Lease.

2.35 Notice. Any consent, demand, designation, election, notice, or request relating to this Lease. All Notices must be in writing.

2.36 Notify. To give a Notice.

2.37 Parties. Collectively, City and Tenant.

2.38 Party. Individually, either City or Tenant, as applicable.

2.39 Person. Any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization, or other entity of any kind.

2.40 Personal Property. All personal property (not permanently affixed to the Rental Space or integral to the operation of the Rental Space) brought into the Rental Space by or on behalf of Tenant.

2.41 Prevailing Wage Law. Defined in **EXHIBIT E**, Section 1.

2.42 Prevailing Wage Determination. Any of the following: (a) any determination by the State or Federal Government that prevailing wage rates should have been paid, but were not; (b) any determination by the State or Federal Government that higher prevailing wage rates than those paid should have been paid; (c) any administrative or legal action or proceeding arising from any failure to comply with any Prevailing Wage Law, including the obligation to maintain certified payroll records under California Labor Code section 1776; or (d) any administrative or legal action or proceeding to recover wage amounts or impose penalties or sanctions, at law or in equity, including under California Labor Code section 1781 or 1782.

2.43 Property. That certain real property owned by City specifically described in **EXHIBIT A** attached to this Lease.

2.44 Rent. Collectively, all Monthly Rent and all Additional Rent.

2.45 Rental Space. That part of the Property specifically described in **EXHIBIT B** attached to this Lease.

2.46 Security Deposit. One Thousand Two Hundred Eighty-Two Dollars (\$1,282).

2.47 State. The State of California.

2.48 Structural Elements. Defined in Section 8.3.

2.49 Tenant. Randy Kattola, an individual, doing business as "Civic Center Café."

2.50 Tenant's Operations. Operation of a delicatessen café.

2.51 Tenant Parties. Collectively, Tenant, its employees, agents, contractors, attorneys, and any other Person whom Tenant authorizes or allows to enter the Rental Space.

2.52 Tenant Party. Individually, Tenant, its directors, officers, members, partners, employees, agents, attorneys, or other Person whom Tenant authorizes or allows to enter the Rental Space.

2.53 Term. Defined in Section 3.1.

2.54 Termination Date. The date of the expiration or termination of this Lease.

2.55 Third Person. Any Person that is not a Party, an affiliate of a Party, a City Party, or a Tenant Party.

2.56 Transfer. Any of the following events, whether occurring by operation of Law or otherwise, voluntarily or involuntarily, or directly or indirectly, any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of Tenant's legal, beneficial, or equitable interest in this Lease.

2.57 Unavoidable Delay. A delay in either Party performing any obligation under this Lease arising from or on account of any cause whatsoever beyond the Party's reasonable control, including strike, labor trouble, union activity, casualty, war, act of terrorism, riot, litigation, Government action, regional natural disaster, pandemic, or inability to obtain materials. Unavoidable Delay shall not include delay caused by a Party's financial condition, illiquidity, or insolvency.

3. TERM.

3.1 Term. This Lease commences on the Effective Date and continues until the end of Lease Year 3, subject to the other rights of the Parties under this Lease ("**Term**").

3.2 No Holdover. If Tenant continues to occupy the Rental Space after the Termination Date, such occupancy shall neither constitute a renewal or extension of this Lease pursuant to Civil Code Section 1945 or otherwise, nor give Tenant any right in or to the Rental Space. If Tenant

continues to occupy the Rental Space after the Termination Date, City may demand and receive from Tenant monthly rent for the Rental Space calculated on a per diem basis using the fair market rental rate for the Rental Space determined as of the Termination Date by an appraiser selected by City, in its sole and absolute discretion. City's acceptance of any such monthly rent shall not constitute a renewal or extension of this Lease pursuant to Civil Code Section 1945 or otherwise, nor give Tenant any right in or to the Rental Space.

4. SECURITY DEPOSIT. Tenant deposited the Security Deposit with City. City shall hold the Security Deposit as security for Tenant's faithful performance of all the terms, covenants conditions, restrictions, and agreements of this Lease to be observed or performed by Tenant during the Term. If Tenant does not timely perform any provision of this Lease, including the provisions relating to payment of Rent, City may (but shall not be required to) use, apply, or retain the Security Deposit for the payment of any Rent or other amount not timely paid, for the payment of any amount City may spend or become obligated to spend by reason of Tenant's failure to perform, or to compensate City for any other loss or damage City may suffer by reason of Tenant's failure to perform. If any portion of the Security Deposit is so used or applied, Tenant shall, within seven (7) days after Notice requesting replenishment of the Security Deposit, deposit cash with City in an amount sufficient to restore the Security Deposit to its original amount. City shall not be required to keep the Security Deposit separate from its general funds. Tenant shall not be entitled to interest on the Security Deposit. If Tenant fully and faithfully observes or performs every term, covenant, condition, restriction, and agreement of this Lease to be observed or performed by Tenant, the unused balance of the Security Deposit will be returned to Tenant within thirty (30) days after the Termination Date Tenant waives all rights regarding the Security Deposit set forth in California Civil Code Section 1950.7, or any similar, related, or successor provision of law.

5. RENT. Tenant shall pay the Rent to City on or before the first day of each calendar month, as part of the consideration to City for permitting Tenant to use the Property for Tenant's Operations pursuant to this Lease.

5.1 Payment. Rent is payable to the City Treasurer in lawful money of the United States of America. Rent payments shall be sent to City by first-class mail through the United States Postal Service with all postage pre-paid and addressed to:

The City of San Diego
Office of the City Treasurer
P.O. Box 129030
San Diego, California 92112-9030

or hand delivered to:

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

5.2 Required Payment Information. Tenant shall include City's customer account number for Tenant with each monthly Rent payment. Tenant's failure to include its City customer account number may result in Tenant's payment not being timely applied to Tenant's account and the application of late payment charges. Tenant assumes all risk of loss and responsibility for all fees or penalties arising from its failure to include its City customer account number with a Monthly Rent payment. The place of payment may be changed at any time by City upon thirty (30) days prior Notice to Tenant. Payments are considered paid on the date the payment is negotiated by the financial institution on which the payment is drawn. Tenant assumes all risk of loss and responsibility for late payment charges if payments are sent by mail.

5.3 No Offsets. Tenant shall pay all Monthly Rent without offset, defense, claim, counterclaim, reduction, or deduction of any kind whatsoever.

5.4 City's Net Return. The Monthly Rent shall give City an absolutely "net" return for the Term, free of any expenses or charges for the Rental Space, except as this Lease expressly provides.

5.5 Delinquent Rent. If Tenant fails to pay Rent when due, Tenant shall pay, in addition to the unpaid Rent, five percent (5%) of the delinquent Rent. If the Rent remains unpaid after fifteen (15) days past due, Tenant shall pay an additional five percent (5%) (a total of ten percent (10%) of the delinquent Rent). The payments required in this Section 5.5 are agreed by the Parties to be reasonable amounts to compensate City for the cost of servicing the delinquent account. In no event shall the charge for late payment of Rent be less than Twenty-Five Dollars (\$25). Acceptance of late charges or any portion of the late Rent payment by City shall neither constitute a waiver of Tenant's Default regarding the late payment nor prevent City from exercising any rights or remedies available pursuant to this Lease, at Law, or in equity arising from such Default.

6. RENTAL SPACE USE.

6.1 No Limitation on Other City Use of the Property. Nothing contained in this Lease is intended to limit, restrict, or prohibit City from entering into future agreements with other Persons regarding use of the Property, other than the Rental Space.

6.2 No Nuisance. Tenant shall not create or allow a nuisance, as defined in California Civil Code section 3479, in, around, or related to its use of the Rental Space.

6.3 Continuous Operation. If Tenant's Operations in the Rental Space are discontinued for more than sixty (60) days other than due to a casualty or other event constituting an Unavoidable Delay, City may, in its sole and absolute discretion, terminate this Lease immediately by Notice to Tenant.

6.4 Accident Reports. Tenant shall immediately, or as soon as practicable and not more than 48 hours after Tenant becomes aware of any accident, in or around the Rental Space causing property damage or injury to any Person, report to City the names and addresses of the Person(s) involved, the circumstances, the date and hour of the accident, the names and addresses of all witnesses, and all other pertinent information.

