

ORIGINAL

CITY OF SAN DIEGO
PERCENTAGE GROUND LEASE
[SAN DIEGO SQUARE; APN 534-196-05-00]

THIS CITY OF SAN DIEGO PERCENTAGE GROUND LEASE ("Lease") is entered into by and between THE CITY OF SAN DIEGO, a California municipal corporation ("CITY"), as lessor, and HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO, a California nonprofit public benefit corporation ("LESSEE"), as lessee, to be effective as of the date signed by CITY (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

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

RECITALS, INFORMATION, CONDITIONS, TERMINATION OF EXISTING LEASE

- A. City owns that certain real property consisting of approximately 60,000 square feet of land only (the "Premises"), bound by 9th, 10th, Broadway and C Street, and also referred to as Lots A, B, C, D, E, F, G, H, I, J, K, and L in Block 31 of Horton's Addition (Assessor's Parcel Number 534-196-05-00), and commonly known as "San Diego Square," located at 910 C Street, San Diego, California 92101, and more particularly described in **Exhibit A: Legal Description of Premises**, attached hereto.
- B. CITY currently leases the Premises to San Diego Kind Corporation, a California nonprofit corporation ("SD Kind"), pursuant to that certain LEASE AGREEMENT ("Existing Lease") filed in the Office of the San Diego City Clerk on September 14, 1979, as Document No. RR-250195.
- C. LESSEE intends to assume all of SD Kind's rights and obligations under the Existing Lease.
- D. LESSEE also intends to acquire all of the improvements (the "Existing Improvements") currently owned by SD Kind and located on the Premises. At some future time, LESSEE would like to rehabilitate the Existing Improvements ("Rehabilitation").
- E. LESSEE intends to assign this Lease to a limited partnership of which LESSEE will be the general partner to secure hoped-for funding to pay for a potential Rehabilitation ("Rehabilitation Funding").
- F. LESSEE has requested a lease term long enough to make a Rehabilitation economically feasible. The term of this Lease will be the shortest period of time necessary to obtain Rehabilitation Funding, up to a maximum of sixty-five (65) years.
- G. LESSEE acknowledges that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency, or legality of any rehabilitation of the Premises or any issues or matters related thereto. Furthermore, CITY does not represent, warrant, or guarantee any future approval of any rehabilitation or aspect thereof by the CITY or the

San Diego City Council, nor shall anything in this Lease be interpreted as representing, warranting, or guaranteeing any such future approval. CITY shall not be liable or obligated for any burden or loss, financial or otherwise, incurred by LESSEE as a result of CITY's or the City Council's failure to approve any rehabilitation of the Premises.

- a. LESSEE's Waiver. LESSEE expressly waives any claim against CITY and its elected officials, officers, employees, representatives and agents for any burden, expense or loss which LESSEE incurs as a result of CITY's or the City Council's failure to approve any rehabilitation of the Premises.
- H. LESSEE intends to sublease the Commercial Space (defined below) to an affiliate ("LESSEE Affiliate") (or LESSEE may continue to lease the Commercial Space if this Lease is assigned as set forth above) for One Dollar (\$1) per year, on the condition that if the Commercial Space is subleased, CITY will receive fifty percent (50%) of all LESSEE Affiliates' net operating income pursuant to such subleasing (or LESSEE's net operating income pursuant to such subleasing if LESSEE continues to lease the Commercial Space, if this Lease is assigned as set forth above).
- I. Leighton and Associated, Inc., prepared that certain "Limited Phase II Environmental Site Assessment Report, San Diego Square, 1055 9th Avenue, San Diego, California, 92101, dated February 16, 2012." As a result of the findings contained therein, work must be performed at the Premises before the San Diego County Department of Environmental Health can issue a "no further action" letter regarding the Premises (the "No Further Action Letter"). LESSEE shall use its reasonable best efforts to obtain the No Further Action Letter. CITY shall hold LESSEE harmless if, despite such reasonable best efforts, LESSEE fails to obtain the No Further Action Letter. CITY and its elected officials, officers, employees, representatives and agents shall not be liable or obligated to obtain the No Further Action Letter. LESSEE expressly waives any claim against CITY and/or its elected officials, officers, employees, representatives and agents for expense or loss which LESSEE incurs as a result of a failure to obtain the No Further Action Letter.
- J. **This Lease is expressly conditioned on all of the following pre-commencement conditions being satisfied on or before April 30, 2014:**
 - a. CITY's receipt of a legal opinion, obtained by LESSEE at LESSEE's expense and reasonably satisfactory to CITY, that this Lease and all its provisions comply with all taxation laws, including without limitation the tax laws under which the anticipated financing structure is based, and that the structure of the Lease related to how consideration is to be paid to CITY under this Lease is legally enforceable.
 - b. The recordation in the Official Records of the San Diego County, California, Recorder of both a transfer of legal title to the Existing Improvements to LESSEE, and the recordation of the assignment and assumption of all rights and obligations of SD Kind under the Existing Lease to LESSEE, with CITY's consent thereto; and
 - c. The recordation of a deed of trust securing LESSEE's construction loan for a

Rehabilitation; and

- d. The issuance of the No Further Action Letter.
- K. This Lease shall commence only when all of the foregoing pre-commencement conditions are satisfied, and as of the date (the "Commencement Date") that a deed of trust securing LESSEE's construction loan for a Rehabilitation is recorded in the Official Records of San Diego County, California. The parties acknowledge that such funding may most likely come at a transactional closing on tax credits and construction financing.
- L. Effective as of the Commencement Date, CITY and LESSEE hereby terminate the Existing Lease. The Existing Lease shall be of no further force or effect except as to any rentals and fees that may have accrued thereunder, and any rights and remedies accrued or granted thereunder and which by their nature or by agreement survive such termination.

SECTION 1: PREMISES; ALLOWED USES

- 1.1 Leasing. Effective as of the Commencement Date, CITY hereby leases the Premises to LESSEE, and LESSEE hereby leases the Premises from CITY under the terms and conditions of this Lease.
- 1.2 Supersedes Prior Agreements. As of the Commencement Date, this Lease shall supersede any and all prior agreements between the parties and related to all or any portion of the Premises, including without limitation the Existing Lease.
- 1.3 Allowed Uses. LESSEE shall use the Premises solely and exclusively for the following purposes (the "Allowed Uses"):
 - (a) Providing low-income rental housing for seniors pursuant to the United States Department of Housing and Urban Development ("HUD") program for the elderly under Section 8 of The U.S. Housing Act of 1937, or other federal, state or local-assisted, low-income rental housing program approved by CITY;
 - (b) Operating a multi-service center with support facilities in the Ballroom, exclusively for residents; and
 - (c) Use of the Commercial Space excluding the Ballroom for any use allowed by municipal zoning laws and approved by CITY, in its sole discretion as the lessor under this Lease.
- 1.3.1 "Commercial Space" shall mean the non-residential portion of the improvements on the Premises consisting of approximately 17,960 square feet and shown in the drawing attached hereto as **Exhibit B: Commercial Space**.
- 1.3.2 "Ballroom" shall mean that portion of the Commercial Space consisting of

approximately 7,700 square feet and shown in the drawing attached hereto as **Exhibit C: Ballroom**.

- 1.3.3 “Multi-service center with support facilities” means an on-site facility approved by CITY, as the lessor under this Lease, through which LESSEE shall provide both assistance and services exclusively to residents on the Premises, at minimal cost to them, including without limitation counseling, recreational, legal and medical assistance and services either: (a) as provided, recommended and/or approved by HUD and approved by CITY, in its sole discretion as the lessor under this Lease; or (b) as approved by CITY, in its sole discretion as the lessor under this Lease. LESSEE shall provide such assistance and services continuously throughout the Term on a regular schedule approved by CITY, and with such quality and quantity as shall be reasonably satisfactory to CITY. LESSEE acknowledges and agrees that informational and referral services, alone, shall not be deemed reasonably satisfactory without CITY’s written approval in each instance.
- 1.3.4 CITY, in its sole discretion, may require that the Commercial Space excluding the Ballroom shall be used in whole or in part for the benefit of San Diego’s seniors.
- 1.3.5 LESSEE shall not use the Premises for any purpose other than the Allowed Uses without CITY’s written consent in each instance. Each and all Allowed Uses shall be conducted in compliance with all laws, rules and regulations of competent governmental authority.
- 1.3.6 CITY makes no representation or warranty regarding the lawfulness of any of the Allowed Uses, including without limitation whether any or all of the Allowed Uses are permitted under the land use laws applicable to the Premises.
- 1.4 Business Objective. LESSEE shall diligently conduct its business on the Premises, using commercially reasonable best efforts to obtain and maintain full occupancy of all rentable space on the Premises and to collect all rent owing to LESSEE.
- 1.5 Superior Interests. This Lease is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, permits and licenses, easements, and rights-of-way pertaining to the Premises, whether or not of record. LESSEE shall obtain all licenses, permits and agreements from such third parties as may be or become necessary or reasonably advisable to allow its use of the Premises, relative to any such superior interest.
- 1.6 Governmental Approvals. By entering into this Lease, neither CITY nor the City Council is obligating itself to LESSEE or to any governmental agent, board, commission, or agency with regard to any other discretionary action relating to LESSEE’s occupancy, use, development, maintenance or restoration of the Premises or improvements thereon. Discretionary action includes without limitation re-zonings, variances, environmental clearances and all other required governmental approvals.

- 1.6.1 LESSEE acknowledges and agrees that CITY has not made, nor now makes, any determinations regarding any aspect, sufficiency or legality of any rehabilitation of the Premises or any improvements thereon, or any aspect thereof. Furthermore, CITY does not represent, warrant or guarantee any future approval of any rehabilitation or any aspect thereof by the City of San Diego, in its governmental capacity, or the City Council, nor shall anything in this Lease be interpreted as representing, warranting or guaranteeing any such future approval.
- 1.7 CITY's Consent, Approval. CITY's consent or approval under this Lease shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
- 1.8 Quiet Possession. LESSEE, performing the covenants and agreements in this Lease, shall at all times during the term of this Lease peaceably and quietly have, hold, and enjoy the Premises. If LESSEE is temporarily dispossessed through action or claim of a title superior to CITY's, this Lease shall not be voidable nor shall CITY be liable to LESSEE for any loss or resulting damages.
- 1.9 Reservation of Rights.
- 1.9.1 Mineral Rights. CITY reserves all rights, title and interest in and to any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- 1.9.2 Easements. CITY reserves the right to grant, establish and use easements and rights-of-way over, under, along, across and through the Premises for utilities, thoroughfares or access as it deems advisable for the public good.
- 1.9.3 Repairs. CITY may at all reasonable times upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency, in which case no prior notice shall be required) enter upon the Premises for the purpose of making repairs to or developing municipal resources and services.
- 1.9.4 Noninterference. In the exercise of the rights reserved under this section, CITY shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 1.9.5 Costs. CITY shall pay the costs of maintenance and repair of all CITY installations made pursuant to these reserved rights.
- 1.10 Competent Management. LESSEE shall provide competent management of the Allowed Uses to CITY's reasonable satisfaction. "Competent management" shall mean management practices generally considered acceptable within LESSEE's industry for the management and operation of activities substantially similar to the Allowed Uses and in compliance with all laws, rules and regulations of competent governmental authority, and

in a fiscally responsible manner. "Fiscally responsible manner" shall mean in accordance with generally accepted accounting principles consistently applied and absent financial malfeasance.

SECTION 2: TERM

- 2.1 Term. The term of this Lease ("Term") shall be the shortest period of time necessary to obtain Rehabilitation Funding, up to a maximum of sixty-five (65) years, commencing on the Commencement Date.
- 2.1.1 Addendum. Upon the Commencement Date, CITY and LESSEE shall execute and deliver an addendum to this Lease stating the Term, and this Lease and the addendum shall then be recorded in the Official Records of the San Diego County, California, Recorder. If no such addendum is so recorded, the Term shall be sixty-five (65) years.
- 2.1.2 First Month. If the Commencement Date is other than the first day of a calendar month, the partial month after the Commencement Date shall be included in the following full calendar month to compose the first month of the Term so that the second month of the Term will start on the first day of a calendar month.
- 2.1.3 Lease Year. "Lease Year" shall mean each twelve (12)-month period during the Term.
- 2.2 Holdover. Any holding over by LESSEE after the expiration or earlier termination of this Lease shall not be considered a renewal or extension of this Lease. LESSEE's occupancy of the Premises after the expiration or earlier termination of this Lease shall constitute a month-to-month tenancy at will, and all other terms and conditions of this Lease shall continue in full force and effect, except that CITY may then demand and receive from LESSEE rent up to two (2) times the then fair market rent for the Premises' highest and best use, as determined by an appraisal prepared by a qualified appraiser chosen by CITY in its sole discretion, which rent shall be effective as of the first day of the holdover period, retroactively applied after the appraisal is made.
- 2.3 Surrender of Premises. Upon the expiration or earlier termination of this Lease, LESSEE shall vacate the Premises and surrender them to CITY free and clear of all liens and encumbrances, and in a condition reasonably satisfactory to CITY. At any time after the expiration or earlier termination of this Lease, LESSEE shall execute and deliver to CITY, within thirty (30) days after CITY's request, a valid and recordable quitclaim deed covering all of the Premises. If LESSEE fails or refuses to deliver the required quitclaim deed, CITY may prepare and record a notice reciting LESSEE's failure to perform this Lease obligation, and the notice shall be deemed conclusive evidence of the termination of this Lease and all of LESSEE's rights in and to the Premises.

SECTION 3: RENT

- 3.1 One-Time Payment. As consideration for this Lease, LESSEE shall pay to CITY a one-time payment of Four Million Dollars (\$4,000,000), as additional rent under this Lease, payable in cash on the Commencement Date.
- 3.2 Gross Revenue. As used in this Lease, "Gross Revenue" shall mean all revenue actually received and derived from all CITY-approved uses of the Premises, including without limitation all revenue derived from subtenants and licensees. Possessory interest taxes or other property taxes shall not be deducted in computing Gross Revenue. Notwithstanding the foregoing, Gross Revenue shall not include: (a) federal, state or municipal taxes collected from consumers (regardless of whether such amount is stated to the consumer as a separate charge) and paid periodically by LESSEE to a governmental agency and accompanied by a tax return or statement as required by law; or (b) refunds for goods returned for resale on the Premises or refunds of deposits; or (c) sublease deposits received by LESSEE. LESSEE shall clearly indicate the amount of all such taxes and refunds on its books and records.
- 3.3 Net Residential Operating Income.
- 3.3.1 "Net Residential Operating Cash Flow" shall mean Gross Revenue from residential operations less all reasonable cash expenses actually incurred for residential operations. Residential operating cash expenses shall include, without limitation:
- (a) required debt service payments and interest charges;
 - (b) scheduled deposits to operating reserves and replacement reserves;
 - (c) payment of the deferred developer fee;
 - (d) property management fees;
 - (e) limited and general partner management fees;
 - (f) water, sewer, electrical, gas and other utility charges for the Premises;
 - (g) costs to operate and maintain the Premises and improvements thereon;
 - (h) insurance premiums;
 - (i) legal fees and expenses incurred in connection with the management of the Premises;
 - (j) capital expenditures on the Premises necessary to comply with applicable laws or otherwise to improve the operation or management of LESSEE's operations on the Premises to the extent such capital expenditures are not made from reserves; and
 - (k) costs for applying for and obtaining welfare exemptions from the assessment of real estate taxes (e.g., possessory interest taxes) assessed for LESSEE's use and occupancy of the Premises.
- 3.3.2 To the extent expenses are incurred with respect to the entire Premises that benefit both the residential and commercial operations on the Premises, those expenses shall be allocated between the residential and commercial operations in a manner

reasonably proportional to the applicable benefits, subject to CITY's approval of the allocation.

3.4 Residential Rent.

3.4.1 Base Rent. LESSEE shall pay to CITY rent (the "Base Rent") in an amount equal to four and one-half percent (4.5%) of Gross Revenue derived from residential operations on the Premises, payable annually in arrears within thirty (30) days after the end of each Lease Year.

3.4.2 Base Rent Adjustments. Effective as of the first day of the sixth (6th) Lease Year, the Base Rent shall be adjusted upward only by the percentage increase in the Consumer Price Index for All Urban Consumers, San Diego ("CPI-U"), of the U.S. Department of Labor, Bureau of Labor Statistics, shall have increased in relation to the CPI-U effective on the Commencement Date. Effective as of the first day of each fifth (5th) Lease Year thereafter, the Base Rent shall be adjusted upward only by the percentage increase in the CPI-U during the five (5) years immediately preceding the adjustment.

3.4.3 Supplemental Rent. For the second (2nd) through the fifth (5th) Lease Years, in addition to the Base Rent, LESSEE shall pay to CITY additional rent ("Supplemental Rent") in an amount equal to fifty percent (50%) of the increase in the Base Rent for each Lease Year over the Base Rent for the first (1st) Lease Year. No Supplemental Rent shall be payable for Lease Years in which a CPI-U adjustment is applied.

3.4.3.1 Beginning in the seventh (7th) Lease Year, and every five (5) Lease Years thereafter, the formula for calculating the Supplemental Rent shall be modified to equal fifty percent (50%) of the increase in Base Rent for each Lease Year over the Base Rent for the first year of the applicable five-year period. For example, in Lease Years 7-10, the Supplemental Rent shall equal 50% of the Base Rent increase for each Lease Year over the Base Rent for Lease Year 6; in Lease Years 12-15, the Supplemental Rent shall equal 50% of the Base Rent increase for each year over the Base Rent for Lease Year 11, and so on, throughout the Term.

3.4.3.2 LESSEE shall pay Supplemental Rent to CITY annually in arrears within thirty (30) days after the end of each Lease Year.

3.5 Rent Accrual. Notwithstanding any provision of this Lease to the contrary, if Net Residential Operating Cash Flow is insufficient to pay Base Rent and Supplemental Rent when due, LESSEE shall pay CITY one hundred percent (100%) of Net Residential Operating Cash Flow toward satisfaction of the rent then due, and any unpaid balance of the rent shall accrue with interest charged at the long-term "Applicable Federal Rate," as published each month by the U.S. Internal Revenue Service in accordance with Internal Revenue Code section 1274(d), and in effect at the time the rent payment is due.

LESSEE shall pay CITY one hundred percent (100%) of Net Residential Operating Cash Flow until all such rent balances and accrued interest are paid.

- 3.6 Annual Statements. Within thirty (30) days after the end of each Lease Year, LESSEE shall deliver to CITY a statement of Gross Revenue and Net Residential Operating Cash Flow for the Lease Year, prepared using generally accepted accounting principles consistently applied, with revenue categorized by source, and expenses categorized by type. Each such statement shall also include calculations of Base Rent, Supplemental Rent, if payable, and any other amounts payable to CITY under this Lease for the Lease Year. LESSEE shall comply with all reasonable requests by CITY to modify the form and content of such statements. LESSEE shall provide such additional information reasonably requested by CITY regarding the operation of LESSEE's operations and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.
- 3.7 Unauthorized-Use Charge. LESSEE shall pay CITY one hundred (100%) of the gross receipts from any use of the Premises that is not allowed by this Lease, regardless of any related penalties charged LESSEE by competent governmental authorities. Such unauthorized use charge shall be payable to CITY within thirty (30) days after LESSEE receives such gross receipts. The unauthorized use charge shall be considered "rent" under this Lease, and shall be subject to all costs and penalties for delinquent payments hereunder and shall not be considered or applied as satisfaction for any other rent obligations of LESSEE under this Lease. The existence of such unauthorized use charge and CITY's acceptance thereof shall not constitute authorization for the use in question, and shall not waive any of CITY's rights under this Lease.
- 3.8 Time and Place of Payment. All rent payments shall be made payable to "City Treasurer" and mailed to:

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

or hand-delivered to

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

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

3.9 Records. LESSEE shall keep or cause to be kept true, accurate and complete books, records and accounts of all financial transactions in the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises. The records shall be supported by source documents such as sales slips, daily cash register tapes, purchase invoices or other documents (which may be in electronic form) as necessary to allow CITY to easily determine Gross Revenue. All retail sales or charges shall be recorded by means of cash registers or other comparable devices which display to the customer the amount of the transaction and automatically issue a receipt. Such registers or other devices shall record sales totals and other transaction numbers and sales details, and shall not be re-settable. Registered totals shall be read and recorded at the beginning and end of each business day. All sales and charges may be recorded by a system other than cash registers or other comparable devices, provided such system is approved by CITY.

3.9.1 CITY's Right to Inspect and Audit. LESSEE shall keep all of its books of account, records and supporting documentation throughout the Term, plus five (5) years. LESSEE shall make such books, records and documentation available for inspection and audit by CITY in one location within the County of San Diego. LESSEE shall maintain separate books and records related to LESSEE's use of the Premises. Upon reasonable prior notice, CITY may inspect and audit the operation of LESSEE's business and all other business activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises as CITY may deem necessary, in its sole discretion, to protect CITY's rights under this Lease. If required by competent governmental authority, LESSEE shall promptly deliver to CITY, at CITY's reasonable request and at LESSEE's sole cost and expense, any and all data reasonably needed to fully comply with such authority's requirements related to LESSEE's operations and activities conducted on the Premises, and all financial transactions resulting from LESSEE's use of the Premises.

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

- (a) For any given Lease Year, if an audit reveals an underpayment of rent of more than five percent (5%) on an annual basis, calculated as the difference between the rent reported as payable by LESSEE and the rent payable as determined by the audit; or
- (b) LESSEE failed to maintain materially true, accurate and complete books, records, accounts and supporting source documents as required by this Lease.

Any rent deficiency determined by the audit shall be delinquent rent, subject to all penalties and remedies provided to CITY for delinquent rent under this Lease. CITY shall credit any overpayment determined by the audit, without interest,

against future rents due under this Lease. If no future rents are then due under this Lease, CITY shall refund to LESSEE any overpayment determined by the audit, without interest, within sixty (60) days after CITY's certification of the audit.

- 3.10 Delinquent Payments. If LESSEE fails to make any payment under this Lease when due, LESSEE shall pay to CITY, in addition to the unpaid amount, five percent (5%) of the unpaid amount, which shall be additional rent. If any amount of such payment remains unpaid after fifteen (15) days past due, LESSEE shall pay to CITY an additional five percent (5%) of the unpaid amount [being a total of ten percent (10%)], which shall be additional rent. Notwithstanding the foregoing, in no event shall the charge for late payment of rent be less than Twenty-Five Dollars (\$25). After thirty (30) days past due, unpaid amounts due CITY under this Lease may be referred to the San Diego City Treasurer for collection, and shall be subject to San Diego Municipal Code section 22.1707, as may be amended from time to time. LESSEE shall pay to CITY any collection-referral fee and all other fees and charges plus interest as may then be charged by the San Diego City Treasurer under authority of the San Diego Municipal Code. Acceptance of late charges and any portion of the late payment by CITY shall neither constitute a waiver of LESSEE's breach or default with respect to the late payment nor prevent CITY from exercising any other rights and remedies available at law or in equity. As required by law, LESSEE is hereby notified that a negative credit report may be submitted to a credit reporting agency if amounts due CITY are not paid when due.