7. ACCEPTANCE OF RENTAL SPACE IN AS-IS CONDITION. TENANT ACKNOWLEDGES AND AGREES THAT IT HAS OCCUPIED THE RENTAL SPACE PURSUANT TO A SEPARATE AGREEMENT WITH CITY FOR MORE THAN 3 YEARS PRECEDING THE EFFECTIVE DATE. TENANT ACCEPTS ALL PHYSICAL CONDITIONS OF THE RENTAL SPACE, AS OF THE EFFECTIVE DATE, AND RELEASES CITY FROM ALL LIABILITY WHATSOEVER FOR ALL KNOWN OR UNKNOWN CONDITIONS OF THE RENTAL SPACE. TENANT SHALL ENTER THE RENTAL SPACE FOR THE TENANT'S OPERATIONS PURSUANT TO THIS LEASE, IN THE RENTAL SPACE'S "AS IS," "WHERE IS" AND "SUBJECT TO ALL FAULTS" CONDITION, AS OF THE EFFECTIVE DATE. TENANT ACKNOWLEDGES AND AGREES THAT IT IS RELYING SOLELY UPON ITS OWN KNOWLEDGE OR INVESTIGATION OF THE RENTAL SPACE, AS IT DEEMS APPROPRIATE. TENANT IS NOT RELYING ON ANY STATEMENT OR REPRESENTATION BY ANY CITY PARTY RELATING TO THE CONDITION OF THE RENTAL SPACE. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 7, CITY MAKES NO REPRESENTATION OR WARRANTY AS TO THE PHYSICAL CONDITION OF THE RENTAL SPACE OR WHETHER THE RENTAL SPACE PRESENTLY COMPLIES WITH ANY LAW. WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION 7, TENANT, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO THE PHYSICAL CONDITION OF THE RENTAL SPACE OR COMPLIANCE OF THE RENTAL SPACE WITH ANY LAW APPLICABLE TO THE RENTAL SPACE. TENANT EXPRESSLY WAIVES ANY RIGHTS OR BENEFITS AVAILABLE TO IT WITH RESPECT TO THE RELEASES CONTAINED IN THIS SECTION 7 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY, INCLUDING CALIFORNIA CIVIL CODE SECTION 1542. THE PROVISIONS OF THIS SECTION 7 SHALL SURVIVE THE TERMINATION DATE.

8. IMPROVEMENTS.

8.1 Improvements. Tenant shall not make or permit any other Person to make any alterations or improvements in or to the Rental Space without the prior written consent of City. Furthermore, all alterations, improvements, or fixtures, except furniture or trade fixtures, made or placed in or on the Rental Space by Tenant or any other Person shall become the property of City on the Termination Date. City shall have the option, however, on or after the Termination Date, to require Tenant, at Tenant's sole cost and expense, to remove such alterations, improvements, or fixtures from the Rental Space. Except as required by Law, City is not obligated to make or pay for any repair, improvement, or alteration to the Rental Space.

8.2 Approvals. Tenant shall not make any improvement to or install any Personal Property in or on the Rental Space without first obtaining all necessary Approvals for such improvement or installation work. In obtaining any necessary Approval for improvement to or installation in or on the Rental Space, Tenant shall inform each Government to which Tenant applies for an Approval, in writing, that the Property is City-owned.

8.3 Maintenance by City. City shall, at its own cost and expense, maintain in good condition and repair the structural elements of the building containing the Rental Space ("**Building**"). For purposes of this Lease, "**Structural Elements**" means and refers to the exterior roof, exterior walls, structural supports, and foundation of the Building. City shall not be liable for any damages to Tenant or Tenant's property resulting from City's failure to make any repairs required by this Section 8.3, unless Notice of the need for those repairs is given to City by Tenant and City does not make the repairs within 180 days after receipt of the Notice, unless prevented by an Unavoidable Delay. Notwithstanding anything in this Section 8.3 to the contrary, Tenant shall promptly reimburse City for the full cost of all repairs made pursuant to this Section 8.3 because of the negligence or other fault of Tenant or a Tenant Party.

8.4 Maintenance by Tenant. Except as otherwise expressly provided in Section 8.3, Tenant shall at its own cost and expense keep and maintain the Rental Space and all Personal Property located in, on, or at the Rental Space in a good, safe, clean and organized condition, reasonable wear and tear excepted. Tenant's obligation to repair shall specifically include necessary repairs to the heating, ventilation, and air conditioning systems, interior walls, floor coverings, ceilings, painting and maintenance of exterior walls, the interior and exterior portions of all doors, and patios or sidewalks for the Rental Space.

8.5 Prevailing Wage Laws. On the Effective Date, no public funds are provided by City or any other Person to Tenant relating to Tenant's use of the Rental Space. If Tenant obtains any public funds after the Effective Date from City or another Person relating to Tenant's use of the Rental Space, Tenant shall comply with Prevailing Wage Laws in performing all restoration, repair, or maintenance required to be performed by Tenant under this Lease.

8.6 City Entry. Tenant shall permit City or City's agents, representatives, or employees to enter the Rental Space at all reasonable times (and at any time during an emergency) for the purpose of inspecting the Rental Space to determine whether Tenant is complying with the terms of this Lease, for the purpose of doing other lawful acts that may be necessary to protect City's interest in the Rental Space, or for the purpose of performing City's duties under this Lease or

Law. Tenant shall make a representative available to be present at any City entry into the Rental Space pursuant to this Section 8.5 on 48 hours' Notice; provided, however, the presence of a Tenant representative is not required for City to exercise its rights under this Section 8.5.

8.7 Protection Against Claims or Liens. IF ANY CLAIM OR LIEN IS RECORDED OR ASSERTED AGAINST THE RENTAL SPACE, THE PROPERTY, OR CITY FOR MATERIALS OR EQUIPMENT SUPPLIED OR LABOR OR SERVICES PERFORMED DIRECTLY OR INDIRECTLY FOR TENANT OR A CONTRACTOR OF TENANT RELATING TO CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE RENTAL SPACE, TENANT SHALL SATISFY AND DISCHARGE SUCH CLAIM OR LIEN, AT THE SOLE COST AND EXPENSE OF TENANT, WITHIN TEN (10) DAYS FOLLOWING NOTICE OF THE EXISTENCE OR ASSERTION OF SUCH CLAIM OR LIEN. NOTICE IS HEREBY GIVEN THAT NEITHER CITY, THE RENTAL SPACE, OR THE PROPERTY SHALL BE LIABLE FOR ANY SERVICES, LABOR, OR MATERIALS OR EQUIPMENT FURNISHED OR TO BE FURNISHED TO TENANT OR TENANT'S CONTRACTOR(S) UPON CREDIT AND NO MECHANIC'S OR OTHER LIEN FOR ANY SERVICES, LABOR, MATERIALS OR EQUIPMENT SHALL ATTACH TO OR AFFECT THE RENTAL SPACE OR THE PROPERTY. NOTHING IN THIS LEASE SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE CITY'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, PROFESSIONAL, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY SERVICE OR LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION, DEMOLITION, MAINTENANCE, INSTALLATION, REMOVAL OR OTHER WORK ON THE RENTAL SPACE OR THE PROPERTY, NOR AS GIVING TENANT ANY RIGHT, POWER, OR AUTHORITY TO CONTRACT FOR, OR PERMIT THE RENDERING OF, ANY SERVICES OR LABOR, OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT THAT WOULD GIVE RISE TO THE FILING OF ANY CLAIM OR LIEN AGAINST THE RENTAL SPACE OR THE PROPERTY.

8.8 No Liens Against Public Property. TENANT ACKNOWLEDGES AND AGREES THAT ON THE EFFECTIVE DATE THE RENTAL SPACE AND THE PROPERTY ARE OWNED BY CITY, WHICH IS A PUBLIC ENTITY, AND THE RENTAL SPACE AND THE PROPERTY ARE NOT SUBJECT TO THE IMPOSITION OF MECHANIC'S LIENS OR ANY OTHER LIENS IN FAVOR OF PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE RENTAL SPACE OR THE PROPERTY. TENANT FURTHER AGREES TO INFORM EACH PROVIDER OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT ON OR TO THE RENTAL SPACE OR THE PROPERTY OF SUCH FACT AND THAT CITY, THE RENTAL SPACE, AND THE PROPERTY ARE NOT RESPONSIBLE FOR PAYMENT OF ANY CLAIMS BY ANY SUCH PROVIDERS OF SERVICES, LABOR, MATERIAL, OR EQUIPMENT.

8.9 Signs. Tenant shall comply with all Laws requiring the posting of signs in or at the Rental Space. Tenant shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising on the Property without City's prior written consent, in each instance, which consent may be given or withheld in City's sole and absolute discretion. If any such unauthorized item is found in or at the Rental Space, Tenant shall

remove the item at Tenant's sole cost and expense within twenty-four (24) hours after Notice from City requesting the removal. If Tenant does not remove the item within such twenty-four (24) hour period, City may enter the Rental Space and remove the item at Tenant's sole cost and expense. If City performs work required of Tenant pursuant to this Section 8.9, Tenant shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City's staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of such costs. Any amount reimbursable to City by Tenant pursuant to this Section 8.9 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

9. TENANT INSURANCE. Tenant shall maintain, to protect the City Parties against all insurable Claims arising from or relating to this Lease, the Rental Space, or the Personal Property, at the sole cost and expense of Tenant, all the insurance coverage required in **EXHIBIT C** attached to this Lease.

10. WASTE OR DAMAGE. Tenant shall immediately Notify City of any waste, casualty, or damage to the Rental Space or the Property. Tenant shall not commit, or allow to be committed, any waste, casualty, or damage to property or injury to person in or around the Rental Space. If waste, casualty, or damage to the Rental Space or the Property arises from Tenant's Operations, at City's election, in City's sole and absolute discretion, Tenant shall make, or cause to be made, full repair of the waste, casualty, or damage and restore the Rental Space or the Property to its condition existing immediately prior to the waste, casualty, or damage. Tenant shall commence preliminary steps toward restoration of the Rental Space or the Property, as applicable, as soon as practicable, but no later than thirty (30) days after the date the waste, casualty, or damage occurs. Tenant shall complete all required repairs or restoration within ninety (90) days after the date the waste, casualty, or damage occurs. Tenant must obtain all Approvals required for repair or restoration of all waste, casualty, or damage to the Rental Space or the Property.

11. DAMAGE TO OR DESTRUCTION OF STRUCTURAL ELEMENTS.

11.1 City's Right to Terminate Lease. Notwithstanding Section 8.3, City shall have the right to terminate this Lease and shall have no obligation to repair, restore, or rebuild the Structural Elements under any of the following circumstances:

11.1.1 Damage or destruction from an insured casualty when the damage or destruction cannot reasonably be repaired, restored, or rebuilt within a period of 90 days; or

11.1.2 Damage or destruction from an uninsured casualty when the cost of repair, restoration, or rebuilding not covered by insurance exceeds \$25,000.

11.2 Notice of Termination. If City elects to terminate this Lease under any of the circumstances described in Section 11.1, City shall give Notice to Tenant not later than 60 days after occurrence of the damage or destruction.

12. ENVIRONMENTAL CONDITIONS. Tenant shall not cause or permit any Environmental Condition. If Tenant discovers or becomes aware of an Environmental Condition, Tenant shall Notify City of such Environmental Condition as soon as possible, but in all cases

within twenty-four (24) hours following Tenant discovering or becoming aware of such Environmental Condition.

12.1 Remediation. If Tenant's action or inaction results in an Environmental Condition, Tenant shall remediate the Environmental Condition for unrestricted use of the Property in accordance with Law, at Tenant's sole cost and expense. If Tenant knows or reasonably believes an Environmental Condition is an imminent danger to public health and safety, Tenant shall take all action necessary to alleviate the imminent danger, at Tenant's sole cost and expense.

12.2 Removal. If Tenant stores, utilizes, generates, or otherwise brings Hazardous Substances onto the Rental Space in accordance with Law, Tenant shall remove all such Hazardous Substances from the Rental Space prior to the Termination Date and provide City with documentation demonstrating the legal removal and disposal of the Hazardous Substances. Tenant shall be responsible for all costs incurred by City to remove or dispose of any Hazardous Substances not removed from the Rental Space by Tenant in accordance with this Section 12.2.

12.3 Reports. Tenant shall deliver a written report describing the circumstances of each Environmental Condition in reasonable detail to City within three (3) days after Notifying City of the Environmental Condition. Tenant shall also submit all required reports relating to the Environmental Condition to other Governments as required by Law.

12.4 Environmental Assessment. If City Reasonably believes that Tenant's action or inaction resulted in an Environmental Condition, City may cause an environmental assessment of the Rental Space to be performed by a professional environmental consultant registered with the State as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be performed at Tenant's sole cost and expense. Tenant shall reimburse City for all costs and expenses reasonably incurred by City in performing the environmental assessment within fifteen (15) days after Notice to Tenant of the amount of such costs and expenses. Any amount reimbursable to City by Tenant pursuant to this Section 12.4 that is not paid within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

13. **COMPLIANCE WITH LAW**. Tenant's Operations shall comply with all Laws, at Tenant's sole cost and expense. Tenant shall comply with all notices issued by City or any other Government under the authority of current or future Law. Tenant shall not conduct any Tenant's Operations without first obtaining all necessary Approvals. Tenant shall promptly deliver to City documentary evidence of all Approvals obtained by Tenant regarding Tenant's Operations.

14. **COMPLIANCE WITH CITY STANDARD CONTRACT PROVISIONS**. Tenant shall comply with all City standard contract provisions set forth in **EXHIBIT D** attached to this Lease.

15. **TENANT INDEMNITY OBLIGATIONS**. In addition to other obligations of Tenant to Indemnify City Parties stated in this Lease, Tenant shall Indemnify the City Parties against each Claim to the extent such Claim arises from: (a) any wrongful intentional act or negligence of a Tenant Party; (b) any Application made at Tenant's request; (c) any agreement Tenant (or anyone claiming by or through Tenant) makes with a Third Person regarding this Lease, the Rental Space,

Tenant's Operations, or any Personal Property; (d) any claim or lien for services, labor, material, or equipment supplied to or for Tenant or Tenant's Operations; (e) any workers' compensation Claim relating to an employee or contractor of a Tenant Party; (f) any Environmental Claim relating to the Rental Space or relating to or arising from any action or failure to act of a Tenant Party or Tenant's Operations; or (g) any Hazardous Substance Discharge relating to or arising from any action or failure to act of a Tenant Party or Tenant's Operations.

15.1 Independent of Insurance Obligations. Tenant's obligations to Indemnify the City Parties under this Lease shall not be construed or interpreted as in any way restricting, limiting, or modifying Tenant's insurance or other obligations under this Lease. Tenant's obligations to Indemnify the City Parties under this Lease are independent of Tenant's insurance and other obligations under this Lease. Tenant's compliance with its insurance obligations or other obligations under this Lease shall not in any way restrict, limit, or modify Tenant's obligations to Indemnify the City Parties under this Lease and are independent of Tenant's obligations to Indemnify the City Parties or other obligations under this Lease.

15.2 Survival of Indemnification and Defense Obligations. Tenant's obligations to Indemnify the City Parties under this Lease shall survive the Termination Date, until all actual or prospective Claims regarding any matter subject to such obligations are fully, finally, absolutely, and completely barred by applicable statutes of limitations.

15.3 Indemnification Procedures. Wherever this Lease requires Tenant to Indemnify the City Parties:

15.3.1 *Notice.* The City Parties shall Notify Tenant of any Claim within a reasonable time.

15.3.2 *Selection of Counsel.* Tenant shall select legal counsel reasonably acceptable to the City Parties. Legal counsel to Tenant's insurance carrier that is providing coverage for a Claim shall be reasonably acceptable to the City Parties, except in the event of a potential or actual conflict of interest for such legal counsel regarding such representation, such legal counsel is reasonably determined by the City Parties to be incompetent regarding such representation, or Tenant provides a defense to the City Parties under a reservation of rights. Even though Tenant shall defend the Claim, the City Parties may, at the City Parties' option and the City Parties' own expense, engage separate legal counsel to advise the City Parties regarding the Claim and the City Parties' defense. Where Tenant provides a defense to the City Parties under a reservation of rights, an actual or potential conflict of interest between Tenant and the City Parties or another Person exists and the City Parties do not consent to the representation, or Tenant's legal counsel is reasonably determined by the City Parties to be incompetent regarding the representation, in each case, Tenant shall pay the Legal Costs of the City Parties' separate legal counsel. The City Parties' separate legal counsel may attend all proceedings and meetings relating to the Claim. Tenant's legal counsel shall actively consult with the City Parties' separate legal counsel, subject to applicable conflict of interest and privileged communication limitations.

15.3.3 *Cooperation.* The City Parties shall reasonably cooperate with the Tenant's defense of the City Parties.

15.3.4 *Settlement.* Tenant may only settle a Claim against the City Parties with the consent of the City Parties. Any settlement shall procure a complete release of the City Parties from the subject Claim, shall not require the City Parties to make any payment to the claimant, and shall provide that neither the City Parties, nor Tenant on behalf of the City Parties, admits any liability.

16. TAXES; POSSESSORY INTEREST TAX. Tenant shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Tenant, Tenant's Operations, the Rental Space, or Personal Property. Tenant acknowledges and agrees that this Lease may create a possessory interest in the Property subject to property taxation. Any possessory interest tax imposed as a result of this Lease shall be solely a tax liability of Tenant and shall be paid before delinquency by Tenant. In addition, Tenant shall pay before delinquency all personal property taxes becoming due for equipment, fixtures, inventory, or other Personal Property of Tenant or any Tenant Party installed, maintained, or present at or in the Rental Space.