SECTION 4: ENCUMBRANCES; ASSIGNMENT & SUBLETTING

- 4.1 No Fee Encumbrance. CITY shall not allow any monetary liens or encumbrances to be recorded against or otherwise attached to the fee interest in the Premises without LESSEE's written consent.
- 4.2 Leasehold Encumbrances. Subject to CITY's written consent, LESSEE may encumber LESSEE's leasehold estate by deed of trust or other security instrument to assure the payment of LESSEE's debts, upon the express condition that the proceeds of such loan or loans be devoted exclusively to capital expenditures for the purpose of improving, repairing or maintaining the Premises. Each such encumbrance shall be subject to all of the terms, covenants and conditions of this Lease, shall not be deemed to amend or alter any of the terms, covenants or conditions of this Lease, and shall be subordinate to CITY's fee interest in the Premises and any and all CITY encumbrances on that fee interest.
- 4.3 Assignment and Subletting. LESSEE shall not assign this Lease or any interest in this Lease to anyone other than the San Diego Housing Commission or an entity controlled by the San Diego Housing Commission or by Housing Development Partners of San Diego, a California nonprofit public benefit corporation ("HDP"), without CITY's written consent in each instance (provided, however, HDP may continue to lease the Commercial Space if this Lease is assigned as set forth herein). Assignments not requiring CITY's consent shall nonetheless be reported to CITY in writing. LESSEE shall not sublet the

Premises or any part of the Premises to anyone other than residential tenants without CITY's written consent in each instance. LESSEE shall not grant any license or other right or appurtenant privilege to the Premises, or permit any other person, except LESSEE's employees, agents, guests and subtenants, to use or occupy the Premises or any part of the Premises without CITY's written consent in each instance. Neither this Lease nor any interest in it shall be assignable, as to LESSEE's interest, by operation of law, without CITY's written consent in each instance. As used in this Lease "assignment" shall include without limitation the transfer of any interest in this Lease and, if LESSEE is other than a natural person, the transfer of a controlling interest in LESSEE or any of LESSEE's general partners, principals or controlling shareholders.

- 4.3.1 Consent Conditions. CITY may require, as a condition to consenting to any assignment, sublease or other grant of rights related to the use and occupancy of the Premises, that this Lease be revised to comply with then-current CITY lease provisions, and that the sublease be subject and subordinate to each and every provision of this Lease.
- 4.3.2 Charter Section 225. Pursuant to San Diego City Charter section 225, LESSEE and each of its assignees and commercial subtenants shall make a full and complete disclosure of the name and identity of each and every person/entity directly or indirectly involved in this Lease and the precise nature of all interests of all such persons. Other than LESSEE's residential subtenants, each and every person/entity proposed to have an interest in this Lease shall be subject to CITY's review and approval, in CITY's sole discretion.
- 4.3.3 Additional Consideration to CITY. If this Lease is assigned to anyone other than the San Diego Housing Commission or an entity controlled by the San Diego Housing Commission or by HDP, or if LESSEE subleases a majority of the Premises to other than residential subtenants, or in the event of a refinancing that encumbers the leasehold, LESSEE shall pay to CITY an amount equal to: (a) for assignments, two percent (2%) of the gross amount paid for the leasehold; (b) for majority subleases to other than residential subtenants, two percent (2%) of all amounts paid to LESSEE in consideration of such sublease; and (c) in the case of a refinancing, two percent (2%) of the amount of any new loan over and above the sum of the balance of the old loan plus, if applicable, the cost of rehabilitating existing improvements or constructing new permanent improvements on the Premises as required or allowed under this Lease. The amount upon which such two-percent payments shall be based shall be the total consideration resulting from the transaction, including without limitation all cash payments and the market value of non-cash consideration, including without limitation stocks, bonds, deferred payments, secured and unsecured notes, and forbearances regarding claims and judgments. Prior to CITY's consent to any assignment, majority subletting to other than residential subtenants, or refinancing, LESSEE shall deliver to CITY a written statement of all sums due and owing to CITY from LESSEE pursuant to the provisions of this section, together with an acknowledgment from the proposed assignee, sublessee or the source of the

refinancing as to the amount due CITY. The additional consideration payable to CITY for each assignment and/or refinancing shall be paid concurrently with the closing of the proposed transaction. The additional consideration due CITY pursuant to this section shall be payable to CITY when accrued regardless of actual receipt by LESSEE. The applicable two-percent (2%) payments required by this section shall not apply to:

- (a) an assignment or transfer of a beneficial interest in the leasehold resulting from devise, bequest, intestate succession or by operation of law for the benefit of the spouse or descendants of the individual who is LESSEE or the owner of a controlling interest in LESSEE; or
- (b) an assignment deemed by CITY, in its sole reasonable discretion, not to materially affect the legal and equitable ownership interests in the leasehold, such as a change in LESSEE's legal or fictitious name without any other change in the equity, beneficial use of, or legal title to, the leasehold as an asset or the income produced thereby; or
- (c) any assignment, sale or transfer of any limited partnership interest in LESSEE.

SECTION 5: AFFILIATE'S COMMERCIAL SPACE SUBLEASE

5.1 LESSEE Affiliate's Sublease. LESSEE may sublease the Commercial Space to a LESSEE Affiliate (or LESSEE may continue to lease the Commercial space if this Lease is assigned as allowed by this Lease) for total consideration of One Dollar (\$1) per year, on condition that a complete disclosure of the name and identity of the LESSEE Affiliate is made to CITY and that the LESSEE Affiliate is reviewed and approved by CITY, in CITY's sole discretion. LESSEE shall include in all LESSEE Affiliates' subleases terms and conditions requiring the LESSEE Affiliate to pay directly to CITY special consideration in an amount equal to fifty percent (50%) of the Net Commercial Operating Income from each LESSEE Affiliates' subleasing of part or all of the Commercial Space, payable annually in arrears within thirty (30) days after the end of each Lease Year (under this Lease).

5.1.1 "Net Commercial Operating Income" shall mean the Gross Revenue from all operations in the Commercial Space less all reasonable expenses actually incurred for commercial operations.

SECTION 6: DEFAULT AND REMEDIES

6.1 Default. LESSEE shall be in default of this Lease if any of the following occurs:

- (a) LESSEE fails to make any payment required under this Lease when due;

- (b) LESSEE breaches any of its obligations under this Lease, other than those requiring payment to CITY, and fails to cure the breach within thirty (30) days following written notice thereof from CITY, or if not curable within thirty (30) days, fails to commence to cure the breach within thirty (30) days and diligently pursue the cure to completion;
- (c) LESSEE voluntarily files or involuntarily has filed against it any petition under any bankruptcy or insolvency act or law, and such proceeding is not dismissed within sixty (60) days thereafter;
- (d) LESSEE is adjudicated a bankrupt; or
- (e) LESSEE makes a general assignment for the benefit of creditors.

6.2 Remedies. Upon LESSEE's default, CITY may, at its option, give LESSEE, or any person claiming rights through LESSEE, a thirty (30)-day written Notice of Intent to Terminate the Lease. If LESSEE does not cure the default within the thirty-day period, CITY may terminate the Lease and all rights of LESSEE (and all persons claiming rights through LESSEE) to the Premises or to possession of the Premises. Upon termination, CITY may enter and take possession of the Premises, and may recover from LESSEE the sum of:

- (a) the worth at the time of award of any unpaid rent that was due at the time of termination;
- (b) the worth at the time of award of the amount by which the unpaid rent that would have been earned after termination until the time of award exceeds the amount of rental loss, if any, that LESSEE affirmatively proves could have been reasonably avoided;
- (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 rental loss, if any, that LESSEE affirmatively proves could be reasonably avoided;
- (d) any other amount necessary to compensate CITY for all the detriment proximately caused by LESSEE's breach and default, or that in the ordinary course of things, would be likely to result; and
- (e) all other amounts in addition to or in lieu of those previously stated as may be permitted at law or in equity.

As used in clauses (a) and (b), above, the "worth at the time of award" is computed by allowing interest at the rate of ten percent (10%) per annum. As used in clause (c), above, the "worth at the time of award" is computed by discounting that amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus two

percent (2%). As used in this section, the term "rent" shall include rent and any and all other amounts payable by LESSEE under this Lease.

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

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

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

6.4 Abandonment by LESSEE. If LESSEE abandons the Premises, this Lease shall continue in effect as long as CITY does not terminate this Lease, and CITY may enforce all of its

rights and remedies under this Lease, including without limitation the right to recover rent as it becomes due, plus damages.

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

SECTION 7: EMINENT DOMAIN

- 7.1 Eminent Domain. If all or part of the Premises are taken through condemnation proceedings or under threat of condemnation by any public authority with the power of eminent domain, the interests of CITY and LESSEE (or beneficiary or mortgagee) shall be as follows:
- 7.1.1 Full Taking. If the entire Premises are taken, this Lease shall terminate on the date of the transfer of title or possession to the condemning authority, whichever first occurs.
- 7.1.2 Partial Taking - Remainder Usable. If a partial taking of the Premises occurs, and in the opinion of CITY, the remaining part of the Premises are suitable for continued Lease operation, this Lease shall terminate in regard to the portion taken on the date of the transfer of title or possession to the condemning authority, whichever first occurs, but shall continue for the portion not taken. The rent shall be equitably reduced to reflect the portion of the Premises taken, only to the extent that LESSEE's operations are reduced or impaired.
- 7.1.3 Award. All monies awarded in any taking shall belong to CITY, whether the taking results in diminution in value of the leasehold or the fee or both. LESSEE shall be entitled to any award attributable to the taking of, or damages to LESSEE's then remaining leasehold interest in installations or improvements owned by LESSEE. CITY shall have no liability to LESSEE for any award not provided by the condemning authority.
- 7.1.4 Transfer. CITY has the right to transfer CITY's interests in the Premises in lieu of condemnation to any authority entitled to exercise the power of eminent domain. If a transfer occurs, LESSEE shall retain whatever interest it may have

in the fair market value of any LESSEE-owned improvements on the Premises in accordance with this Lease.

- 7.1.5 No Inverse Condemnation. The exercise of any CITY right under this Lease shall not be interpreted as an exercise of the power of eminent domain and shall not impose any liability upon CITY for inverse condemnation.

SECTION 8: INDEMNITY; HOLD HARMLESS; INSURANCE

- 8.1 Indemnification & Hold Harmless. LESSEE shall protect, defend, indemnify and hold CITY and its elected officials, officers, employees, representatives and agents harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to LESSEE's officers, employees, invitees, guests, agents or contractors, which arise out of or are in any manner directly or indirectly connected with LESSEE's acts or omissions in the performance of its rights and obligations under this Lease, and all expenses of investigating and defending against same, including without limitation attorney fees and costs; provided, however, that LESSEE's duty to indemnify and hold CITY harmless shall not include any established liability arising from the gross negligence or intentional misconduct of CITY or its elected officials, officers, employees, representatives or agents.

- 8.2 Insurance. LESSEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:

- (1) Commercial General Liability Insurance, providing coverage on the Premises for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
- (2) Automobile Liability Insurance, providing coverage on the Premises for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Lease. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage; and
- (3) Workers' Compensation Insurance, as required by the laws of the State of California for all of LESSEE's employees who are subject to this Lease, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000).

- 8.2.1 Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives and agents" shall be named as additional insureds in all policies.