17. CITY CURE RIGHT. If Tenant at any time fails to take any action this Lease requires of Tenant, without waiving or releasing Tenant from any obligation, Default, or Event of Default and without waiving City's right to take such action as this Lease may permit as a result of a Default or Event of Default, City may (but is not obligated to) take such action. Tenant shall reimburse City for an amount equal to: (a) all reasonable costs and expenses (including Legal Costs) incurred by City in exercising its cure rights under this Section 17; and (b) Default Interest on all amounts described in clause "(a)" from the date incurred until all such amounts are reimbursed in full to City by Tenant. Nothing in this Section 17 is intended to modify or restrict any other cure right provided to City in this Lease.

18. REMEDIES. If an Event of Default occurs, then City, at City's option, in City's sole and absolute discretion, may pursue any or all the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law, or in equity, or under any other provision of this Lease:

18.1.1 *Termination of Tenant's Rights.* City may terminate Tenant's right to possession of the Rental Space by any lawful means, including Notice of termination to Tenant, in which case this Lease and the Term shall terminate, such date of termination shall be the Termination Date, and Tenant shall immediately surrender possession of the Rental Space to City pursuant to Section 23.

18.1.2 *Recovery of Damages Following Termination.* Upon termination of this Lease pursuant to Section 18.1.1, City may recover from Tenant:

(a) The worth at the time of award of the unpaid Rent which had been earned at time of termination;

(b) The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided;

(c) 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 such rental loss that Tenant proves could be reasonably avoided; and

(d) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

(e) The "worth at the time of award" of the amounts referred to in Sections 18.1.2(a) and 18.1.2(b) is computed by accruing Default Interest on such amounts. The "worth at the time of award" of the amount referred to in Section 18.1.2(c) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award, plus one percent (1%).

18.1.3 *Taking Possession.* City may re-enter and take possession of the Rental Space with process of law, whether by summary proceedings or otherwise, and remove Tenant, with or without having terminated this Lease, and without being liable for damages or guilty of trespass or terminating this Lease. This Section 18.1.3 is intended to constitute an express right of re-entry in favor of City. No re-entry by City, whether had or taken under summary proceedings or otherwise, shall absolve or discharge Tenant from liability under this Lease. The terms "enter," "re-enter," "entry," and "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Following any such entry or re-entry by City, City may, at any time and from time to time, relet the Rental Space. City may at City's election, in City's sole and absolute discretion, eject all Persons or eject some and not others or eject none. City shall apply all rents from any such reletting in the manner provided in Section 18.3. Any reletting may be for the remainder of the Term or for a longer or shorter period. City may enter into any leases made under this Section 18.1.3 in City's name and shall be entitled to all rents from the use, operation, or occupancy of the Rental Space. Tenant shall nevertheless pay to City on the due dates specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus City's expenses (including Legal Costs), less the avails of any reletting. No act by or on behalf of City under this Section 18.1.3 shall constitute a termination of this Lease unless City gives Tenant Notice of termination of this Lease.

18.1.4 *Suits Before Expiration Date.* City may sue Tenant for damages or to recover Rent, from time to time, at City's election, in City's sole and absolute discretion.

18.1.5 *Receipt of Moneys.* No receipt of money by City from Tenant after termination of this Lease, or after the giving of any Notice of termination of this Lease, shall reinstate, continue, or extend this Lease or affect any Notice previously given to Tenant, or waive City's right to enforce payment of any Rent payable or later falling due, or City's right to recover possession of the Rental Space by proper remedy, except as this Lease expressly states otherwise, it being agreed that after service of Notice of termination of this Lease or the commencement of suit or summary proceedings, or after final order or judgment for possession, City may demand, receive, and collect any moneys due or thereafter falling due from Tenant under this Lease, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use and occupation of the Rental Space by Tenant or, at City's election in City's sole and absolute discretion, on account of Tenant's liability.

18.1.6 *No Waiver.* No failure by City to insist upon strict performance of any covenant, agreement, term, condition, or restriction of this Lease or to exercise any right or remedy upon a Default, and no acceptance of full or partial Rent during continuance of any such Default or Event of Default, shall waive any such Default Event of Default, or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Lease to be performed or complied with by Tenant, and no Default or Event of Default, shall be modified or waived, except by a written instrument signed by City. No waiver of any Default shall amend this Lease. Each covenant, agreement, term, condition, and restriction of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term, condition, or restriction of this Lease.

18.1.7 *Damages.* City may recover from Tenant all damages City incurs because of Tenant's Default, including reasonable costs of recovering possession, reletting the Rental Space, all other damages legally recoverable by City, and reimbursement of City's reasonable out of pocket costs, including Legal Costs and bank fees for dishonored checks. City may recover such damages at any time after Tenant's Default, including after the Termination Date. Notwithstanding any Law to the contrary, City need not commence separate actions to enforce Tenant's obligations for each month's Rent not paid, or each month's accrual of damages for Tenant's Default, but may bring and prosecute a single combined action for all such Rent and damages.

18.1.8 *Continue Lease.* City may, at City's option, in City's sole and absolute discretion, maintain Tenant's right to possession of the Rental Space. City has the remedy described in California Civil Code Section 1951.4 (City may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations). In that case, this Lease shall continue, and City may continue to enforce it, including the right to collect Rent when due and any remedies for non-payment of Rent. Tenant acknowledges and agrees that the standards and conditions of this Lease regarding Tenant's right to Transfer this Lease are reasonable.

18.2 Injunction of Breaches. Whether or not an Event of Default has occurred, City may obtain a court order enjoining Tenant from continuing any Default or from committing any threatened Default. Tenant specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Non-Monetary Default.

18.3 Proceeds of Reletting. City shall apply the proceeds of any reletting of the Rental Space as follows, without duplication, but including Default Interest on all such amounts:

18.3.1 *City's Costs.* First, to pay to itself the cost and expense of terminating this Lease, re-entering, retaking, repossessing, repairing, performing any construction, and the cost and expense of removing all Persons and property from the Rental Space, including reasonable and customary brokerage commissions and Legal Costs;

18.3.2 *Preparation for Reletting.* Second, to pay to itself the cost and expense reasonably sustained in securing any new tenants or other occupants, including in such costs all brokerage commissions, Legal Costs, and any other reasonable costs of preparing the Rental Space for reletting;

18.3.3 *Costs of Maintenance and Operation.* Third, to the extent that City shall maintain and operate the Rental Space, to pay to itself the reasonable cost and expense of doing so; and

18.3.4 *Residue.* Fourth, to pay to itself any balance remaining of Tenant's liability to City.

19. LEGAL ACTIONS. Either Party may institute legal action, at law or in equity, to enforce or interpret the rights or obligations of the Parties under this Lease or recover damages.

20. CUMULATIVE RIGHTS AND REMEDIES. The rights and remedies of the Parties under this Lease are cumulative with the other rights or remedies of the Parties under this Lease, at law, or in equity. The exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or a different time, of any other right or remedy for the same Default or Event of Default or the same right or remedy for any other Default or Event of Default.

21. SECURITY AND SAFETY OF RENTAL SPACE. Tenant shall bear sole responsibility for the security and safety of the Rental Space during the Term. Tenant shall be responsible for the maintenance, cleanup, and securing of the Rental Space. Tenant shall comply with all Laws, at Tenant's sole cost and expense, with respect to maintaining the Rental Space in a safe and secure manner during the Term.

22. ENCUMBRANCES. Tenant shall keep the Rental Space free from all encumbrances and liens of any nature arising out of or in any manner directly or indirectly connected with this Lease or the Tenant's Operations. Tenant shall Indemnify City from and against all such encumbrances or liens relating to or charged against the Rental Space, including Tenant's failure or the failure of any contractor or subcontractor hired by Tenant to pay any Person referred to in California Civil Code Section 3181 or other applicable Law.

23. SURRENDER.

23.1 Tenant Removal of Personal Property and Improvements. Before the Termination Date, Tenant shall, at its sole cost and expense, remove from the Rental Space and repair all damage from such removal, all in a manner reasonably satisfactory to City: (a) all Personal Property brought into the Rental Space by or on behalf of Tenant; and (b) all improvements made to the Rental Space by or on behalf of Tenant. No later than the Termination Date, Tenant shall surrender and deliver the Rental Space to City in as good a condition as the Rental Space existed on the Effective Date, excluding reasonable wear and tear.

23.2 City Removal of Personal Property or Improvements. City shall have the right to perform the work required of Tenant pursuant to Section 23.1 if Tenant does not either: (i) commence performing the work required by Section 23.1 within the required time, or (ii) complete all work required by Section 23.1 within the required time. If City performs work required of Tenant pursuant to Section 23.1, Tenant shall reimburse City for all costs and expenses reasonably incurred by City in performing such work (including the costs of City staff time, administrative overhead, and Legal Costs), within fifteen (15) days after Notice to Tenant of the amount of such costs. Any amount reimbursable to City by Tenant pursuant to this Section 23.2 that is not paid

within fifteen (15) days after Notice to Tenant of such amount, shall accrue Default Interest from the date incurred until paid.

24. TRANSFER. Tenant shall not have any right to make or allow any Transfer without the prior written consent of City, which may be given or withheld in the City's reasonable discretion. Tenant acknowledges and agrees that, under the circumstances that this Lease is entered into by City and Tenant, the restrictions in this Lease on Transfers are reasonable.

25. NO SUBLEASING. Tenant may not sublease the Rental Space.

26. CITY'S RESERVATION OF RIGHTS.

26.1 Government Action. By entering into this Lease, City is not obligating itself or any other Government regarding any discretionary action relating to the development, occupancy, use, or maintenance of the Rental Space, including re-zonings, variances, environmental clearances, any Approval required for Tenant's Operations, or otherwise. Tenant shall diligently seek and use commercially reasonable efforts to obtain, at Tenant's sole cost and expense, all Approvals required from City and other Governments necessary for Tenant's Operations.

26.2 Natural Resources. City reserves all right, title, and interest in all natural resources relating to the Rental Space, including subsurface natural gas, oil, minerals, and water, on or within the Rental Space.

27. EMINENT DOMAIN. If all or part of the Rental Space or any other part of the Property is taken through eminent domain proceedings or under threat of the exercise of the power of eminent domain by any Government with the power of eminent domain over the Property, the interests of City and Tenant shall be as follows:

27.1 Full Taking. If all or substantially all the Rental Space or access to the Rental Space is taken, this Lease shall terminate on the earlier of the date title or possession of the Rental Space or access to the Rental Space is transferred to the condemning Government.

27.2 Partial Taking - Remainder Unusable. If a partial taking of the Rental Space or access to the Rental Space occurs and, in City's sole and absolute discretion, the remaining part of the Rental Space or access to the Rental Space is unsuitable for Tenant's Operations, this Lease shall terminate on the earlier of the date title or possession of the part of the Rental Space or access to the Rental Space taken is transferred to the condemning Government.

27.3 Partial Taking - Remainder Usable. If a partial taking of the Rental Space or access to the Rental Space occurs and, in City's sole and absolute discretion, the part of the Rental Space or access to the Rental Space not taken is suitable for Tenant's Operations, this Lease shall terminate regarding the part of the Rental Space or access to the Rental Space taken on the earlier of the date title or possession of the part of the Rental Space or access to the Rental Space taken is transferred to the condemning Government, but shall continue for the part of the Rental Space or access to the Rental Space not taken.

27.4 Award. Notwithstanding anything to the contrary in this Lease, in all eminent domain proceedings, settlements, or other means by which a Government taking of the Rental

Space or access to the Rental Space by exercise or threat of exercise of the power of eminent domain is pursued or resolved, all money paid or awarded in such process shall be the sole property of City.

27.5 Transfer. City may transfer its title or interest in the Rental Space or access to the Rental Space in lieu of condemnation to any Government entitled to exercise the power of eminent domain over the Property.

27.6 No Inverse Condemnation. City's exercise of any right or performance of any obligation 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.

28. NOTICES. All Notices submitted by a Party to the other Party pursuant to or as required by this Lease shall be sent by messenger for immediate personal delivery, nationally recognized overnight (one Business Day) delivery service (i.e., United Parcel Service, Federal Express, etc.), registered or certified first-class mail, postage prepaid, return receipt requested through the United States Postal Service, or by e-mail, in each case, to the address of the recipient Party designated below in this Section 28. Notices may be sent in the same manner to such other addresses as either Party may from time to time designate by Notice in accordance with this Section 28. Notice shall be considered received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day the Notice is sent by messenger for immediate personal delivery, one (1) Business Day after delivery to a nationally recognized overnight delivery service, three (3) days after the Notice is deposited with the United States Postal Service in accordance with this Section 28, or on a Business Day sent by e-mail, if sent before 3:00 p.m. Pacific Time, otherwise on the next Business Day. Any attorney representing a Party may give any Notice on behalf of such Party. The Notice addresses for the Parties, as of the Effective Date, are as follows:

To City:	City of San Diego Department of Economic Development Attention: Director 1200 Third Avenue, Suite 1700 (MS 51A) San Diego, CA 92101 Telephone: (619) 236-6020
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To Tenant:	Randy Kattola 9433 Calle De Lago Santee, CA 92071 Telephone: (858) 232-2229 E-Mail: randykattola@yahoo.com
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29. REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS. When this Lease requires service of a Notice, that Notice shall replace, rather than supplement, any equivalent or similar notice required by Law, including any notices required by Code of Civil Procedure Section 1161 or any similar or successor Law. When a Law requires service of a notice in a particular manner, service of that notice (or a similar Notice required by this Lease) in the manner required

by Section 28 shall replace and satisfy the service-of-notice procedures of such Law, including those required by Code of Civil Procedure Section 1162 or any similar or successor Law.

30. CALCULATION OF TIME PERIODS. Unless otherwise specified, all references to time periods in this Lease measured in days shall be to consecutive calendar days, all references to time periods in this Lease measured in months shall be to consecutive calendar months, and all references to time periods in this Lease measured in years shall be to consecutive calendar years. All references to Business Days in this Lease shall be to consecutive Business Days.

31. PRINCIPLES OF INTERPRETATION. No inference in favor of or against any Party shall be drawn from the fact that such Party drafted any part of this Lease. The Parties participated substantially in the negotiation, drafting, and revision of this Lease, with advice from legal and other counsel and advisers of their own selection. A word, term, or phrase defined in the singular in this Lease may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Lease. The words "include" and "including" in this Lease shall be construed to be followed by the words: "without limitation." Each collective noun in this Lease shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to a document, including this Lease, refers to such document, as modified from time to time (excepting any modification violating this Lease), and includes all exhibits, schedules, addenda, or riders to such document. The word "or" in this Lease includes the word "and," except where the context clearly requires otherwise. Every reference to a law, statute, regulation, order, form, or similar Government requirement refers to each such law, statute, regulation, order, form, or requirement as amended, modified, renumbered, superseded, or succeeded, from time to time.

32. GOVERNING LAW. The procedural and substantive laws of the State shall govern the interpretation and enforcement of this Lease, without application of conflicts of laws principles or statutes. The Parties acknowledge and agree that this Lease is entered into, is to be fully performed in and relates to real property located in the County. All legal actions arising from this Lease shall be filed in the Superior Court of the State in and for the County or in the United States District Court with jurisdiction in the County.

33. PRIOR AGREEMENT TERMINATION. As of the Effective Date, all leases, right-of-entry permits, or other agreements between City and Tenant concerning Tenant's Operations in or at the Rental Space, other than this Lease, are terminated, except as to any rents, fees, rights, or remedies accrued to either Party under those agreements prior to the Effective Date.

34. RELATIONSHIP OF PARTIES. The Parties each intend and agree that City and Tenant are independent contracting entities and do not intend by this Lease to create any partnership, joint venture, or similar business arrangement, relationship, or association between them.

35. ACCORD AND SATISFACTION; PARTIAL PAYMENTS. No payment by Tenant or receipt by City of a lesser amount than the amount owed under this Lease shall be deemed to be other than a part payment on account by Tenant. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. City may

accept any such check or payment without prejudice to City's right to recover the balance of the amount due to City or pursue any other remedy.

36. WARRANTY AGAINST PAYMENT OF CONSIDERATION FOR LEASE. Tenant represents and warrants to City that: (a) Tenant has not employed or retained any Person to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of Tenant; and (b) no gratuities, in the form of entertainment, gifts or otherwise have been or will be given by Tenant or any of Tenant's agents, employees or representatives to any elected or appointed official or employee of City in an attempt to secure this Lease or favorable terms or conditions for this Lease. Breach of the representations or warranties of this Section 36 shall entitle City to terminate this Lease immediately, without liability. Upon any termination of this Lease pursuant to this Section 36, Tenant shall immediately repay to City any payments made to or on behalf of Tenant by City (if any) pursuant to this Lease prior to the Termination Date.

37. UNAVOIDABLE DELAY; EXTENSION OF TIME FOR PERFORMANCE. Performance by either Party under this Lease shall not be in Default, where any such Default is due to the occurrence of an Unavoidable Delay. Any Party claiming an Unavoidable Delay shall Notify the other Party: (a) within twenty (20) days after such Party knows of any such Unavoidable Delay; and (b) within twenty (20) days after such Unavoidable Delay ceases to exist. To be effective, any Notice of an Unavoidable Delay must describe the Unavoidable Delay in reasonable detail. The Party claiming an extension of time to perform due to an Unavoidable Delay shall exercise reasonable efforts to cure the condition causing the Unavoidable Delay, within a reasonable time. Notwithstanding anything to the contrary in this Lease, no obligation of Tenant for payment of money under this Lease may be delayed by the occurrence of an Unavoidable Delay, unless the delay in payment of money is due to an Unavoidable Delay preventing or materially limiting the ability to transfer funds by or between Federal or State chartered financial institutions.