- 8.2.2 Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 8.2.3 Qualified Insurer(s). All insurance required by the terms of this Lease must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.
- 8.2.4 Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of LESSEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 8.2.5 Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, LESSEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Lease. LESSEE shall provide proof of continuing insurance at least annually during the Term and otherwise upon CITY's request. If insurance lapses or is discontinued for any reason, LESSEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 8.2.6 Modification. To assure protection from and against the kind and extent of risk existing with the Allowed Uses, CITY, at its reasonable discretion, may require the revision of amounts and coverage at any time by giving LESSEE thirty (30) days prior written notice. LESSEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Allowed Uses.
- 8.2.7 Accident Reports. LESSEE shall immediately report to CITY any accident causing property damage or injury to persons on the Premises or otherwise related to the Allowed Uses. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
- 8.2.8 Causes of Loss - Special Form Property Insurance. LESSEE shall obtain and maintain, at its sole cost, Causes of Loss - Special Form Property Insurance on all of LESSEE's insurable property related to the Allowed Uses of the Premises under this Lease or the Premises in an amount to cover 100 percent (100%) of the replacement cost. LESSEE shall deliver a certificate of such insurance to CITY's

SECTION 9: IMPROVEMENTS; ALTERATIONS; MAINTENANCE

- 9.1 Acceptance of Premises. LESSEE acknowledges that the Premises are in good order and condition and shall take possession of the Premises "as is." CITY has not made and makes no representation or warranty as to the condition or suitability of the Premises for LESSEE's intended use, and assumes no obligation to alter or improve the Premises. LESSEE has relied solely on its own independent investigations of the condition and suitability of the Premises, and is satisfied with the condition thereof.
- 9.2 Rehabilitation Plans. If LESSEE conducts a Rehabilitation, LESSEE shall do so in accordance with plans submitted to the California Tax Credit Allocation Committee and approved to effect Rehabilitation Funding, subject to the written approval of all rehabilitation applications and plans by CITY, in its capacity as lessor under this Lease, and subject to all other reviews, approvals, and permit requirements of competent governmental authorities.
- 9.3 Improvements/Alterations. No improvements, structures or installations shall be constructed on the Premises, and the Premises may not be altered, by LESSEE without CITY's written approval. LESSEE shall not make any structural or architectural design alterations to approved improvements, structures or installations on the Premises without CITY's written approval. This provision shall not relieve LESSEE of any maintenance obligation under this Lease. CITY shall not be obligated by this Lease to make or assume any expense for any improvements or alterations to the Premises.
- 9.4 Construction Bond. If LESSEE constructs improvements on the Premises, CITY may require LESSEE to deposit with CITY, prior to commencement of the construction, a faithful performance bond in the amount of one hundred percent (100%) of the estimated construction cost of the work to be performed. The bond may be in cash or may be a corporate surety bond or other security satisfactory to CITY. The bond shall insure that the construction commenced by LESSEE shall be completed in accordance with the plans approved by CITY or, at the option of CITY that the uncompleted construction shall be removed and the Premises restored to a condition satisfactory to CITY. The bond or cash shall be held in trust by CITY for the purpose specified above, or at CITY's option may be placed in an escrow approved by CITY. Notwithstanding the foregoing, LESSEE shall not be required to deposit any such bond, cash security or other security related to Rehabilitation.
- 9.5 Liens. LESSEE shall protect, defend, indemnify and hold CITY harmless from and against all claims for labor or materials in connection with operations, improvements, alterations or repairs on or to the Premises and the costs of defending against such claims, including without limitation reasonable attorney fees. If LESSEE causes improvements, alterations or repairs to be made to the Premises, and a lien or notice of lien is filed against the Premises, LESSEE shall notify CITY of the lien within five (5) days after LESSEE first becomes aware of the existence of the lien, and within thirty (30) days after

the filing either: (a) take all actions necessary to record a valid release of the lien; or (b) file with CITY a bond, cash or other security acceptable to CITY sufficient to pay in full all claims of all persons seeking relief under the lien.

- 9.6 Ownership of Improvements and Personal Property. CITY shall not own any improvements, fixtures, structures or installations on the Premises during the Term, unless such ownership is evidenced by a separate writing. LESSEE shall not remove any such improvements, fixtures, structures or installations during the Term without CITY's written consent in each instance. Upon expiration or termination of this Lease, all improvements, fixtures, structures and installations on the Premises shall be deemed a part of the Premises and owned by CITY. Notwithstanding the foregoing sentence, CITY may, upon notice to LESSEE at Lease termination or at any time prior to the expiration of the Term, elect to have part or all of such improvements, fixtures, structures and installations or additions removed by LESSEE upon the termination or expiration of this Lease. In that case, LESSEE shall, at LESSEE's sole cost and expense, remove those items designated for removal in CITY's notice and restore the Premises to CITY's reasonable satisfaction as soon as practicable, but in no event later than sixty (60) days after the expiration or earlier termination of this Lease. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of such items. If LESSEE fails to remove the items as required in this section, CITY may, at its option, remove them at LESSEE's sole cost and expense.

9.6.1 Personal Property. LESSEE shall remove LESSEE-owned machines, appliances, equipment, trade fixtures and other items of personal property upon the expiration of the Term, or as soon as practicable after termination of this Lease. Any such items which LESSEE fails to remove shall be deemed abandoned and become CITY's property free of all claims and liens, or CITY may, at its option, remove such items at LESSEE's sole cost and expense. LESSEE, at its sole cost and expense, shall be responsible for the repair of any and all damage resulting from the removal of its personal property from the Premises.

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

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

- 9.7 Waste, Damage, or Destruction. LESSEE shall not commit or allow to be committed any waste or any public or private nuisance on the Premises, shall keep the Premises clean

and clear of refuse and obstructions, and shall dispose of all garbage, trash and rubbish in a manner satisfactory to CITY. If the Premises are put into a condition which is not decent, safe, healthy and sanitary, LESSEE shall restore the Premises to a decent, safe, healthy and sanitary condition within a reasonable time and to CITY's reasonable satisfaction.

- 9.8 Entry and Inspection. Upon not less than 72 hours written notice to the LESSEE (except in the event of an emergency in which case no prior notice shall be required), CITY, as the lessor under this Lease with no effect on its governmental rights and powers, may enter and inspect the Premises and the operations conducted on the Premises, provided that such entry and inspection shall not substantially unreasonably interfere with LESSEE's or LESSEE's subtenants' use of the Premises.
- 9.9 Maintenance. LESSEE shall maintain the Premises and all improvements, fixtures, structures or installations thereon in a decent, safe, healthy and sanitary condition reasonably satisfactory to CITY. CITY shall have no obligation or responsibility to remove debris, or to construct, maintain, repair or replace improvements, fixtures, structures or installations on the Premises.
- 9.10 Utilities. LESSEE shall order, obtain and pay for all water, utilities, and service and installation charges in connection with the operation of the Premises. All utilities shall be installed underground.
- 9.11 Taxes. LESSEE shall pay, before delinquency, all taxes, assessments and fees assessed or levied upon the Premises or upon LESSEE's use and occupancy of the Premises, including without limitation licenses and permits, and including the land and any improvements or fixtures installed or maintained by LESSEE thereon. LESSEE acknowledges that this Lease may create a possessory interest subject to property taxation and that LESSEE may be subject to the payment of taxes levied on that possessory interest. LESSEE shall pay all such possessory interest taxes. LESSEE's payment of taxes, fees and assessments shall not reduce any rent due to the CITY. CITY shall not assume any responsibility for any taxes whatsoever resulting from LESSEE's possession, use or occupancy of the Premises.
- 9.12 Signs. LESSEE shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings or similar devices or advertising without CITY's written consent. If any such unauthorized item is found on the Premises, LESSEE shall remove the item at its expense within twenty-four (24) hours after notice by CITY, or CITY may thereafter remove the item at LESSEE's cost.
- 9.13 Unavoidable Delay. If the performance of an act required by this Lease is directly prevented or delayed by a cause beyond the reasonable control of the party required to perform the act, that party shall be excused from performing the act for a period equal to the period of the prevention or delay. This provision shall not apply to obligations to pay rent. The party claiming a delay shall notify the other party in writing within ten (10) days after the beginning of any claimed delay.

9.14 Hazardous Substances. NOTE: Any Hazardous Substance allowed to remain within the Premises pursuant to the No Further Action Letter shall not be subject to the provisions of this section and its subsections.

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

9.14.2 Definitions. A "release" shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or otherwise disposing of Hazardous Substances. "Hazardous Substances" shall mean any hazardous liquid, solid, gaseous material, or waste substances listed by the Environmental Protection Agency or the State of California as a Hazardous Substance, and any type of petroleum-related substances and their chemical constituents.

9.14.3 Remediation. If LESSEE's occupancy, use, development, maintenance or restoration of the Premises results in a release of a Hazardous Substance, LESSEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Premises, and in accordance with all applicable laws, rules and regulations of competent governmental authority

9.14.4 Removal. If LESSEE or LESSEE's contractor or agent has received approval and permits to store, utilize, generate or install, or otherwise bring Hazardous Substances onto the Premises, LESSEE shall remove, or cause to be removed, all such Hazardous Substances from the Premises immediately upon or prior to the expiration or earlier termination of this Lease. CITY reserves the right to conduct inspections of the Premises and/or request documentation demonstrating the legal removal and/or disposal of the Hazardous Substances from the Premises. LESSEE shall pay any and all costs incurred by CITY to remove or cause the removal of such Hazardous Substances from the Premises.

9.14.5 Indemnity. LESSEE shall protect, defend, indemnify and hold CITY harmless from any and all claims, costs and expenses related to environmental liabilities

resulting from LESSEE's occupancy, use, development, maintenance or restoration of the Premises, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, LESSEE's officers, employees, invitees, guests, agents, or contractors, or the public; and (vii) all costs of any health assessments or health effect studies.

9.14.6 Notice of Release. If LESSEE knows or has reasonable cause to believe that a Hazardous Substance has been released on, from or within the Premises, LESSEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Code of Regulations Title 19 and any other applicable laws or regulations. LESSEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If LESSEE knows or has reasonable cause to believe that such substance is an imminent release or is an imminent substantial danger to public health and safety, LESSEE shall take all actions necessary to alleviate the danger. LESSEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Premises.

9.14.7 Environmental Assessment. Upon reasonable cause to believe that LESSEE's occupancy, use, development, maintenance or restoration of the Premises ("LESSEE's Operations"), resulted in any Hazardous Substance being released on, from or beneath the Premises, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist or Registered Civil Engineer. The environmental assessment shall be obtained at LESSEE's sole cost and expense, and shall establish what, if any, Hazardous Substances have more likely than not been caused by LESSEE's Operations on, in, from or under the Premises, and in what quantities. If any such Hazardous Substances exist in quantities greater than allowed by laws, rules and regulations of competent governmental authority, or require future restricted re-use of the Premises, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws, rules and regulations, and estimates of the cost of such remediation or removal. LESSEE shall cause, or if LESSEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Premises and compliance with the laws, rules and regulations of competent governmental authority is achieved, and LESSEE shall pay all costs and expenses therefor.