38. NO OTHER REPRESENTATIONS OR WARRANTIES. Except as expressly set forth in this Lease, no Party makes any representation or warranty material to this Lease to the other Party.

39. TAX CONSEQUENCES. Tenant acknowledges and agrees that it shall bear all responsibility, liability, costs, or expenses connected in any way with any tax consequences experienced by Tenant related to this Lease.

40. CITY ATTORNEY COSTS. All references to Legal Costs in this Lease include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney who provide legal services regarding a particular matter, adjusted to or billed at an hourly rate based on their respective salary and multiplied by the time spent on such matter rounded to increments of 1/10th of an hour, in addition to Legal Costs of outside counsel retained by City or Tenant, respectively, for any matter.

41. NO THIRD-PARTY BENEFICIARIES. Nothing in this Lease, express or implied, is intended to confer any rights or remedies under or by reason of this Lease on any Person other than the Parties and their respective permitted successors and assigns (if any), nor is anything in

this Lease intended to relieve or discharge any obligation of any Third Person to any Party or give any Third Person any right of subrogation or action over or against any Party.

42. TIME OF THE ESSENCE. As to the performance of any obligation under this Lease of which time is a component, the performance of such obligation within the time specified is of the essence of this Lease.

43. WAIVERS AND AMENDMENTS. All waivers of the provisions of this Lease must be in writing and signed by the authorized representative(s) of the Party making the waiver. Failure to insist on any one occasion upon strict compliance with any term, covenant, condition, restriction or agreement contained in this Lease shall not constitute a waiver of such term, covenant, condition, restriction or agreement, nor shall any waiver or relinquishment of any right or power under this Lease, at any one time or more times, constitute a waiver or relinquishment of such right or power at any other time or times. All amendments of this Lease must be in writing and signed by the authorized representative(s) of both City and Tenant.

44. CALIFORNIA PUBLIC RECORDS ACT. City shall determine, in City's sole and absolute discretion, whether information provided to City by or about Tenant pursuant to or in relation to this Lease or Tenant's Operations is or is not a public record subject to disclosure under the California Public Records Act ("CPRA"). If Tenant Notifies City that Tenant objects to the disclosure of certain Tenant information to a Third Person pursuant to the CPRA before the City discloses the information, provides detailed legal analysis with such Notice supporting Tenant's position that the information is exempt from disclosure under the CPRA, and City withholds disclosure of the information in reliance on such legal analysis (but City is under no obligation to do so), Tenant will Indemnify the City Parties regarding all Claims arising or resulting from City's withholding the information. TENANT, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, WAIVES AND RELEASES CITY AND ITS SUCCESSORS AND ASSIGNS FROM ALL COSTS OR EXPENSES WHATSOEVER (INCLUDING LEGAL COSTS), WHETHER DIRECT OR INDIRECT, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, ARISING FROM OR RELATING TO DISCLOSURE OR WITHHOLDING OF INFORMATION PROVIDED TO CITY BY OR ABOUT TENANT PURSUANT OR IN RELATION TO THIS LEASE OR TENANT'S OPERATIONS UNDER THE CPRA. TENANT EXPRESSLY WAIVES ALL RIGHTS OR BENEFITS AVAILABLE TO TENANT RELATING TO THE RELEASES CONTAINED IN THIS SECTION 44 UNDER ANY PROVISION OF APPLICABLE LAW PROVIDING THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY. THE PROVISIONS OF THIS SECTION 44 SHALL SURVIVE THE TERMINATION DATE.

45. ACCESSIBILITY ASSESSMENT. City discloses to Tenant that the Property has not been inspected by a Certified Access Specialist (CAsp). City further states:

A Certified Access Specialist (CAsp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law

does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

46. SURVIVAL OF LEASE. All the provisions of this Lease shall be applicable to each dispute between the Parties arising from or relating to this Lease, whether prior to or after the Termination Date, until such dispute is finally and completely resolved between the Parties, either by written settlement, entry of a non-appealable judgment, or expiration of all applicable statutory limitations periods, and all terms and conditions of this Lease relating to dispute resolution and remedies shall survive the Termination Date.

47. INTEGRATION. This Lease includes twenty-six (26) pages and four (4) exhibits (the exhibits are incorporated into this Lease by this reference) constituting the entire understanding and agreement of the Parties regarding the subject matter of this Lease and supersedes all previous negotiations or agreements between the Parties relating to the subject matter of this Lease.

48. TITLES AND HEADINGS FOR REFERENCE ONLY. The titles and headings of the articles, paragraphs, or sections of this Lease are for the Parties' convenience of reference only, are not to be considered a part of this Lease, and shall not in any way interpret, modify, or restrict the meaning of any term, provision, covenant, condition, restriction, reservation, or agreement in this Lease.

49. SEVERABILITY. If any term or provision of this Lease or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Lease, or the application of such term or provision to Persons or circumstances other than those as to which the term or provision is invalid or unenforceable, shall not be affected by such invalidity. All remaining terms and provisions of this Lease shall be valid and enforced to the fullest extent Law allows.

50. COUNTERPARTS. This Lease may be signed in multiple counterpart originals, each of which shall be considered an original, and all of which shall constitute one and the same agreement.

51. EXHIBITS. All the exhibits attached to this Lease are incorporated into this Lease and described as follows:

EXHIBIT A	Property Description
EXHIBIT B	Rental Space Layout
EXHIBIT C	Insurance Requirements
EXHIBIT D	City Standard Contract Provisions

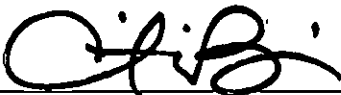
EXHIBIT E

Prevailing Wage Requirements

IN WITNESS WHEREOF, Tenant and City sign and enter into this Lease by and through the signatures of their respective authorized representatives, as follow:

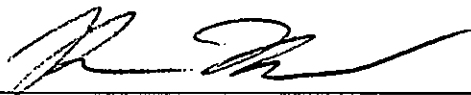
CITY:

City of San Diego,
a California municipal corporation

By: 
Christina Bibler
Director
Department of Economic Development

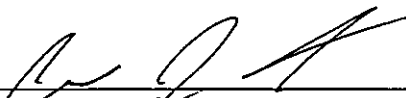
TENANT:

RANDY KATTOLA, an individual

By: 
Randy Kattola
Owner

Approved as to form on
April 8, 2024 :

MARA W. ELLIOTT
City Attorney

By: 
Andrew J. Alfonso
Deputy City Attorney

**EXHIBIT A
TO
LEASE AGREEMENT
(Civic Center Café)**

PROPERTY DESCRIPTION

The building commonly known as "Civic Center Plaza" at 1200 Third Avenue, San Diego, California, 92101; APN 533-433-11-00.

**EXHIBIT B
TO
LEASE AGREEMENT
(Civic Center Café)**

RENTAL SPACE DESCRIPTION

The Rental Space is that portion of the Property identified as Suite 408, consisting of approximately 768 square feet, including a food preparation and storage area, counter space, and customer seating, and outlined in red in the diagram on the following page:

[Remainder of Page Intentionally Blank; Diagram Appears on Next Page]

**EXHIBIT B
Rental Space**

PREPARED FOR:
Gensler
225 Broadway, Suite 1600
San Diego, CA 92101
Tel 619.557-2546

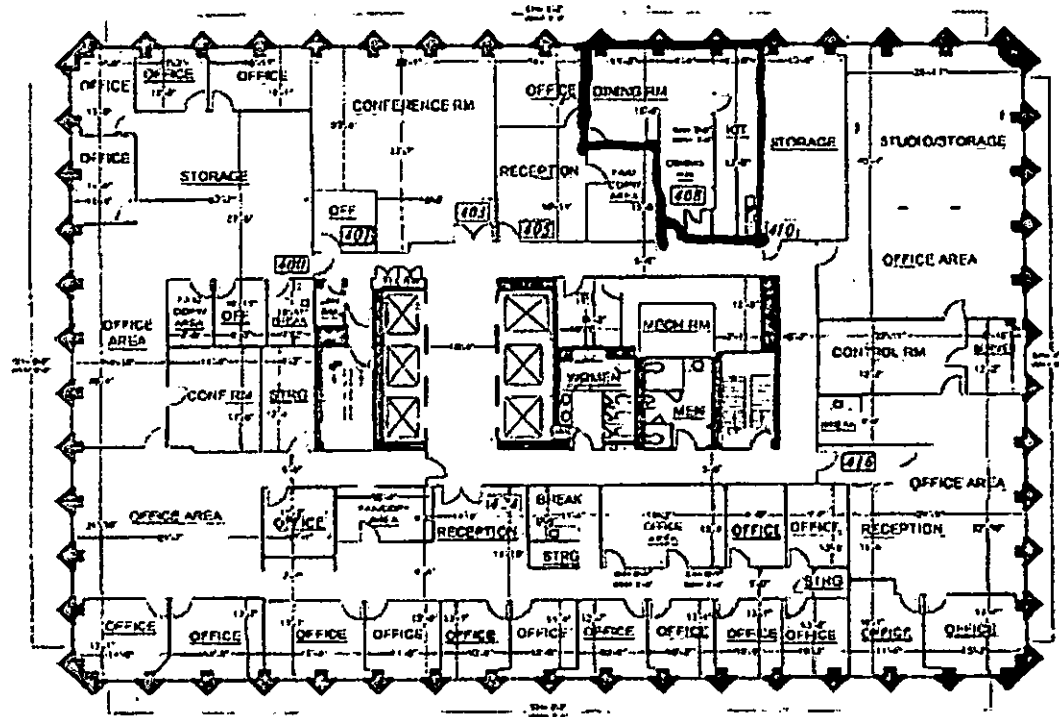
Measured Area: 16,216 s.f.

FLOOR PLAN

CIVIC CENTER PLAZA
1200 3rd AVENUE
SAN DIEGO, CA
FOURTH FLOOR
(As Measured: February 2015)
(Last Updated: April 2016)



EXHIBIT B
Rental Space



ELEVATION LEGEND
Door Height: 6'-8"
Wall Height: 8'-0"
Window Height: 4'-0" to 5'-0"
(shown 6'-0" to windows)
Survey Accuracy: ± 0.12 %

Note: All dimensions shown are rounded to the nearest inch, for informational purposes only. All measurements are recorded to 1/8" accuracy as recommended in the final CAD drawing required.
LaserTECH is a registered service of LaserTECH International
Copyright 1999 LaserTECH. Please see file: 415 B.pdf for details.

16' 8' 16'
SCALE: 1/16" = 1'-0"



TEL: (619) 593-6600
FILE: 16-C49

**EXHIBIT C
TO
LEASE AGREEMENT
(Civic Center Café)**

INSURANCE REQUIREMENTS

1. Required Insurance Coverage.

- 1.1. *Automobile Liability Insurance.* Insurance coverage against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by Tenant, with minimum limits for bodily injury and property damage of Two Million Dollars (\$2,000,000). Such insurance shall be provided by a business or commercial vehicle policy and may be provided through a combination of primary and excess or umbrella policies, all of which shall be subject to pre-approval by City, which pre-approval shall not be unreasonably withheld.
- 1.2. *Liability Insurance.* Commercial general liability insurance against claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Rental Space or adjoining streets or passageways, at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate. Commercial general liability insurance coverage may be provided through a combination of primary and excess or umbrella insurance policies. If commercial general liability insurance or other form with a general aggregate limit is used, the general aggregate limit shall apply separately to the Rental Space.
- 1.3. *Property Insurance.* Insurance providing coverage for the Rental Space and all improvements on or to the Rental Space against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of all improvements (excluding excavations and foundations), and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in the County at the time, such insurance shall include coverage for explosion of steam and pressure boilers and similar apparatus located in or associated with the Rental Space, an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.
- 1.4. *Workers Compensation Insurance.* Workers compensation insurance complying with the provisions of State law and an employer's liability insurance policy or endorsement to a liability insurance policy, with a minimum liability limit of One

Million Dollars (\$1,000,000) per accident for bodily injury or disease, covering all employees of Tenant.

2. **Nature of Insurance.** The contents of this **EXHIBIT C** are sometimes referred to as the **"Insurance Requirements."** All Liability Insurance, Automobile Liability Insurance, and Workers Compensation Insurance policies required by these Insurance Requirements shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A-" and a minimum financial size category of "VII" (exception may be made for the State Compensation Insurance Fund when not specifically rated); and (b) are authorized to do business in the State by the State Department of Insurance. Tenant may provide any insurance under a "blanket" or "umbrella" insurance policy, provided that: (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Rental Space, which amount(s) shall equal or exceed the amount(s) required by these Insurance Requirements; and (ii) such policy otherwise complies with the requirements of these Insurance Requirements.
3. **Policy Requirements and Endorsements.** All insurance policies required by these Insurance Requirements shall contain (by endorsement or otherwise) the following provisions:
 - 3.1. *Insured.* Liability Insurance policies shall name the City Parties as "additional insured." The coverage afforded to the City Parties shall be at least as broad as that afforded to Tenant regarding the Rental Space and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to Tenant.
 - 3.2. *Primary Coverage.* Any insurance or self-insurance maintained by the City Parties shall be excess of all insurance required to be maintained by Tenant pursuant to these Insurance Requirements and shall not contribute with any insurance required to be maintained by Tenant pursuant to these Insurance Requirements.
 - 3.3. *Contractual Liability.* Liability Insurance policies shall contain contractual liability coverage for Tenant's Indemnity obligations under this Lease. Tenant's obtaining or failing to obtain such contractual liability coverage shall not relieve Tenant from nor satisfy any Indemnity obligation of Tenant under this Lease.
 - 3.4. *Deliveries to City.* Evidence of Tenant's maintenance of all insurance policies required by these Insurance Requirements shall be delivered to City before the Effective Date. No later than seven (7) days before any insurance required by these Insurance Requirements expires, is cancelled or its liability limits are reduced or exhausted, Tenant shall deliver to City evidence of Tenant's maintenance of all insurance required by these Insurance Requirements. Each insurance policy required by these Insurance Requirements shall be endorsed to state that coverage shall not be cancelled, suspended, voided, reduced in coverage or in limits, except after thirty (30) days' advance Notice of such action to City. Phrases such

as "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" shall not be included in the cancellation wording of any certificates or policies of insurance applicable to the City Parties pursuant to these Insurance Requirements.

- 3.5. *Waiver of Certain Claims.* Tenant shall cause each insurance carrier providing any Liability Insurance, Worker's Compensation Insurance, or Automobile Liability Insurance coverage pursuant to these Insurance Requirements to endorse their applicable policy(ies) with a Waiver of Subrogation (defined below) with respect to the City Parties, if not originally in the policy. To the extent Tenant obtains an insurance policy covering both the Tenant Parties and the City Parties and containing a Waiver of Subrogation, the Parties release each other from any Claims for damage to any Person or property to the extent such Claims are paid by the insurance carrier pursuant to such insurance policy. "**Waiver of Subrogation**" means and refers to a provision in, or endorsement to, any insurance policy, pursuant to which the carrier agrees to waive rights of recovery by way of subrogation against the Tenant Parties or the City Parties for any loss such insurance policy covers.
- 3.6. *No Representation.* No Party makes any representation that the limits, scope, or forms of insurance coverage required by these Insurance Requirements are adequate or sufficient.
- 3.7. *No Claims Made Coverage.* None of the insurance coverage required by these Insurance Requirements may be written on a claims-made basis.
- 3.8. *Fully Paid and Non-Assessable.* All insurance obtained and maintained by Tenant in satisfaction of these Insurance Requirements shall be fully paid for and non-assessable.
- 3.9. *Separation of Insured.* All Liability Insurance and Automobile Liability Insurance shall provide for separation of insured for Tenant and the City Parties. Insurance policies obtained in satisfaction of these Insurance Requirements may provide a cross-suits exclusion for suits between named insured Persons but shall not exclude suits between named insured Persons and additional insured Persons.
- 3.10. *Deductibles and Self-Insured Retentions.* All deductibles or self-insured retentions under insurance policies required by these Insurance Requirements shall be declared to and approved by City. Tenant shall pay all such deductibles or self-insured retentions regarding the City Parties. Each insurance policy issued in satisfaction of these Insurance Requirements shall provide that, to the extent Tenant fails to pay all or any portion of a self-insured retention under such policy in reference to an otherwise insured loss, City may pay the unpaid portion of such self-insured retention, in City's sole and absolute discretion. All amounts paid by City toward self-insured retentions regarding insurance policies covering the City Parties pursuant to these Insurance Requirements shall be reimbursable to City by

Tenant in the same manner that insurance costs are reimbursable to City from Tenant pursuant to Section 5 of these Insurance Requirements.