SECTION 10: GENERAL PROVISIONS

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

If to LESSEE:

HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO
Attention: Marco Vakili, Executive Director
1335 Fifth Avenue
San Diego, CA 92101

If to CITY:

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

- 10.2 Compliance with Law. LESSEE shall at all times in the construction, maintenance, occupancy, restoration and operation of the Premises comply with all applicable laws, rules and regulations of competent legal authority, at LESSEE's sole cost and expense. LESSEE shall promptly deliver to CITY copies of all documentary evidence of such compliance received by or otherwise available to LESSEE (e.g., validation of periodic inspection of LESSEE fire-suppression equipment).
- 10.3 California Public Records Act. CITY shall determine, in its sole discretion, whether information provided to CITY by LESSEE pursuant to this Lease is or is not a public record subject to disclosure under the California Public Records Act. LESSEE shall hold CITY, its elected officials, officers and employees harmless for CITY's disclosure of any such information in response to a request for information under the California Public Records Act.
- 10.4 Equal Opportunity. LESSEE shall comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and all other laws, rules and regulations of competent governmental authority. LESSEE shall not discriminate against any employee or applicant for employment based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition or place of birth. LESSEE shall cause the foregoing provisions to be inserted in all commercial subleases and all contracts for any work covered by this Lease so that such provisions will be binding upon each commercial sublessee and contractor. LESSEE shall fully cooperate with any investigation conducted by the City of San Diego, in its governmental capacity, pursuant to its Nondiscrimination in Contracting Ordinance [San Diego Municipal Code sections 22.3501-22.3517, as amended from time to time], and upon CITY's request, LESSEE shall submit a current

Workforce Report. LESSEE acknowledges that failure to comply with the requirements of this section and/or submitting false information in response to these requirements may result in termination of this Lease and debarment from participating in CITY contracts for a period of not less than one (1) year.

- 10.5 Equal Benefits. LESSEE shall comply with San Diego Municipal Code sections 22.4301-22.4308, as amended from time to time, which require lessees of CITY-owned property to offer the same employment benefits to employees with spouses and employees with domestic partners. LESSEE shall certify that it will maintain such equal benefits throughout the term of this Lease. LESSEE's failure to maintain equal benefits shall be a default of this Lease.
- 10.6 Disabled Access Compliance. LESSEE shall, as applicable to the Premises and LESSEE's possession, use and occupancy thereof, comply with the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973, Section 504, Title V; the Americans with Disabilities Act of 1990 ("ADA"); and all other applicable laws, rules and regulations of competent governmental authority protecting the rights of people with disabilities. LESSEE's compliance shall include without limitation the following:
- 10.6.1 LESSEE shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs and termination of employment.
- 10.6.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs or activities of LESSEE.
- 10.6.3 LESSEE shall include language in each commercial sublease agreement which indicates the commercial sublessee's agreement to abide by the foregoing provisions of this section. LESSEE and each of its commercial sublessees shall be individually responsible for their own ADA employment programs.
- 10.6.4 LESSEE shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 10.6.5 Where required by law, all improvements, fixtures, structures or installations on the Premises shall comply with municipal disabled-access requirements by bringing up to code and making accessible any areas of the Premises which deny access to disabled persons. All improvements and alterations shall be at LESSEE's sole cost and expense.
- 10.6.6 LESSEE acknowledges and agrees that failure to comply with the above requirements and/or submitting false information in response to these requirements shall be a default of this Lease.

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

- (a) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of controlled substances are prohibited on the Premises and specifying the actions that will be taken against employees for violations of the prohibition; and
- (b) Establish a drug-free awareness program to inform employees about all of the following:
 - (1) The dangers of drug abuse in the workplace;
 - (2) LESSEE's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse.

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

10.8 CITY Employee Participation Policy. CITY may unilaterally and immediately terminate this Lease if LESSEE employs an individual who, within the twelve (12) months immediately preceding such employment did, in their capacity as a City of San Diego officer or employee, participate in negotiations with or otherwise have an influence on a recommendation made to the City Council related to the selection of LESSEE for this Lease. It is not the intent of this policy that these provisions apply to members of the City Council.

10.9 Local Business and Employment. LESSEE acknowledges that CITY seeks to promote employment and business opportunities for local residents and firms in all CITY contracts. For work associated with this Lease and to the extent legally possible, LESSEE shall use its best efforts to solicit applications for employment and bids and proposals for contracts from local residents and firms as opportunities occur. LESSEE shall use its best efforts to hire qualified local residents and firms whenever practicable.

10.10 Water Quality Assurances. LESSEE shall, at its sole cost and expense, comply with all laws, rules, regulations and direction of competent governmental authority (such as the San Diego Regional Water Quality Control Board) relating to water quality assurance and storm water management. LESSEE acknowledges and agrees that such legal

requirements may change at any time and from time to time.

- 10.10.1 NPDES. LESSEE shall comply with all applicable requirements of the National Pollutant Discharge Elimination System ("NPDES") permit in force on the Effective Date of this Lease (i.e., Permit No. R9-2007-0001), and any and all amendments thereto and all applicable succeeding NPDES permits.
- 10.10.2 Stormwater Management. LESSEE shall comply with all applicable requirements of the San Diego Municipal Code Chapter 4, Article 3, Division 3: Stormwater Management and Discharge Control (the "Stormwater Code"), and employ "Best Management Practices," as that term is defined by the Stormwater Code, and as approved by the City of San Diego, in its governmental capacity, under its Stormwater Management Program.
- 10.11 Nondiscrimination. This Lease is made and accepted upon and subject to the covenant and condition, which shall run with the land, that LESSEE or any person claiming under or through LESSEE shall not establish or allow any discrimination against or segregation of any person or group of persons on account of race, color, religion, gender, disability, sexual orientation, marital status, national origin, ancestry, familial status or source of income in the possession, use and occupancy of the Premises or in the selection, location, number, use or occupancy of tenants, subtenants or vendees on the Premises.
- 10.12 Cumulative Remedies. CITY's rights and remedies under this Lease are cumulative and shall not limit or otherwise waive or deny any of CITY's rights or remedies at law or in equity.
- 10.13 Survival. Any obligation which accrues under this Lease prior to its expiration or termination shall survive such expiration or termination.
- 10.14 Joint and Several Liability. If LESSEE is comprised of more than one person or legal entity, such persons and entities, and each of them, shall be jointly and severally liable for the performance of each and every obligation of LESSEE under this Lease.
- 10.15 No Affiliation. Nothing contained in this Lease shall be deemed or construed to create a partnership, joint venture or other affiliation between CITY and LESSEE or between CITY and any other entity or party, or cause CITY to be responsible in any way for the debts or obligations of LESSEE or any other party or entity.
- 10.16 Entire Agreement. This Lease constitutes the entire agreement between the parties and supersedes any and all prior understandings, representations, warranties and agreements between them pertaining to this Lease and LESSEE's occupancy, use, development, maintenance and restoration of the Premises. Any modification, alteration or amendment of this Lease shall be in writing and signed by all the parties hereto.
- 10.17 Partial Invalidity. If any term, covenant, condition or provision of this Lease is found invalid, void or unenforceable by a court of competent jurisdiction, the remaining

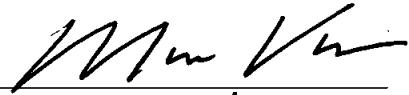
provisions shall remain in full force and effect.

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

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

Date: May 1, 2013

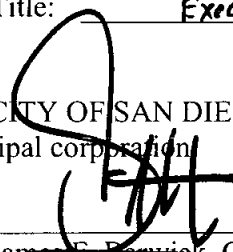
HOUSING DEVELOPMENT PARTNERS OF
SAN DIEGO, a California nonprofit public benefit
corporation

BY: 

Name: MARCO VAULI
Title: Executive Director

Date: 2 MAY 13

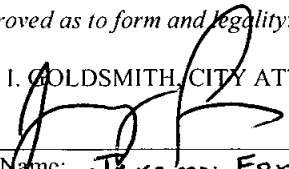
THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 

~~James F. Darwiche, CCIM~~
~~Director, Real Estate Assets Department~~
SCOTT CHAPPELLE
INTERIM CDO
308156

Approved as to form and legality:

JAN I. GOLDSMITH, CITY ATTORNEY

By: 

Name: Jeremy Fonseca
Title: Deputy City Attorney

Exhibit A: Legal Description of Premises

Exhibit B: Commercial Space

Exhibit C: Ballroom

Exhibit A: Legal Description of Premises

Per the Preliminary Title Report dated August 28, 2012, the subject's legal description is:

LOTS A, B, C, D, E, F, G, H, I, J, K AND L IN BLOCK 31 OF HORTON'S ADDITION, IN THE CITY OF SAN DIEGO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF MADE BY L.L.LOCKLING FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.

Exhibit B: Commercial Space

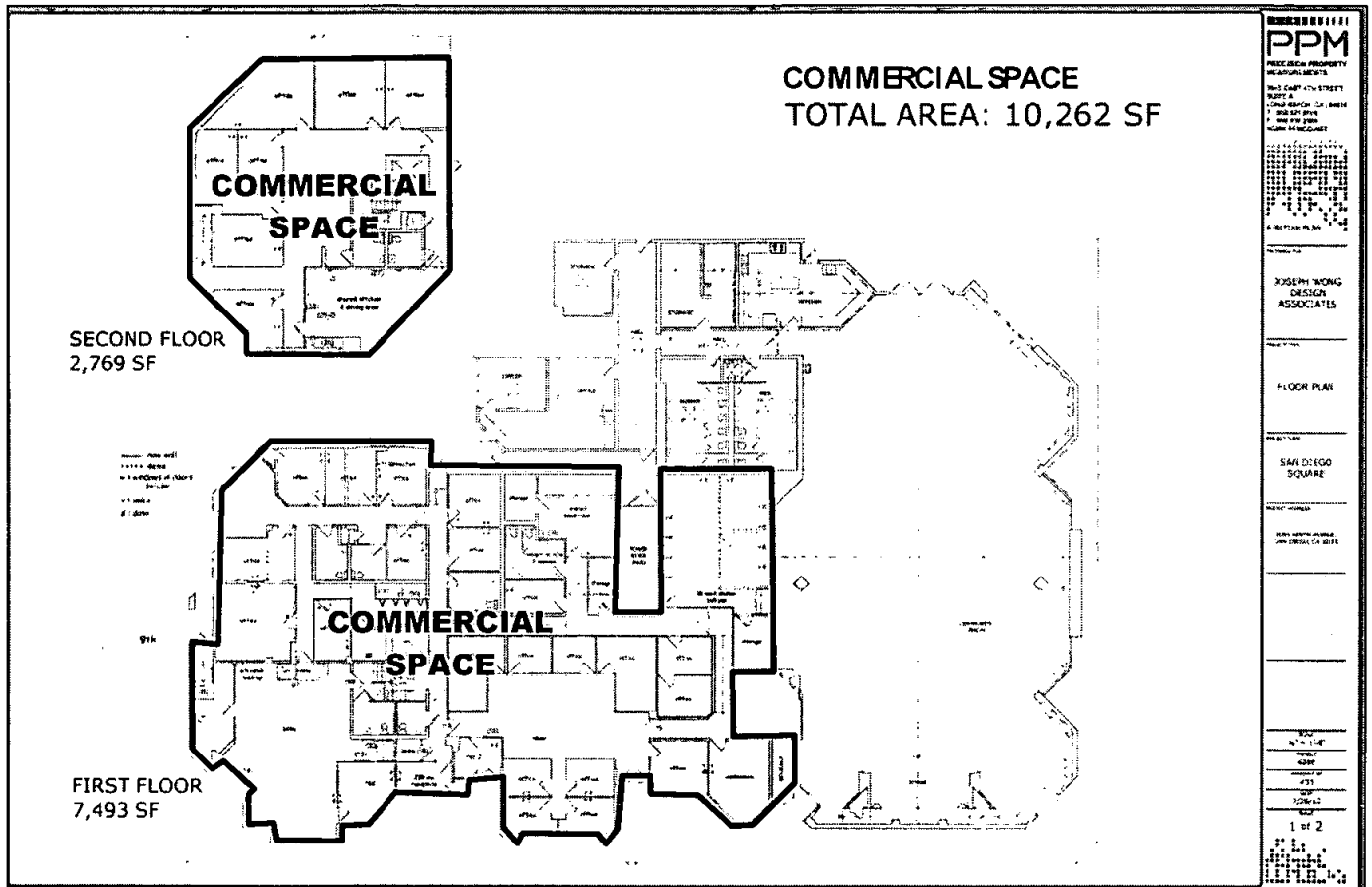
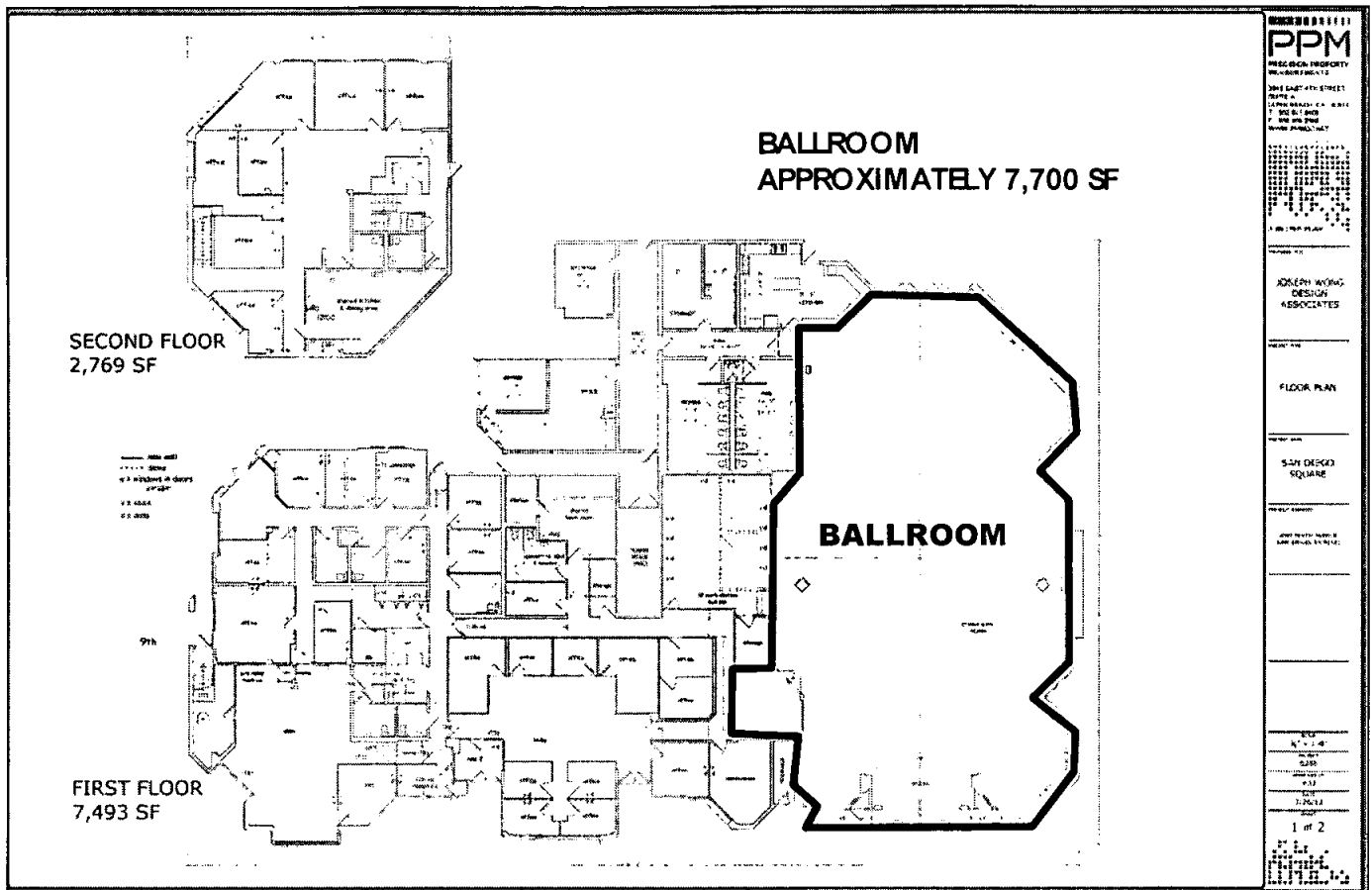


Exhibit C: Ballroom





CITY OF SAN DIEGO PERCENTAGE GROUND LEASE

BY AND BETWEEN

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

AND

**HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO,
A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, LESSEE**

*SD land
terminates
9/13/2029
HDP would terminate
4/30/2029
(45 years)*

CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT

THIS CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT ("Permit") is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation ("CITY"), **HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO**, a California nonprofit corporation ("HDP"), and **LEIGHTON AND ASSOCIATES, INC.**, a California corporation ("LEIGHTON"), to be effective as of **January 6, 2011** (the "Effective Date"), when signed by the parties and approved by the San Diego City Attorney.

RECITALS

- A. CITY, as lessor and SAN DIEGO KIND CORPORATION, a California nonprofit corporation ("SD Kind"), as lessee, are parties to that certain LEASE AGREEMENT dated September 14, 1979, and filed in the Office of the San Diego City Clerk as Document No. RR-250195 on September 14, 1979 (the "Lease," as amended) relating to the ground lease of the land underlying the improvements thereon, commonly known as San Diego Square and located at 1055 9th Avenue, San Diego, California 92101 (the "Property").
- B. HDP has requested CITY's authorization for LEIGHTON, on behalf of HDP, to conduct a Phase II environmental site assessment of the Property, as described in the attached **Exhibit A: Scope of Work** (the "Allowed Use").
- C. This Permit is subject to SD KIND's granting to HDP and LEIGHTON a license to enter upon SD Kind's leasehold on the Property to perform the environmental site assessment.

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

- 1. **Right to Enter.** Subject to the terms and conditions of this Permit, CITY hereby grants permission to HDP and LEIGHTON (collectively and jointly and severally, "PERMITTEE") to enter upon the Property to perform the Allowed Use and to maintain and restore the Property as required by this Permit (the "Permit Use"). This Permit shall also be subject to PERMITTEE's obtaining permission from SD Kind to enter upon SD Kind's leasehold on the Property to perform the Allowed Use.
- 2. **Use of Property.** Subject to the terms and conditions of this Permit, PERMITTEE may use the Property on a non-exclusive basis solely for the purpose of the Permit Use. PERMITTEE shall obtain all required permits for the Permit Use. PERMITTEE shall promptly repair any and all damage resulting from the Permit Use and restore the Property to CITY's reasonable satisfaction.
- 3. **Permit Fee.** Consideration to CITY for granting the license under this Permit shall be the completion of the Permit Use and delivery to CITY of copies of all reports and other data and documentation related to and resulting from the Permit Use.

4. Term. The term of this Permit ("Term") shall be two (2) months, commencing on the Effective Date. Notwithstanding the foregoing, CITY may terminate this Permit at will, in its sole discretion.
5. CITY's Consent, Discretion. Whenever required under this Permit, CITY's consent or approval shall mean the written consent or approval of the Mayor of San Diego, or his or her designee ("Mayor"), unless otherwise expressly provided. CITY's discretionary acts hereunder shall be made in the Mayor's discretion, unless otherwise expressly provided.
6. Insurance. PERMITTEE shall deliver to CITY's Real Estate Assets Department a current certificate of insurance for:
 - (a) Commercial General Liability Insurance, providing coverage for bodily injury, including death, personal injury, and property damage with limits of at least One Million Dollars (\$1,000,000) per occurrence, subject to an annual aggregate of at least Two Million Dollars (\$2,000,000);
 - (b) Automobile Liability Insurance, providing coverage for all bodily injury and property damage, with a limit of at least One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of any vehicle (including owned, hired, and non-owned vehicles) operated in performing any and all work pursuant to this Permit. Coverage shall be written on *ISO form CA 00 01 12 90*, or a substitute form providing equivalent liability coverage;
 - (c) Workers' Compensation Insurance, as required by the laws of the State of California for all of PERMITTEE's employees who are subject to this Permit, with Employers' Liability coverage with a limit of at least One Million Dollars (\$1,000,000); and
 - (d) For use of the Property involving any contact with hazardous substances, the insurance coverage specified in that certain "Standard Specifications for Public Works Construction (The WHITEBOOK, 2010 Edition)," and subject to all related terms and conditions therein related to PERMITTEE's use of the Property.
- 6.1. Additional Insureds. Pursuant to a separate endorsement [CG2010 (11/85) or equivalent form], "The City of San Diego, its elected officials, officers, employees, representatives, and agents" shall be named as additional insureds in all policies.
- 6.2. Primary & Non-Contributory. Insurance policies shall be endorsed such that the coverage is primary and non-contributory to any coverage carried or maintained by CITY.
- 6.3. Qualified Insurer(s). All insurance required by the terms of this Permit must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the current AM Best Ratings Guide and which are acceptable to CITY. Non-admitted surplus lines insurers may be accepted provided they are

included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet CITY requirements.

- 6.4. Deductibles/Retentions. All deductibles and self-insured retentions on any insurance policy are the sole responsibility of PERMITTEE and must be disclosed and acceptable to CITY at the time evidence of insurance is provided.
- 6.5. Continuity of Coverage. All policies shall be in effect on or before the first day of the Term, except "course of construction fire insurance" shall be in force on commencement of all authorized construction, and full applicable fire insurance coverage shall be effective upon completion of each insurable improvement. The policies shall be kept in force for the duration of the Term. At least thirty (30) days prior to the expiration of each insurance policy, PERMITTEE shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the requirements of this Permit. PERMITTEE shall provide proof of continuing insurance at least annually during the Term. If insurance lapses or is discontinued for any reason, PERMITTEE shall immediately notify CITY and obtain replacement insurance as soon as possible.
- 6.6. Modification. To assure protection from and against the kind and extent of risk existing with the Permit Use or the Property, CITY, at its discretion, may require the revision of amounts and coverage at any time during the Term by giving PERMITTEE thirty (30) days prior written notice. PERMITTEE shall also obtain any additional insurance required by CITY for new improvements, changed circumstances, or CITY's reasonable re-evaluation of risk levels related to the Permit Use or the Property.
- 6.7. Accident Reports. PERMITTEE shall immediately report to CITY any accident causing property damage or injury to persons and related to the Permit Use or the Property. Such report shall contain the names and addresses of the involved parties, a statement of the circumstances, the date and hour of the accident, the names and addresses of any witnesses, and other pertinent information.
7. Hold Harmless. PERMITTEE shall protect, defend, indemnify, and hold CITY, its elected officials, officers, representatives, agents, and employees, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to PERMITTEE's employees, invitees, guests, agents, or contractors, which arise out of or are in any manner directly or indirectly connected with the Permit Use, and all expenses of investigating and defending against same, including without limitation attorneys' fees and costs; provided, however, that PERMITTEE's duty to indemnify and hold harmless shall not include any claims or liability arising from the gross negligence, recklessness, or intentional misconduct of CITY and its elected officials, officers, employees, representatives, and agents. The rights and obligations under this section shall survive the expiration or termination of this Permit. Notwithstanding anything to the contrary in this Permit, this paragraph 7 shall have no application to conditions on the Property that preexist the Permit Use and are not exacerbated by the Permit Use,

including without limitation the preexistence of hazard substances on the Property.