- 3.11. *No Separate Insurance.* Tenant shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with insurance coverage required by these Insurance Requirements, unless the City Parties are made additional insured under such insurance coverage.
4. **Insurance Independent of Indemnification.** These Insurance Requirements, are independent of the Parties' Indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to satisfy, restrict, limit or modify the Parties' Indemnification or other obligations or to limit the Parties' liability under this Lease, whether within, outside or in excess of such coverage, and regardless of solvency or insolvency of the insurer issuing the coverage, nor shall the provision of such insurance preclude City from taking such other actions as are available to City under any other provision of this Lease or otherwise at law or in equity.
5. **City Option to Obtain Coverage.** During the continuance of an Event of Default arising from the failure of Tenant to carry any insurance required by these Insurance Requirements, City may, in City's sole and absolute discretion, purchase any such required insurance coverage. City shall be entitled to immediate payment from Tenant of any premiums and associated reasonable costs paid by City to obtain such insurance coverage. Any amount becoming due and payable to City under this Section 5 that is not paid within fifteen (15) days after Notice from City with an explanation of the amounts owed, will accrue Default Interest from the date incurred until paid. Any election by City to purchase or not to purchase insurance otherwise required by these Insurance Requirements to be carried by Tenant shall not relieve Tenant of any Default or Event of Default or Tenant's obligation to obtain and maintain any insurance coverage required by these Insurance Requirements.

**EXHIBIT D
TO
LEASE AGREEMENT
(Civic Center Café)**

CITY STANDARD CONTRACT PROVISIONS

1. **Tenant Certifications of Compliance.** By signing this Lease, Tenant agrees and certifies that Tenant is aware of, and will comply with, all the following City requirements in performance of this Lease:

1.1. Tenant Certification for Americans with Disabilities Act (“ADA”) and State Access Laws and Regulations. Tenant shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Tenant shall comply with the most restrictive requirement (i.e., that which provides the most access). Tenant also shall comply with the City’s ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Lease by reference. Tenant warrants and certifies compliance with all Federal and State access laws and regulations and further certifies that any subcontract agreement relating to this Lease contains language which indicates the subcontractor’s agreement to abide by the provisions of the City Council Policy 100-04 and any applicable Federal and State access laws and regulations.

1.2. Compliance with City’s Equal Opportunity Contracting Program (“EOCP”). Tenant shall comply with City’s EOCP requirements. Tenant shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Tenant shall provide equal opportunity in all employment practices. Tenant shall ensure that its subcontractors comply with the EOCP. Nothing in this Section 1.2 shall be interpreted to hold Tenant liable for any discriminatory practice of its subcontractors. Prior to commencing construction, Tenant shall contact the City’s Equal Opportunity Contracting Program to determine compliance with all applicable rules and regulations.

1.3. Equal Benefits Ordinance Certification. Unless an exception applies, Tenant shall comply with the Equal Benefits Ordinance codified in San Diego Municipal Code (“SDMC”) section 22.4308.

1.4. Equal Pay Ordinance. Unless an exception applies, Tenant shall comply with the Equal Pay Ordinance codified in SDMC sections 22.4801 through 22.4809. Tenant shall certify in writing that it will comply with the requirements of the Equal Pay Ordinance. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of Tenant to the same extent as it would apply to Tenant. Tenant shall require all its subcontractors to certify compliance with the Equal Pay Ordinance in written subcontracts.

1.5. Product Endorsement. Tenant shall comply with Council Policy 000-41 concerning product endorsement which requires that any advertisement referring to City as a user of a good or service requiring the prior written approval of the Mayor.

1.6. Business Tax Certificate. Unless the City Treasurer determines in writing that Tenant is exempt from the payment of business tax, Tenant is required to obtain a City business tax certificate and provide a copy of its City business tax certificate to City before this Lease is signed.

**EXHIBIT E
TO
LEASE AGREEMENT
(Civic Center Café)**

PREVAILING WAGE REQUIREMENTS

1. **PREVAILING WAGES.** Under San Diego Municipal Code section 22.3019, construction work performed or funded under this Lease cumulatively exceeding \$25,000 and alteration, demolition, repair and maintenance work performed, or funded under this Agreement cumulatively exceeding \$15,000 is subject to the State prevailing wage law set forth in State Labor Code sections 1720 through 1862, and in undertaking any and all such work, Tenant and Tenant's contractors and subcontractors shall comply with State Labor Code sections 1720 through 1862 and the requirements set forth in this **EXHIBIT E** (collectively, "**Prevailing Wage Law**"). This requirement to comply with Prevailing Wage Law is in addition to any requirement to pay "living wage" under San Diego Municipal Code sections 22.4201 through 22.4245 ("**LWO**"). If both Prevailing Wage Law and the LWO are applicable to particular work, Tenant and Tenant's contractors and subcontractors must determine which per diem rate is highest for each classification of work between the applicable prevailing wage rate and living wage rate and pay the higher of the two rates to their employees. The LWO may apply to work that is not subject to Prevailing Wage Law.

1.1 Compliance with Prevailing Wage Requirements. Under Prevailing Wage Law, Tenant and Tenant's contractors and subcontractors shall all ensure that all workers who perform work that is subject to Prevailing Wage Law are paid not less than the prevailing rate of per diem wages, as determined by the Director of the California Department of Industrial Relations ("**DIR**"), including work performed during the design and preconstruction phases of construction, which encompasses, without limitation, inspection and land surveying work.

1.1.1 Copies of the prevailing rate of per diem wages are on file with City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Tenant and Tenant's contractors and subcontractors shall all post a copy of the prevailing rate of per diem wages determination at each job site and shall make this information available to all interested Persons upon request. Tenant and Tenant's contractors and subcontractors shall all deliver evidence of the required job site posting to City, within five (5) days after such posting.

1.1.2 The wage rates determined by DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the Term. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with DIR, such predetermined wage rate shall become effective on the date following the expiration date of the previous wage rate and shall apply to this Agreement in the same manner as if it had been published. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the Term, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of

such predetermined wage rates expire during the Term, such wage rate shall apply to the balance of the Term.

1.2 Penalties for Violations. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1775, in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. Compliance with State Labor Code section 1775 shall be in addition to all other applicable penalties allowed under State Labor Code sections 1720-1861.

1.3 Payroll Records. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, which generally requires keeping accurate payroll records, verifying, and certifying payroll records, and making them available for inspection. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code section 1776, including having provisions requiring such compliance in all contracts with subcontractors. Any requirement to submit certified payroll records to DIR shall include submitting certified payroll records to DIR through its online system for submission of certified payroll records, as required by DIR. Further, Licensee and Licensee's contractors and subcontractors shall all furnish the records specified in State Labor Code section 1776 directly to the State Labor Commissioner in the manner required in State Labor Code section 1771.4. Tenant is responsible for ensuring that Tenant's contractors and subcontractors submit certified payroll records to City, the State Labor Commissioner, and DIR.

1.4 Apprentices. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Licensee shall be held responsible for its compliance and the compliance of Licensee's contractors and subcontractors with State Labor Code sections 1777.5, 1777.6, and 1777.7.

1.5 Working Hours. Tenant and Tenant's contractors and subcontractors shall all comply with State Labor Code sections 1810 through 1815, including: (i) restricting working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specifying penalties to be imposed on design professionals, contractors, and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of State Labor Code sections 1810 through 1815.

1.6 Required Provisions for Subcontracts. Tenant shall include, at a minimum, a copy of the following provisions in any contract it enters into with a contractor or subcontractor: State Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860, and 1861.

1.7 Labor Code Section 1861 Certification. In accordance with State Labor Code section 3700, Tenant and Tenant's contractors and subcontractors are all required to secure the payment of compensation of their respective employees and by signing this Agreement or any contract or subcontract, respectively, Tenant and Tenant's contractors and subcontractors all certify that "I am aware of the provisions of section 3700 of the State Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract." Tenant shall include this certification in all contracts with each contractor or subcontractor.

1.8 Registration Requirements. All work is subject to compliance monitoring and enforcement by DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of State Public Contract Code section 4104 or engage in the performance of any contract for public work, as defined in Prevailing Wage Law, unless currently registered and qualified to perform the work under State Labor Code section 1725.5. In accordance with State Labor Code section 1771.1(a), "[i]t is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the State Business and Professions Code or by section 10164 or 2103.5 of the State Public Contract Code, provided the contractor is registered to perform public work under section 1725.5 at the time the contract is awarded."

1.8.1 A contractor's inadvertent error in listing a subcontractor who is not registered under State Labor Code section 1725.5 in a response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive, provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in State Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered contractor under State Public Contract Code section 4107.

1.8.2 A contract entered into with any contractor or subcontractor in violation of State Labor Code section 1771.1(a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of State Labor Code section 1725.5.

1.8.3 By entering into this Lease, Tenant is certifying that it has verified or will verify that all contractors and subcontractors used on work subject to Prevailing Wage Law are registered with DIR in compliance with State Labor Code sections 1771.1 and 1725.5 and shall provide proof of such registration to City.

1.9 Filing of Form PWC-100. Tenant shall timely file a PWC-100 Form (or other form required by DIR) with DIR, as and when required by Prevailing Wage Law, and concurrently deliver a copy of such filed form to City.

1.10 Filing of Notice of Completion. Tenant shall record a notice of completion in accordance with State Civil Code section 8182, et seq., with the Recorder for the County of San Diego, California, and concurrently deliver a copy of such recorded notice of completion to City.