8. PERMITTEE's Risk. PERMITTEE shall bear all risks and liability arising out of or in any manner directly or indirectly connected with the Permit Use and any damages to the improvements on, under, or in the vicinity of the Property resulting directly or indirectly thereby.
9. Revocable License. This Permit is not a lease. It is a non-exclusive license to use CITY property, and may be revoked at will by CITY, in its sole discretion. CITY shall not be obligated for any loss, financial or otherwise, which may be incurred by PERMITTEE as a result of such revocation or the termination of this Permit. PERMITTEE expressly waives any claim for expense or loss which PERMITTEE might incur as a result of CITY's termination of this Permit.
10. Compliance with Law. PERMITTEE shall, at its sole cost and expense, comply with all laws and the requirements of all municipal, state, and federal authorities now in effect or which may hereafter be in effect, which pertain to the Permit Use.
11. No Assignment. PERMITTEE shall not assign any rights granted by this Permit or any interest therein without CITY's prior written consent.
12. Encumbrances. PERMITTEE shall keep the Property free from all encumbrances and liens of any nature which arise out of or are in any manner directly or indirectly connected with the Permit Use. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from and against any and all such encumbrances and/or liens, and from and against any claim, liability, cost or expense with respect to the Permit Use, including without limitation all attorneys' fees and costs, related thereto, including without limitation PERMITTEE's failure or the failure of any contractor or subcontractor hired by PERMITTEE to pay any person or persons referred to in Section 3181 of the California Civil Code or other applicable sections thereof.
13. Performance of Permit Use. PERMITTEE shall, to CITY's reasonable satisfaction, conduct the Permit Use in a decent, safe, healthy and sanitary manner. PERMITTEE shall conduct the Permit Use in a manner that does not unreasonably interfere with any other person's legal use and occupancy of the Property.
14. Inspection. Subject to the terms and conditions of the Lease, CITY may, at any and all times, enter and inspect the Property and/or the Permit Use.
15. Hazardous Substances. If the Permit Use causes the illegal installation, storage, utilization, generation, sale or release of hazardous or otherwise regulated substances in, on, under, or from the Property, PERMITTEE shall be responsible for therefor. PERMITTEE and PERMITTEE's employees, agents and contractors shall not install, store, utilize, generate, or sell any hazardous substance on the Property without CITY's prior written consent. PERMITTEE shall, prior to commencing the Permit Use, obtain all required permits from applicable regulatory agencies, including without limitation the San Diego County

Department of Environmental Health, local fire agencies, the San Diego County Department of Weights and Measures, the San Diego County Air Pollution Control District, and the San Diego Regional Water Quality Control Board. Installing, utilizing, storing, or any other presence of a hazardous substance includes boxes, bags, bottles, drums, cylinders, above or below ground tanks, equipment with tanks, or any other type of container, equipment, or device which holds or incorporates a hazardous substance or hazardous waste.

- 15.1 No liability for Preexisting Conditions. Notwithstanding anything to the contrary in this Permit, PERMITTEE shall not be responsible or liable for hazardous substances and conditions on the Property that preexist the Permit Use and are not exacerbated by the Permit Use.
- 15.2 Release. For the purposes of this provision, a release shall include without limitation any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or otherwise disposing of hazardous substances. "Hazardous substances" shall mean any hazardous liquid, solid, or gaseous material substances listed by the Environmental Protection Agency or the State of California as a hazardous substance, and any type of petroleum-related substances and their chemical constituents.
- 15.3 Remediation. If the Permit Use results in a release of a hazardous substance, PERMITTEE shall pay all costs of remediation and removal to the CITY's satisfaction for unrestricted reuse of the Property, and in accordance with all applicable laws, rules, and regulations of governmental authorities.
- 15.4 Removal. If PERMITTEE or PERMITTEE's contractor or agent has received approval and permits to store, utilize, generate, or install, or otherwise bring hazardous materials or hazardous wastes on the Property for the Permit Use, PERMITTEE and/or PERMITTEE's contractor or agent shall remove all hazardous substances and hazardous wastes in any type of container, equipment, or device related to the Permit Use from the Property immediately upon or prior to the expiration or earlier termination of this Permit. CITY reserves the right to conduct inspections of the Property and/or request documentation demonstrating the legal removal and/or disposal of the hazardous materials, wastes or other containers, equipment, or devices from the Property. PERMITTEE shall be responsible for any and all costs incurred by CITY to remove any container, equipment, or device related to the Permit Use and requiring disposal or removal as required by this provision.
- 15.5 Indemnity. PERMITTEE shall protect, defend, indemnify, and hold CITY harmless from any and all claims, costs, and expenses related to environmental liabilities caused by the Permit Use, including without limitation: (i) costs of environmental assessments; (ii) costs of regulatory remediation oversight; (iii) costs of remediation and removal; (iv) any necessary CITY response costs; (v) all fines, penalties, or fees assessed by any regulatory agency; (vi) damages for injury to natural resources, PERMITTEE's officers, employees, invitees, guests, agents, or contractors, or the

public; and (vii) all costs of any health assessments or health effect studies. CITY shall protect, defend, indemnify, and hold PERMITTEE harmless from any and all claims, costs, and expenses related to environmental liabilities arising solely from conditions existing, or acts or omissions occurring, prior to and otherwise not caused by the Permit Use.

15.6 Notice of Release. If PERMITTEE knows or has reasonable cause to believe that a hazardous substance has been released on, from, or beneath the Property and caused by the Permit Use, PERMITTEE shall immediately notify CITY and any appropriate regulatory or reporting agency per California Administrative Code Title 19 and any other applicable laws or regulations. PERMITTEE shall deliver a written report thereof to CITY within three (3) days after receipt of the knowledge or cause for belief and submit any required written reports to regulatory or reporting agencies as required by regulation or law. If PERMITTEE knows or has reasonable cause to believe that a release of a hazardous substance caused by the Permit Use is imminent or that a hazardous substance on the Property caused by the Permit Use presents an imminent substantial danger to public health and safety, PERMITTEE shall take all actions necessary to alleviate the danger. PERMITTEE shall immediately notify CITY in writing of any violation, notice to comply, or notice of violation received or the initiation of environmental actions or private suits related to the Permit Use.

15.7 Environmental Assessment. Upon reasonable cause to believe that the Permit Use resulted in any hazardous substance being released on, from or beneath the Property, CITY may cause an environmental assessment under regulatory oversight of the suspect area to be performed by a professional environmental consultant registered with the State of California as a Professional Engineer, Certified Engineering Geologist, or Registered Civil Engineer. The environmental assessment shall be obtained at PERMITTEE's sole cost and expense, and shall establish what, if any, hazardous substances have more likely than not been caused by the Permit Use, and in what quantities. If any such hazardous substances exist in quantities greater than allowed by municipal, county, state, or federal laws, statutes, ordinances, or regulations, or require future restricted re-use of the Property, then the environmental assessment shall include a discussion of such substances with recommendations for remediation and removal necessary to effect unrestricted re-use and in compliance with those laws or statutes, and estimates of the cost of such remediation or removal. PERMITTEE shall cause, or if PERMITTEE fails to do so within a reasonable period of time, as determined by CITY in its sole discretion, CITY may cause the remediation and/or removal recommended in the environmental assessment such that unrestricted re-use of the Property and compliance with environmental law and regulations are achieved, and PERMITTEE shall pay all costs and expenses therefor.

16. Waiver. CITY's failure to insist upon the strict performance of any of PERMITTEE's obligations under this Permit, in one or more instance, shall not be construed as a waiver of any such obligation, and the same shall remain in full force and effect. The property constituting the Property is CITY-owned and held in trust for the benefit of CITY's citizens. CITY's failure to discover a breach of any obligation of this Permit or take

prompt action to require the cure of any such breach shall not result in an equitable estoppel, but CITY may at any and all times require the cure of any such breach.

17. Survival. Any obligation which accrues under this Permit prior to its expiration or termination shall survive such expiration or termination.
18. Entire Agreement. This Permit constitutes the entire agreement between the parties relating to the Permit Use and supersedes any and all prior understandings, representations, warranties and agreements between the parties. Any modification, alteration, or amendment of this Permit shall be in writing and signed by all the parties hereto.
19. Legal Proceedings. If any party brings an action or proceeding against another party under this Permit, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses thereof, including without limitation reasonable attorneys' fees and costs. The "prevailing party" shall be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment. If, as a result of an action brought by or against PERMITTEE in connection with this Permit, CITY becomes a party (or is made a party) thereto, PERMITTEE shall pay all of CITY's costs and expenses thereof, including without limitation reasonable attorneys' fees and costs.
20. Notices. Any notice required or permitted to be given under this Permit shall be in writing and may be served personally or by United States mail, postage prepaid, and addressed to CITY or PERMITTEE, respectively, as follows:

THE CITY OF SAN DIEGO

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

With a copy by First Class Mail to: SAN DIEGO CITY ATTORNEY
Attn: Real Property Section
1200 Third Avenue, Suite 1100
San Diego, California 92101-4106

HOUSING DEVELOPMENT PARTNERS OF SAN DIEGO

Attention: Marco Vakili, Executive Director
1122 Broadway, Suite 500
San Diego, CA 92101
(619) 578-7470

LEIGHTON AND ASSOCIATES, INC.

Attention: Thomas E. Mills
3934 Murphy Canton Road, Suite B205
San Diego, CA 92123-4425
(858) 292-8030

21. Governmental Approvals. By entering into this Permit, neither CITY nor CITY's City Council is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to the Permit Use. Discretionary action includes but is not limited to re-zonings, variances, environmental clearances, or any other governmental agency approvals which may be required for the Permit Use.
22. Authority to Contract. Each individual executing this Permit on behalf of another person or legal entity represents and warrants that he/she is authorized to execute and deliver this Permit on behalf of such person or entity in accordance with duly adopted resolutions or other authorizing actions which are necessary and proper and under such legal entity's articles, charter, bylaws, or other written rules of conduct or governing agreement, and that this Permit is binding upon such person or entity in accordance with its terms.

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

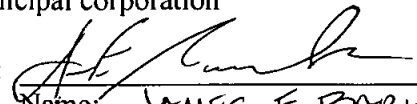
**HOUSING DEVELOPMENT PARTNERS OF
SAN DIEGO**, a California nonprofit corporation

BY: 
Name: MARCO VAZILI
Title: Executive Director

LEIGHTON AND ASSOCIATES, INC., a
California corporation

BY: 
Name: Michael R. Stewart
Title: Vice President

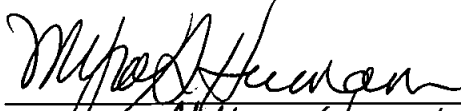
THE CITY OF SAN DIEGO, a California
municipal corporation

BY: 
Name: JAMES F. BARWICK, CLIM
Title: DIRECTOR, REAL ESTATE ASSETS

Environmental Analysis Section Environmental Clearance:

This Right-of-Entry Permit is Categorically Exempt from CEQA pursuant to State CEQA Guidelines Sections §15301 (Existing Facilities) and §15306 (Information Collection).

Date: 2/1/12

BY: 

Name: Myra Hermann

Title: Senior Planner

Approved as to form and legality:

JAN I. GOLDSMITH, City Attorney

BY: 

Name: Brock Ladewig

Title: Deputy City Attorney

Exhibit A: Scope of Work

[TO FOLLOW BEHIND THIS PAGE]



Leighton and Associates, Inc.

A LEIGHTON GROUP COMPANY

December 12, 2011

Proposal No. P04-001765

To: Housing Development Partners
1122 Broadway, 5th Floor
San Diego, California 92101

Attention: Mr. Michael Pavoc:

Subject: Proposal for a Limited Phase II Environmental Site Assessment, San Diego Square, 1055 9th Avenue, San Diego, California

Reference: SCS Engineers, 2011, Phase I Environmental Site Assessment (Assessment) and Limited Asbestos and Lead Paint Sampling, Assessor's Parcel Number (APN) 760-214-04, 1055 9th Avenue, San Diego, California 92101, dated November 17, 2011

INTRODUCTION

Leighton and Associates, Inc. (Leighton) is pleased to present this proposal for a Limited Phase II Environmental Site Assessment at the San Diego Square complex at 1055 9th Avenue, San Diego, California (subject site). The scope of work for this proposal is based on the findings of the above referenced Phase I ESA report prepare for the subject site that identified the following historical land uses have resulted in recognized environmental conditions:

- 1) Furniture finishing at 1020 10th Avenue (1921);
- 2) Tire Store at 918 Broadway (1921);
- 3) Bakery at 942 Broadway (1921);
- 4) Plating Facility at 1028 10th Avenue (1921-1926);
- 5) Gas Station at 901 C Street (1921-1968);
- 6) Battery Store at 1045 9th Avenue (1921-1931);
- 7) Service Station at 928 Broadway (1931);

Utility Clearance

Underground Service Alert (USA) will be contacted prior to the commencement of fieldwork to mark underground utility locations. Each proposed boring location will be clearly marked in white paint prior to contacting USA. ULS Services will be contracted to perform a geophysical survey at the following outdoor locations noted on the attached map: Nos. 5 and 8 to evaluate if historical USTs/piping systems are possibly present.

Task 2 – Field Investigation

Field activities for the soil gas survey are to be conducted in accordance with the California State Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) Advisory - Active Soil Gas Investigations (2003) (Advisory).

Two (2) soil vapor borings at historical gas station #5, one (1) soil vapor boring at historical service station #11, and historical laundry #11 will be advanced to a total depth of up to 19 feet below ground surface (bgs) using direct push technology by H&P Mobile Geochemistry of Carlsbad, California. The proposed location of these six (6) borings are shown on Figure 2 – Proposed Boring Location Map. Soil vapor samples will be collected at 5 and 15 feet and soil samples will be collected at 5, 10, 15 and 19 feet below grade for analysis and lithologic observation. During boring advancement, a photoionization detector (PID) will be used to evaluate the soil samples for the presence or absence of volatile organic hydrocarbon vapors. Each soil sample collected will be placed in an ice-cooled chest for temporary storage and transported to a State of California Certified laboratory (Associated Laboratories, Garden Grove, California) for selected chemical analyses. Drilling equipment will be appropriately decontaminated before the commencement of any drilling activities and in between boreholes.

A tracer gas compound will be used to test for leaks around the soil vapor probe penetration seal at the ground surface and within the sampling system. The soil vapor samples will be collected in the field and analyzed onsite by a State of California Certified mobile laboratory (H&P Mobile Geochemistry) and analyzed for volatile organic compounds (VOCs) full scan by EPA Method 8260. The results of the analysis will meet the reporting limits required by the California Human Health Screening Levels (CHHSLs) established by the California Environmental Protection Agency (CalEPA).



Hand auger soil borings will be located in the open areas (due to limited access) at historical areas #4 (former plating facility), #10 (former cleaners/laundry) and #6 (former Battery store) and soil samples will be collected at 3 and 5 feet below grade.

The number of soil vapor (SV) and/or soil sample borings (SS) will be drilled at the following historical areas that are noted on the attached Figure 2 – Proposed Boring Location Map:

- 4) Soil samples at 3 and 5 feet below grade will be collected from two (2) hand auger SS locations (outside the existing building) at the former Plating Facility at 1028 10th Avenue;
- 5) Soil samples will be collected at 5, 10, 15 and 19 feet below grade and soil vapor sampled will be collected at 5 and 15 feet below grade from three (3) SV/SS locations at the former Gas Station at 901 C Street - 1 boring in the approximate location of underground storage tanks as noted on the 1921 and 1950/1965 Sanborn Maps and 2 borings in the area of two dispenser islands noted on the 1950/1965 Sanborn Maps;
- 6) Soil samples at 3 and 5 feet below grade will be collected from one (1) hand auger SS location (outside the existing building) at the former Battery store at 1045 9th Avenue;
- 8) Soil samples will be collected at 5, 10, 15 and 19 feet below grade and soil vapor sampled will be collected at 5 and 15 feet below grade from two (2) SV/SS locations at the former Service Station at 1072 10th Avenue;
- 10) Soil samples at 3 and 5 feet below grade will be collected from one (1) hand auger SS location (outside the existing building) at the former Cleaners/Laundry at 1012 10th Avenue;
- 11) Soil samples will be collected at 5, 10, 15 and 19 feet below grade and soil vapor sampled will be collected at 5 and 15 feet below grade from one (1) SV/SS location at the former Linens/Laundry at 941 C Street; and
- 12) See #4 above for the former Laundry at 1026 10th Avenue.

No soil samples are recommended for historical item #13 since it is our understanding that no improvements are planned for the subject site that would disturb or excavate the existing subsurface soils.

In summary a total of 6-soil vapor borings and soil samples will be collected to 19 feet below grade and four (4) hand auger boring will be sampled to 5 feet below grade (or refusal which ever is less).



Laboratory Analysis

Select soil samples will be analyzed for total petroleum hydrocarbons – carbon chain (TPHcc) by EPA Method 8015, VOCs by EPA 8260B, CAM17 heavy metals, hexavalent chrome, cyanide, and ph. The number of soil samples to be analyzed by each of these constituents at the proposed boring locations is itemized below.

- 4) Test the four (4) soil samples from the two (2) hand auger SS locations at the former Plating Facility at 1028 10th Avenue will be analyzed for CAM 17 metals, hexavalent chrome, cyanide and ph.
- 5) The six (6) soils samples (the samples at 10 and 19 feet will be placed on hold) from the three (3) SV/SS locations at the former Gas Station at 901 C Street - one (1) boring in the approximate location of underground storage tanks as noted on the 1921 and 1950/1965 Sanborn Maps and two (2) borings in the area of two dispenser islands noted on the 1950/1965 Sanborn Maps will be analyzed for TPH extended and VOCs (including oxygenates).
- 6) The two (2) soil samples from the one (1) hand auger SS location (outside the existing building) at the former Battery store at 1045 9th Avenue will be analyzed for Total Lead and ph.
- 8) The four (4) soil samples (the samples at 10 and 19 feet will be placed on hold) from the two (2) SV/SS locations at the former Service Station at 1072 10th Avenue will be analyzed for TPH extended and VOCs (including oxygenates).
- 10) One (1) soil sample at 3 feet (the 5 feet sample will be placed on hold) at the former Cleaners/Laundry at 1012 10th Avenue will be analyzed for VOCs.
- 11) The two (2) soil samples (the samples at 10 and 19 feet will be placed on hold) from the one (1) SV/SS location at the former Linens/Laundry at 941 C Street will be analyzed for VOCs.
- 12) One (1) soil sample at 3 feet (the 5 feet sample will be placed on hold) from one (1) of the two (2) hand auger borings at the former Laundry at 1026 10th Avenue will be analyzed for VOCs.

All samples will be logged on a chain of custody form in accordance with current Environmental Protection Agency (EPA) regulations. The laboratory results will be available on a 10-business day laboratory turn around time.



In summary is a list of the analyses for the soil samples:

- 10 soil samples will be analyzed for TPH Extended;
- 14 soil samples will be analyzed for VOCs;
- 4 soil samples will be analyzed for CAM17 Heavy Metals;
- 2 soil samples will be analyzed for Total Lead;
- 4 soil samples will be analyzed for Hexavalent Chrome;
- 4 soil samples will be analyzed for Cyanide; and
- 6 soil samples will be analyzed for ph.

Soil vapor samples (12 plus 2 duplicates for 14 samples) will be analyzed for the tracer gas, VOCs (including naphthalene) by EPA Method 8260B with a laboratory detection limit of 0.1 micrograms per liter ($\mu\text{g/l}$) or less at an onsite mobile laboratory.

Leighton will compare any detected levels of TPH and VOCs in soil to appropriate regulatory guidance levels prepared by the State of California (California Human Health Screening Levels – CHHSLs) and if VOCs are detected in soil vapor a human health risk assessment based on the County of San Diego Department of Environmental Health (DEH) current vapor risk model. A summary of this analysis will be provided in an email as soon as final results are received from the analytical laboratory. Final soil vapor results are normally received within 24 hours of sample collection and soil results are received within 10 business days of sample collection.

Task 3 – Letter Report Preparation

Leighton will analyze field and laboratory data and develop appropriate conclusions and recommendations to be included in a letter report. The client will be issued a report, including all tables, appendices and illustrations to review and comment upon. All investigation reports will be reviewed and stamped by a California Professional Geologist (PG).

Cost and Schedule

We propose to provide these services on a time-and materials basis, not to exceed for the amount of **Seventeen Thousand Dollars (\$17,000) or Seventeen Thousand Eight Hundred (\$17,800) with a Human Health Risk Assessment if VOCs are present in the soil vapor samples** (Task 1 Pre-field \$2,100, Task 2 Field Soil Vapor Survey and Soil Sampling \$8,900 and \$3,000 for lab analysis of soil samples and Task 3 Report Preparation \$3,000 or \$3,800). If additional field or laboratory services are required, they

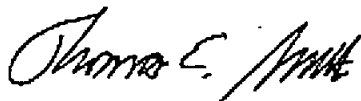


will be provided in accordance with the rates mentioned above, and those included on the attached 2011 Professional Fee Schedule (discounted).

If the Scope of Work is acceptable to you and the services are awarded to Leighton Consulting, please have two copies of the Scope of Work executed by a duly authorized officer and returned to us. We will return one fully executed copy for your records. If at any time during the performance of this work, conditions are disclosed that requires a change in the scope of work, we will notify you immediately and will only proceed with out of scope tasks when approved in writing by you. The cost of these additional services, including post-report consultation will be charged as time-and-materials, based on the attached 2011 Professional Fee Schedule (Discounted).

Leighton appreciates this opportunity to be of service. Should you have any questions, please contact the undersigned at (858) 300-8482 or tmills@leightongroup.com.

Respectfully submitted,
LEIGHTON AND ASSOCIATES, INC.



Thomas E. Mills, PG
Project Geologist

Attachments: Figure 1 - Site Map
Figure 2 - Proposed Boring Location Map
2011 Professional Fee Schedule (Discounted)
Scope of Work Agreement
Master Services Agreement

Distribution: (1) Addressee





San Diego Square, 1055 9th St. San Diego, CA



Parcel with historical gas/service station
(#5, #7 and #8) and battery store (#6)



Parcel with historical furniture finishing (#1),
Tire Shop (#2), Bakery (#3), Printing Facility (#9)



Parcel with historical Cleaners/Laundry
(#10, #11 and #12)



Parcel with historical Plating Facility (#4)

Figure 1
Site Map



0 25 50 100
Feet



San Diego Square, 1055 9th St. San Diego, CA



Parcel with historical gas/service station
(#5, #7 and #8) and battery store (#6)



Parcel with historical furniture finishing (#1),
Tire Shop (#2), Bakery (#3), Printing Facility (#9)



Parcel with historical Cleaners/Laundry
(#10, #11 and #12)



Parcel with historical Plating Facility (#4)



Approx. Location of Proposed Soil Vapor Boring to 19 ft.



Approx. Location of Proposed Hand Auger Soil Boring

Figure 2
Proposed Boring
Location Map

